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Panel on Administration of Justice and Legal Services

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 18 July 2017**

**Measures to prevent the misuse of the legal aid system in Hong Kong and
assignment of lawyers in legal aid cases**

Purpose

This paper gives an account of the deliberations of the Panel on Administration of Justice and Legal Services ("the Panel") on issues relating to the measures to prevent the misuse of the legal aid system in Hong Kong and assignment of lawyers in legal aid cases.

Government's legal aid policy

2. The Government's policy objective on legal aid is to ensure that no one with reasonable grounds for taking legal action in the Hong Kong courts is prevented from doing so due to a lack of means.

Legal aid framework

3. The Legal Aid Ordinance (Cap. 91) ("LAO"), enacted in 1967, sets out the legal framework for the administration of legal aid. Legal aid is provided by the Legal Aid Department ("LAD") under the Ordinary Legal Aid Scheme ("OLAS") and the Supplementary Legal Aid Scheme ("SLAS").

4. The Legal Aid Services Council ("LASC") was set up on 1 September 1996 under the Legal Aid Services Council Ordinance (Cap. 489) to supervise the provision of legal aid services provided by LAD and to advise the Government on legal aid policy.

5. LAD provides legal representation to eligible applicants by a solicitor and, if necessary, a barrister in civil and criminal proceedings. Legal aid is available,

inter alia, to cases in District Court, the Court of First Instance, the Court of Appeal and the Court of Final Appeal. It is also available for committal proceedings in the Magistrates' Courts. Any person, whether or not resident in Hong Kong, who is involved in these court proceedings may apply for legal aid.

6. To successfully apply for legal aid, an applicant must pass the means test and the merits test. An applicant would not be eligible for legal aid if his financial resources¹ exceed the financial eligibility limit ("FEL")². To satisfy the merits test, an applicant needs to show that he has reasonable grounds for taking or defending proceedings. Section 9(d) of LAO empowers the Director of Legal Aid ("DLA") to refer an application for legal aid to a counsel or a solicitor to give opinion on the case to assess its eligibility for legal aid.

OLAS

7. OLAS covers civil proceedings in District Court and above. The types of cases include matrimonial cases, traffic accident claims, landlord and tenant disputes, claims in respect of industrial accidents, employees' compensation, immigration matters, breach of contract, professional negligence, seamen's wage claims, employees' wages and severance pay, Mental Health Review Tribunal cases, and Coronors' inquests involving interests of public justice. The scope of OLAS was expanded in November 2012 to cover monetary claims in derivatives of securities, currency futures or other futures contracts when fraud, misrepresentation or deception was involved in respect of the sale.

8. To satisfy the means test for legal aid for civil proceedings under OLAS, an applicant's financial resources must not exceed \$290,380. An aided person may be required to make a contribution towards the cost of legal representation if, on a determination of his financial resources, he should be able to do so. DLA may waive the limit in meritorious cases involving a possible breach of the Hong Kong Bill of Rights Ordinance (Cap. 383) ("HKBORO") or an inconsistency with the International Covenant on Civil and Political Rights ("ICCPR").

9. To satisfy the means test for legal aid in criminal cases, an applicant's financial resources should not exceed \$290,380. If an applicant was charged

¹ "Financial resources" means the aggregate of an applicant's disposable income within a 12-month period and disposable capital. A person's disposable income is his gross income minus deductible items as allowed under LAO. A person's disposable capital is the sum of his credit balance, money due to him, the market value of non-money resources and the value of business or share in a company, minus deductible items as allowed under the LAO.

² With effect from 17 July 2015, the FELs for the OLAS and the SLAS were increased to \$290,380 and \$1,451,900 respectively to take into account changes in the Consumer Price Index (C).

with murder, treason or piracy with violence, he may apply to a judge for exemption of means test and of payment of contribution. DLA has the discretion to grant legal aid in criminal cases to an applicant whose financial resources exceed \$290,380 if he is satisfied that it is desirable in the interests of justice to do so subject to payment of a contribution, if required.

10. The maximum contribution rate payable under OLAS is 25% of the financial resources possessed by an aided person, with the maximum amount of contribution capped at \$72,595.

SLAS

11. SLAS is a self-financing scheme introduced in 1984. The scheme was limited initially to cover claims for damages for personal and fatal injuries. It was subsequently extended to cover employees' compensation claims in 1992 and medical, dental as well as legal professional negligence in 1995. In November 2012, the scope of SLAS was significantly expanded to cover a wider range of professional negligence claims, negligence claims against insurers or their intermediaries in respect of the taking out of personal insurance products, monetary claims against the vendors in the sale of completed or uncompleted first-hand residential properties, and representation for employees in appeals against awards made by the Labour Tribunal. According to the Administration, all along, the guiding principles governing the scope of proceedings covered by SLAS should be those: (a) which deserve priority for public funding in the sense that significant injury or injustice to the individual, as distinct from that to a commercial concern or a group of citizens, is involved; and (b) which involve monetary claims and have a reasonably good chance of success.

12. The scheme is available to those whose financial resources exceed \$290,380 but do not exceed \$1,451,900. The costs of the scheme are met from the Supplementary Legal Aid Fund, which is financed by the application fees payable by applicants, the interim contributions from aided persons and the final contributions from a percentage deduction of the damages recovered in successful cases. The contribution rates were reduced twice, in 2000 and 2006, to the present 6% for cases settled before delivery of brief to counsel and 10% for other cases.

Assignment of lawyers to legally aided persons by LAD

Legislative framework on assignment of legal aid cases

13. Section 13 of LAO provides that where a legal aid certificate is granted,

DLA may act for the aided person through legal aid counsel or assign any lawyers in private practice who are on the Legal Aid Panel selected by either the aided person if he so desires, or DLA.

14. In brief, section 13 of LAO stipulates that when a legal aid certificate is granted, DLA has the choice whether to act as solicitor and for the aided person to be represented by a legal aid counsel or to assign the case to a solicitor on the Legal Aid Panel. If DLA decides not to act, he may assign a solicitor on the Legal Aid Panel selected by the aided person or DLA may assign a solicitor on the Legal Aid Panel if the aided person makes no selection.

15. To avoid conflict of interests and to maintain the independence of LAD, all judicial review cases are assigned out. In addition, cases are assigned out if the aided person was already represented by a private practitioner before the grant of legal aid. DLA will not act where both parties are legally aided unless a party to the proceedings is already represented by LAD at the time when legal aid is granted to the other party and there is no conflict of interest or prejudice to the aided person already represented by DLA if LAD continues to act.

Policy and criteria on assignment of private lawyers

16. Cases that LAD cannot or choose not to take up are assigned out to lawyers on the Legal Aid Panel. When distributing legal aid work to lawyers on the Legal Aid Panel, irrespective of the types of cases involved, LAD will adhere to the fundamental principle that the aided person's interest is of paramount importance. LAD's primary duty towards the aided person is to facilitate access to and attainment of justice through competent legal representation. To this end, LAD has devised and published criteria on assignment of legal aid cases based on the experience and expertise of the lawyers. The criteria, which have been endorsed by the LASC and are available at LAD's website and contained in the Manual for Legal Aid Practitioners, seek to ensure that DLA fulfils his duty of assigning competent lawyers to act for aided persons. A copy of the assignment criteria is in **Appendix I**.

Nomination of lawyers by legally aided persons

17. When aided persons decide to nominate their own lawyers, LAD takes the view that the effect of Section 13 of LAO is such that the aided person's nominations should be given due weight and should not be rejected unless there are compelling reasons to do so. Compelling reasons are when the nomination is likely to undermine the aided person's interest in the proceedings and/or to jeopardize the legal aid fund on account of matters such as previous unsatisfactory performance, adverse disciplinary action by regulatory bodies of

the two branches of the profession, language requirements of the proceedings, or the aided person has made repeated/late requests for change of lawyer without any good reasons in support and where the hearing date is imminent.

18. In the absence of any compelling reasons as those mentioned above, LAD is of the view that it does not have any valid ground under the existing legal framework to decline or question the nomination of the aided person. By the same token, unless there is evidence to the contrary, it is improper for the Department and would be a slur on the character and professional integrity of the nominated lawyer for LAD to enquire if the nomination is prompted by some kind of questionable conduct on the part of the lawyer concerned.

19. In judicial review cases, any such enquiry may also be interpreted as an unnecessary and improper attempt to influence the outcome of legally aided proceedings when the lawyer nominated by the aided person is professionally qualified and has an untarnished professional record. It could also be construed as interference with the aided person's right of access to justice. The practice of acceding to the aided person's nomination in the absence of compelling reasons also serves to give recognition to the fiduciary nature of the relationship between a litigant and his legal representative which is a relationship that reposes total trust and confidence essential in the conduct of legal proceedings and which contributes to the smooth operation of the justice system and protects the interest of aided persons.

Relevant Panel discussions

Provision of legal aid

20. At the meeting on 23 March 2015, a member cited examples to illustrate that the bureaucratic practices of the LAD had imposed unnecessary burden/nuisance on the applicants as well as legally aided persons. He quoted the examples of:

- a) requiring applicants to produce supporting documents on maintaining their parents often prolonged the application process, because not all participants could readily produce such document;
- b) although the court proceedings would be put on hold for 42 days after DLA filed at court a memorandum of notification upon receipt of a legal aid application, LAD often took more than 42 days, and in some cases up to three to four months, to complete processing an application. This had resulted in the applicants having to represent

themselves in legal proceedings;

- c) assignment of lawyers by LAD to legally aided persons was sometimes inappropriate. A case in point was that a legally aided person in a judicial review case to challenge the free postage arrangements under the Legislative Council Ordinance (Cap. 541) for favouring political parties was assigned a lawyer from a law firm run by Mr Albert HO and Mr James TO who were both members of the Democratic Party and candidates of the District Council (second) functional constituency election in the 2012 Legislative Council ("LegCo") Election; and
- d) although a party to any proceedings might choose to use either or both of the official languages, i.e. English and Chinese languages, during court proceedings and the party could request his/her lawyer to use either English or Chinese language to represent him/her during court proceedings under section 5 of the Official Languages Ordinance (Cap. 5), there were instances whereby LAD refused to fund legal proceedings conducted in Chinese language if the assigned bilingual lawyers used English language, instead of Chinese language as requested by their clients, during court proceedings.

21. The Administration responded that the legal aid applicants were not required to provide documentary proof for maintaining their parents for meeting the means test if they could provide other forms of proof; means and merits tests were conducted concurrently by LAD to avoid prolonged processing time of legal aid applications; and although an aided person might use either Chinese or English language to address the court or testify in the court, the use of which of these two official languages in the court was subject to the wish of the presiding judge or judicial officer who might use either or both of the official languages in any proceedings or a part of any proceedings as he/she deemed fit under section 5(1) and (2) of Official Languages Ordinance (Cap. 5).

22. In response to the enquiries made by a member, the LAD confirmed that a person, whose legal aid application had been turned down by LAD for failing the means test, could apply for legal aid for the same case again if the person's financial capacity subsequently could satisfy the means test; and that there had not been any increase then in the number of legal aid applications for cases involving a breach of the HKBORO or an inconsistency with the International Covenant on Civil and Political Rights as applied to Hong Kong ("human rights cases").

23. A member commented that to fully implement the policy objective of legal aid, aided persons of human rights cases and of judicial review cases involving important points of law affecting the general public should be waived from making a contribution upon acceptance of the offer of legal aid. The Administration responded that delineating which categories of aided persons should be waived from making a contribution upon the acceptance of the offer of legal aid would be impractical and divisive. DLA had discretion to waive the financial eligibility limit of means test when human rights issues were involved under section 5AA of the LAO. Such an exception was given as a matter of human rights policy consideration.

24. LAD was urged to exclude the financial resources of the applicant's spouse in assessing the financial resources of the applicant. The Administration replied that including the financial resources of the applicant's spouse in assessing the financial resources of the applicant was reasonable, as the spouse would also benefit from the damages or compensation recovered in the proceedings, if any, if the applicant won the case. It was also a common practise in many overseas jurisdictions to use household income to assess the financial resources of legal aid applicants.

25. A member said that she had received complaints from some members of the public that the time taken by LAD to process legal aid applications for cases arising from or relating to the "Occupy Central" movement was faster than that for processing other legal aid applications. The member asked if it was the case; and if so, whether the expeditious handling of cases arising from or relating to the "Occupy Central" movement was based on political consideration. The Administration responded that there was no question of LAD expediting the processing of legal aid applications for cases arising from or relating to the "Occupy Central" movement. When processing legal aid applications, priority was only accorded to applications with imminent statutory bar dates, including applications relating to judicial reviews. Such applications were treated as urgent cases.

Granting of legal aid for judicial review cases

26. A member considered that to enable access to justice in cases of public interest, LAD should waive the FELs of OLAS and SLAS for applicants seeking judicial review. The Administration advised that DLA had the discretion to waive the OLAS FEL for applicants in meritorious cases in which a breach of HKBORO or an inconsistency with ICCPR as applied to Hong Kong was an issue.

27. At the meeting on 30 January 2012, a member asked whether LAD would require an applicant to self-fund an initial application for judicial review whilst DLA would only grant legal aid if the court granted leave. The Administration advised that leave to apply for judicial review was not a pre-condition for the grant of legal aid. All cases including judicial review cases were subject to a means test independently conducted by LAD. Independent counsel's opinion would also be obtained where appropriate before a decision on granting of legal aid was made. An applicant who was refused legal aid might appeal against the DLA's decision to the Registrar of the High Court.

Possible abuse of legal aid services

28. At the same meeting in 2012, some members expressed concern that in some personal injuries cases where the same solicitors firm was nominated in many cases by the aided persons, the involvement of claims recovery agent might be suspected. In this connection, LAD should, in consultation with LASC, take more proactive actions to safeguard against any possible abuse of the legal aid system. Suggestion was made that the present nomination arrangement should be reviewed so that an applicant would be required, before the granting of legal aid, to sign a declaration that his choice of lawyer had not been influenced by touting or any other improper conduct on the part of the lawyer concerned. The Administration assured members that if LAD had come across any suspicious activities in the nomination process or in the course of the proceedings, LAD would look into the issue and refer them to the relevant legal professional bodies for follow-up.

29. Some members enquired whether there was any impropriety if a lawyer persuaded a person to apply for legal aid for judicial review and nominate the lawyer to act for him. The Administration advised that unless the lawyer nominated had provided misleading information to the aided person affecting his choice of lawyer in his application for legal aid, the Administration saw no impropriety for the lawyer to advise the aided person to seek judicial review in respect of his case.

30. A member expressed concern that certain applicants had applied for legal aid on multiple occasions, and that a selected group of legal professionals had often been nominated to handle the cases. Query was raised as to whether there was any mechanism in place to ensure that legal aid would not be abused by applicants. At the meeting on 16 February 2015, the Administration advised that there were multiple mechanisms and safeguards to ensure the independent and fair handling of legal aid cases. In particular, LAD had to assess legal aid applications in accordance with the statutory means and merits tests. Safeguards were also in place to ensure the proper and fair provision of legal aid

services, and LAD's provision of legal aid services was overseen by the independent LASC.

Assessment of financial resources of legal aid applicants

31. At the meeting on 16 February 2015, suggestion was made that LAD should review the assessment of financial resources of applicants. A member pointed out that at present, the determination of an applicant's financial resources would include those of the applicant's spouse, even though the applicant had separated from his/her spouse. Another example was that in determining an application for a probate case, the LAD would assess the financial resources of all of the beneficiaries of the estate concerned. As such, if, say, only the financial resources of one of the five beneficiaries exceeded the FEL of OLAS or SLAS, legal aid would be refused.

Assignment of cases to and nomination of solicitors/counsel

32. During the policy briefing by the Secretary for Home Affairs on the Chief Executive's 2011-2012 Policy Address on 20 October 2011, members enquired about the criteria adopted by LAD for assigning solicitors/counsel to legally aided persons. The Administration advised that section 13(1) of LAO stipulated that LAD might assign solicitors or counsel to be selected by the aided person to act for them. In the assignment of legal aid cases, LAD would adhere to the fundamental principle that the aided person's interest was of paramount importance. Other factors, such as the nature and complexity of cases, experience and performance of the lawyers would also be taken into account. The Administration stressed that confidence in one's own legal representative was essential in the conduct of legal proceedings and hence, as long as the solicitor/counsel nominated by the aided person was legally qualified and did not have poor performance record, LAD would normally accede to and not reject an aided person's choice of solicitor/counsel unless there were compelling reasons to do so.

33. In response to the criticism made by a member regarding inappropriate assignment of lawyer at the Panel meeting on 23 March 2015, the Administration said that they could not comment openly any individual legal aid applications and pointed out that section 13 of the LAO provided that where a legal aid certificate was granted, the DLA might act for the aided person through legal aid counsel or assign any lawyers in private who were on the Legal Aid Panel selected by either the aided person if he/she so desired, or the DLA. In other words, the aided person could reject a lawyer selected by DLA and nominate his/her lawyer on the Legal Aid Panel. When legally aided persons decided to nominate their own lawyers, the legally aided person's nominations should be given due weight and

should not be rejected unless there were compelling reasons to do so.

34. A member opined that lawyers who engaged in political activities and their employee lawyers, if any, should not be excluded from being assigned legal aid work involving government departments or decisions, as the Independent Commission Against Corruption ("ICAC") had reviewed the adequacy of the safeguards in the lawyer assignment procedures to avoid the risk of abuse. Moreover, if an assigned lawyer was found to have engaged in any improper conduct, such as touting or champerty, LAD would impose appropriate sanctions on the lawyer concerned and refer the case to the Hong Kong Bar Association or the Law Society of Hong Kong for follow-up action. The aided persons should have the right to choose the lawyers on the Legal Aid Panel to represent them, as Article 35 of the Basic Law ("BL") guaranteed the right of all Hong Kong residents their choice of lawyers to represent them in the courts. It was of paramount importance that a client must have trust in his/her counsel and the counsel concerned had the relevant experience and expertise required to take up the case in selecting a lawyer for a lawsuit. Another member furthered advised that the Administration should have mentioned in its paper to the Panel that under BL35 all Hong Kong residents had the right to choose their lawyers to represent them in the courts.

35. Noting that assignments of civil legal aid cases should not generally exceed 45 and 25 cases for solicitors and counsel respectively within the past 12 months, a member queried whether such limits were set too high, especially for solicitors who could be assigned up to 45 cases within the past 12 months. The Administration responded that the existing limits on legal aid assignments were drawn up by LAD in consultation with LASC and the two legal professional bodies. It was not impossible for a solicitor to handle up to 45 civil legal aid cases within the past 12 months, as some of these cases were straightforward ones without requiring a court hearing and the solicitor could assign some of his/her work to his/her fellow solicitor(s) in the law firm. Member requested LAD to review the existing limits on legal aid assignments, in view of the comments made by some members of the legal sector that legal aid work was often distributed to same solicitors and counsel on the Legal Aid Panel.

36. A representative of the Law Society said that the existing limits on assignments of civil and criminal legal aid cases were inconsistent and should also be reviewed. It was noted that the limits on legal aid assignments for civil cases was up to 45 and 25 cases within the past 12 months for solicitors and counsel respectively, whereas such limits for criminal cases were up to 30 cases or \$600,000 legal aid costs within the past 12 months (whichever occurred first) for solicitors and up to 30 cases or \$1.2 million legal aid costs within the past 12 months (whichever occurred first) for counsel.

Measures to address touting or champerty activities in legal aid cases

37. At the meeting on 23 March 2015, some members expressed concern about improper touting or champerty in legal aid cases. Members pointed out that in recent years, aided persons of judicial review cases were often the same persons and the lawyers nominated by these aided persons were the lawyers who assisted them to apply for legal aid or had ties with these lawyers.

38. The Administration replied that to address the public's growing concern on improper touting or champerty activities in legal aid cases, a new declaration system was introduced in September 2013 after consultation with LASC and two branches of the legal profession. The objective of the new system was to ensure that the nominations of lawyers were made out of the aided person's own free will and they had not agreed to share any damages, property or costs which they might get or retain in the proceedings with any person(s) including the lawyers nominated, the lawyers' employee, agent or claims agent. The aided person was required to give a written declaration in support of his/her nomination. As for the nominated lawyer, the declaration was incorporated into the assignment letter as one of the conditions. The lawyer nominated was obliged to return the papers to the LAD if he/she could not fulfil this new condition. To enhance the transparency and fairness in the assignments of lawyers, LAD and ICAC had formed a Corruption Prevention Group in mid-2013 to discuss issues relating to prevention of corruption and bribery. ICAC had recently completed their study on LAD's assignment system for lawyers and experts, and had submitted its report with recommendations to LAD in January 2015. LAD would carefully study ICAC's report and recommendations.

39. Member suggested that the assignment system for lawyers should be more stringent, such as allowing LAD to have the final say on the assignments of lawyers to aided persons. The Administration reiterated that under section 13 of the LAO, aided persons had the right to select any lawyers in private practice who were on the Legal Aid Panel if they so desired.

40. A member opined that although the new declaration system as mentioned in paragraph 38 above might deter improper touting or champerty activities, the system could not prevent a political party from seeking to overturn, say, a government capital work project passed by LegCo, by arranging a person, whose financial resources could satisfy the means test, to apply for legal aid judicial review on such decision and instructing that person to nominate a lawyer on the Legal Aid Panel who had ties with or was member of the political party should the person be granted legal aid.

41. The Administration responded that under the LAO, a legal aid applicant must also satisfy the merits test in that the case must have reasonable grounds. As aided persons had the right to nominate their lawyers to represent them under section 13 of the LAO, the fact that an aided person decided to nominate a lawyer who assisted him/her to apply for legal aid or where the nominated lawyer had ties with the person who assisted the aided person to apply for legal aid was not a reason for LAD to reject such nomination unless there was conflict of interests in the assignment of the lawyer. When processing the nomination of lawyers, LAD would base on the assignment criteria to determine whether the choice of lawyer was appropriate. If the nominated lawyer was considered not appropriate on grounds such as having previous records of unsatisfactory performance in handling legal aided cases or currently handling an overwhelming number of legal aid cases, etc., LAD would discuss the choice of lawyer with the aided person. When necessary, LAD would ask the aided person to select another Panel lawyer and assess whether the newly nominated lawyer was appropriate in taking up the case. The lawyer eventually assigned to take up the case was generally agreed to by both the aided person and LAD.

42. In response to a member's enquiry about the meaning of "conflict of interests" in the assignments of lawyers to aided persons, the Administration said that this meant that the assignments were not made out of the aided persons' own free will and the assigned lawyers would get benefits from the proceedings should the legal aid cases concerned be won.

43. A member opined that it would be inappropriate if the political background and/or stance of solicitors and counsel on the Legal Aid Panel would be made a factor for assignments of lawyers to aided persons; and that lawyers in Hong Kong had always been political neutral in offering legal advice to their clients. Apart from the fact that the legal aid applicant for judicial review must satisfy the means test, the judicial review case must have reasonable grounds for legal aid to be granted. If in doubt, section 9(d) of the LAO empowered DLA to seek independent opinion from outside counsel. He further said that even if LAD decided that the legal aid application for judicial review also satisfied the merits test, no legal aid would be granted until the applicant was successful in his/her leave application to the court for judicial review. In the leave application, the applicant must, amongst other things, state the grounds on which his/her application was based.

Impact of litigants in person ("LIPs") on court proceedings

44. The Administration was advised to give due regard to the impact of the increasing number of LIPs on court waiting times, court users and judicial

resources in its provision of legal aid. Some members pointed out that the existing inadequate provision of legal aid had given rise to many LIPs, particularly in the High Court ("HC") whereby LIPs comprised over 50% of certain types of cases heard in the HC. The ever increasing number of LIPs prolonged the already long court waiting time, particularly in the HC, and added to the already heavy workload of the courts, as judges needed to spend a lot of time to assist LIPs during court proceedings. Such problems were aggravated by insufficient judicial manpower.

45. The Administration responded that one aspect of the work of the Civil Service Reform Monitoring Committee was to monitor the number of hearings involving LIPs to ensure the effective operation of the judicial system. In this regard, LAD had been and would continue to closely liaise with the Judiciary to understand the situation of LIPs. The reasons why some people chose to represent themselves in courts were varied, such as they chose not to apply for legal aid and their legal aid applications failed to satisfy the merits test. However, in recognition of the challenges posed to civil service justice by an increasing number of LIPs, a "Two-year Pilot Scheme to Provide Legal Advice for Litigants in Person" ("the LIPs Scheme") was launched by the Home Affairs Bureau ("HAB") in March 2013 to provide legal advice on procedural matters for LIPs who had commenced or were parties to civil proceedings in the District Court or above and had not been granted legal aid. The Administration advised that as at end February 2015, the LIPs Scheme had assisted 1 188 LIPs and conducted some 3 400 advice sessions. HAB staff had interviewed users of the LIPs Scheme, and over 90% of them were satisfied with the services provided by the Scheme. As the two-year pilot had recently been completed, HAB would shortly seek the advice of the Steering Committee on the Provision of Legal Advice for LIPs Scheme, chaired by a former HC Judge, Mr PANG Kin-kee, on the future arrangements with regard to the provision of legal advice for LIPs in the light of the operational experience.

Re-positioning of LAD

46. Considered that the LASC was tasked to oversee the administration of legal aid services provided by LAD and to advise the Chief Executive on legal aid policy, a member commented that it was not necessary to place the formulation and oversight of policy matters on legal aid under HAB. In response, the Administration recalled that as advised at the meeting of the Panel held on 24 June 2014, it was agreed to accept in principle LASC's recommendation that the responsibilities for formulating legal aid policy and "housekeeping" LAD should be vested with the Chief Secretary for Administration's Office ("CSO") and DLA should report directly to the Chief Secretary for Administration, with the implementation timetable be reviewed in

the light of various commitments of CSO in last term of Government and the progress of various on-going reviews which HAB was undertaking.

Council questions

47. Members have discussed various aspects of the provision of legal aid, the assignment of lawyers to legally aided persons by LAD and abuse of legal aid systems at different meetings of the Council. Details of the Council questions are hyperlinked in **Appendix II** for ease of reference.

Financial Committee

48. At the special meetings of the Finance Committee held on 6 April 2017, a member raised question on the number of applications involving judicial review were received each year by LAD and how many of them were granted legal aid certificates, also the measures to prevent the abuse of the judicial review system. Details of the question is hyperlinked in **Appendix II** for ease of reference.

Latest position

49. The Home Affairs Bureau will brief members on measures to prevent the misuse of the legal aid system in Hong Kong and assignment of lawyers in legal aid cases.

Relevant papers

50. A list of the relevant papers which are available on the LegCo website is in **Appendix II**.

Selection of Counsel and Solicitors for Legal Aid Assignments

Legal aid work is not distributed to counsel or solicitors on the Legal Aid Panel equally regardless of merits, the legally aided persons' interests being the paramount consideration. The Legal Aid Department's primary duty is therefore towards the aided persons by facilitating the access and attainment of justice through competent legal representation. Counsel or solicitors are selected by Legal Aid Council having regard to the level of experience and expertise of the practitioners concerned and the type and complexity of the particular case. In general, counsel or solicitors are selected in accordance with the following criteria:

General

2. Counsel or solicitors should –
 - (a) be on the Legal Aid Panel;
 - (b) be in active practice;
 - (c) have a satisfactory past performance record*;
 - (d) satisfy the minimum experience requirement specified for the relevant area of work;
 - (e) not exceed the limit on assignments of legal aid work and/or, where appropriate, costs and fees paid or payable for such work in the past 12 months;
 - (f) (in the case of solicitors) have the necessary support and facilities afforded by their firms to handle legal aid work.

Minimum Experience Requirements

Civil Case

3. Counsel or solicitors should –
 - (a) have at least 3 years of post-call / post-admission experience; and
 - (b) have handled a minimum number of civil cases in the relevant area of work within a specified period –
 - (i) for medical negligence, professional negligence, administrative / constitutional law (including Bill of Rights) cases, have handled at least 5 such cases* in the past 3 years; and

- (ii) for other cases, have handled at least 16 cases* in the relevant area of work in the past 3 years.

Criminal Cases

4. Counsel or solicitors should –
- (a) have at least 3 years of post-call / post-admission experience;
 - (b) have handled at least 5 cases* in the past 3 years in the relevant area of work; and
 - (c) meet the minimum experience requirements specified below –
 - (i) *Cases in the District Court*
 - at least 3 years relevant criminal litigation experience;
 - (ii) *Cases in the Court of First Instance and appeals from the Magistrates' Court*
 - at least 5 years relevant criminal litigation experience;
 - (iii) *Appeals to Court of Appeal and Court of Final Appeal[#]*
 - Court of Appeal:
 - Counsel – at least 7 years relevant criminal litigation experience
 - Solicitors – at least 5 years relevant criminal litigation experience
 - Court of Final Appeal:
 - Counsel – at least 10 years relevant criminal litigation experience
 - Solicitors – at least 7 years relevant criminal litigation experience
- * including both legally aided and non-legally aided cases
- [#] the number of cases handled in the Court of Appeal and the Court of Final Appeal are considered jointly for the purpose of counting past experience in paragraph (c)(iii) above.
5. For Senior Counsel, they are exempted from the minimum experience requirements for assignment of legal aid work.

Limits on Legal Aid Assignments

6. Assignments should not generally exceed the limits set out below –
- Civil Cases:*
- (a) for solicitors – 45 cases within the past 12 months; and
 - (b) for counsel – 25 cases within the past 12 months.
- Criminal Cases:*
- (a) for solicitors – 30 cases or \$600,000 legal aid costs within the past 12 months (whichever occurs first); and

(b) for counsel – 30 cases or \$1.2 million legal aid fees within the past 12 months (whichever occurs first).

7. Assignment to counsel and solicitors who do not meet the above selection criteria may be allowed with the approval of a directorate officer.

* In the assignment of legal aid cases, the Department will take into account such matters as the Record of Unsatisfactory Performance/Conduct and the record of disciplinary decisions of the Bar Association and the Law Society for which the Department maintains a separate list.

Appendix II

Relevant documents on measures to prevent the misuse of the legal aid system in Hong Kong and assignment of lawyers in legal aid cases

Meeting	Date of meeting	Paper
<p>Panel on Administration of Justice and Legal Services ("AJLS Panel")</p>	<p>29 March 2010</p>	<p>Administration's paper on "Five-yearly review of the criteria for assessing the financial eligibility of legal aid applicants" [LC Paper No. CB(2)1148/09-10(01)]</p> <p>Updated background brief on "Five-yearly review of the criteria for assessing the financial eligibility of legal aid applicants" prepared by the LegCo Secretariat [LC Paper No. CB(2)1156/09-10(06)]</p> <p>Minutes of meeting [LC Paper No. CB(2)1581/09-10]</p> <p><u>Follow-up papers</u></p> <p>Submission from the Society for Community Organization [LC Paper No. CB(2)1192/09-10(01)] (<i>Chinese version only</i>)</p> <p>Letter from the Chairman of the Legal Aid Services Council to the Administration which sets out the Council's views on the Administration's proposals arising from the recently completed Five-yearly Review of the Criteria for Assessing the Financial Eligibility of Legal Aid Applicants [LC Paper No. CB(2)1200/09-10(01)] (<i>English version only</i>)</p> <p>Administration's paper on the basis for arriving at the proposed financial eligibility limits for the two legal aid schemes [LC Paper No. CB(2)1364/09-10(01)]</p>

Meeting	Date of meeting	Paper
Legislative Council	30 June 2010	Official Record of Proceedings of the Council on a written question raised by Hon LEUNG Kwok-hung
AJLS Panel	30 September 2010	<p>Paper provided by the Administration on "Five-yearly review of the criteria for assessing the financial eligibility of legal aid applicants" [LC Paper No. CB(2)2298/09-10(01)]</p> <p>Updated background brief on "Five-yearly review of the criteria for assessing the financial eligibility of legal aid applicants" prepared by the LegCo Secretariat [LC Paper No. CB(2)2304/09-10(01)]</p> <p>Submission from the Hong Kong Bar Association [LC Paper No. CB(2)2327/09-10(01)] <i>(English version only)</i></p> <p>Submission from the Law Society of Hong Kong [LC Paper No. CB(2)2329/09-10(01)] <i>(English version only)</i></p> <p>Minutes of meeting [LC Paper No. CB(2)524/10-11]</p>

Meeting	Date of meeting	Paper
AJLS Panel	28 February 2011	<p>LegCo Brief on five-yearly review of the criteria for assessing the financial eligibility of legal aid applicants" [File Ref: HAB/CR 19/1/48]</p> <p>Background brief on "Legislative amendments to implement the proposals arising from the five-yearly review of the criteria for assessing the financial eligibility of legal aid applicants" prepared by the LegCo Secretariat [LC Paper No. CB(2)1136/10-11(08)]</p> <p>Minutes of meeting [LC Paper No. CB(2)1482/10-11]</p>
AJLS Panel	28 March 2011	<p>Paper provided by the Administration on the "Review of the Supplementary Legal Aid Scheme" [LC Paper No. CB(2)1320/10-11(01)]</p> <p>Submission from the Hong Kong Bar Association [LC Paper No. CB(2)1373/10-11(01)]</p> <p>Background brief on "Expansion of the Supplementary Legal Aid Scheme" prepared by the LegCo Secretariat [LC Paper No. CB(2)1332/10-11(04)]</p> <p>Minutes of meeting [LC Paper No. CB(2)259/11-12]</p>
Legislative Council	19 October 2011	<p>Official Record of Proceedings of the Council on a written question raised by Hon Starry LEE Wai-king</p>

Meeting	Date of meeting	Paper
AJLS Panel	20 December 2011	<p>Paper provided by the Administration on the "Further expansion of the Supplementary Legal Aid Scheme" [LC Paper No. CB(2)600/11-12(01)]</p> <p>Updated background brief on "Further expansion of the Supplementary Legal Aid Scheme" prepared by the LegCo Secretariat [LC Paper No. CB(2)624/11-12(06)]</p> <p>Minutes of meeting [LC Paper No. CB(2)1932/11-12]</p>
AJLS Panel	30 January 2012	<p>Paper provided by the Administration on the "Processing of legal aid applications relating to judicial review and assignment of lawyers in civil legally-aided cases" [LC Paper No. CB(2)863/11-12(01)]</p> <p>Submission from the Hong Kong Bar Association on "The need and benefits of having an independent legal aid authority" [LC Paper No. CB(2)918/11-12(01)] <i>(English version only)</i></p> <p>Background brief on "Issues relating to the provision of legal aid for judicial review cases" prepared by the LegCo Secretariat [LC Paper No. CB(2)871/11-12(06)]</p> <p>Minutes of meeting [LC Paper No. CB(2)2762/11-12]</p>
Legislative Council	23 May 2012	<p>Official Record of Proceedings of the Council on a written question raised by Hon CHAN Kin-por</p>

Meeting	Date of meeting	Paper
Legislative Council	12 February 2014	Official Record of Proceedings of the Council on a written question raised by Hon NG Leung-sing
Legislative Council	26 March 2014	Official Record of Proceedings of the Council on an oral question raised by Hon Frankie YICK Chi-ming
AJLS Panel	24 June 2014	<p>Paper provided by the Administration on the "Legal Aid Services Council's recommendations on the independence of legal aid" [LC Paper No. CB(4)822/13-14(05)]</p> <p>Submission from the Hong Kong Bar Association on "The need and benefits of having an independent legal aid authority" [LC Paper No. CB(4)/854/13-14(01)] <i>(English version only)</i></p> <p>Paper provided by the Administration on the "Progress report on the review of the Supplementary Legal Aid Scheme and operation of the Two-year Pilot Scheme to provide legal advice for litigants in person" [LC Paper No. CB(4)822/13-14(06)]</p> <p>Background brief on "Implementation of the measures to strengthen the governance and operational transparency of the Legal Aid Department" prepared by the LegCo Secretariat [LC Paper No. CB(4)822/13-14(07)]</p> <p>Minutes of meeting [LC Paper No. CB(4)94/14-15]</p>
Legislative Council	20 November 2014	Official Record of Proceedings of the Council on a written question raised by Hon NG Leung-sing

Meeting	Date of meeting	Paper
AJLS Panel	16 February 2015	<p>Paper provided by the Administration on the "Proposed amendment of the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91B) and adjustment of the financial eligibility limits of the Ordinary and Supplementary Legal Aid Schemes"</p> <p>[LC Paper No. CB(4)493/14-15(04)]</p>
AJLS Panel	23 March 2015	<p>Paper provided by the Administration on "Provision of legal aid and assignments of lawyers to legally aided persons by the Legal Aid Department"</p> <p>[LC Paper No. CB(4)658/14-15(03)]</p> <p>Background brief on "Provision of legal aid and assignment of lawyers to legally aided persons by the Legal Aid Department" prepared by the LegCo Secretariat</p> <p>[LC Paper No. CB(4)658/14-15(04)]</p> <p>Minutes of meeting</p> <p>[LC Paper No. CB(4)1205/11-12]</p>
Legislative Council	20 January 2016	<p>Official Record of Proceedings of the Council on a written question raised by Hon NG Leung-sing</p>
Finance Committee	6 April 2017 (Special meeting)	<p>Question raised by Dr Hon Priscilla LEUNG Mei-fun (HAB171) and controlling officer's reply</p>
Legislative Council	10 May 2017	<p>Official Record of Proceedings of the Council on a written question raised by Hon Paul TSE</p>