

立法會
Legislative Council

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Panel on Administration of Justice and Legal Services

Minutes of meeting
held on Monday, 30 April 2018, at 4:45 pm
in Conference Room 3 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 CHAN Kin-por, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon CHAN Chi-chuen
Dr Hon Fernando CHEUNG Chiu-hung
Hon Martin LIAO Cheung-kong, SBS, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon Alvin YEUNG
Hon CHU Hoi-dick
Hon Jimmy NG Wing-ka, JP
Dr Hon Junius HO Kwan-yiu, JP
Hon Holden CHOW Ho-ding
Hon YUNG Hoi-yan
Hon CHEUNG Kwok-kwan, JP
Hon HUI Chi-fung
Hon Vincent CHENG Wing-shun, MH

Member absent : Hon CHUNG Kwok-pan

**Public officers
attending**

: Agenda item III

Department of Justice

Miss LEE Sau-kong
Deputy Solicitor General (Policy Affairs) (Acting)

Mr LEE Tin-yan
Senior Assistant Solicitor General (Arbitration)

Mr Richard MA
Senior Government Counsel

Ms Kristal CHAN
Senior Government Counsel (Acting)

Agenda items IV and V

Home Affairs Bureau

Mr Patrick LI Pak-chuen, JP
Deputy Secretary for Home Affairs(1)

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

Legal Aid Department

Mr Thomas Edward KWONG, JP
Director of Legal Aid

Mr Chris CHONG Yan-tung, JP
Deputy Director of Legal Aid (Policy & Administration)

**Attendance by
invitation**

: Agenda item III

Hong Kong Bar Association

Mr William WONG M F, SC

Ms Kim Margaret ROONEY

Agenda items IV and V

Hong Kong Bar Association

Mr Ruy BARRETTO, SC

Mr Nicholas PIRIE

The Law Society of Hong Kong

Mr Dennis HO Chi-kuen
Chairman of Family Law Committee

Ms LAM Ka-lai
Assistant Director, Practitioners Affairs

Clerk in attendance : Mr Lemuel WOO
Chief Council Secretary (4)6

Staff in attendance : Mr YICK Wing-kin
Senior Assistant Legal Adviser 2

Ms Macy NG
Senior Council Secretary (4)6

Ms Emily LIU
Legislative Assistant (4)6

Action

I. Information papers issued since the last meeting

(LC Paper No. CB(4)843/17-18(01) - Information paper on the Mechanism for Handling Complaints Against Judicial Conduct Review of the progress in implementing the improvement measures

LC Paper No. CB(4)952/17-18(01) - Letter dated 13 April 2018 from Hon CHEUNG Kwok-kwan on the handling of religious and

cultural matters of the ethnic minority by the Judiciary

- LC Paper No. CB(4)952/17-18(02) - Letter dated 19 April 2018 from Hon HUI Chi-fung on the work of the Coroner's Court
- LC Paper No. CB(4)964/17-18(01) - Information paper on the annual review of the financial eligibility limits of legal aid applicants)

Members noted the above papers issued since the last meeting and raised no objection to:

- (a) seeking the response from the Judiciary on the letter from Mr CHEUNG Kwok-kwan on the handling of religious and cultural matters of the ethnic minority by the Judiciary (LC Paper No. CB(4)952/17-18(01)); and
- (b) including in the list of outstanding items of the Panel on Administration of Justice and Legal Services ("the Panel") the suggestion of Mr HUI Chi-fung to discuss the work of the Coroner's Court.

(Post-meeting note: The Judiciary Administration's response to the letter from Mr CHEUNG Kwok-kwan was circulated to members on 26 September 2018 via LC Paper No. CB(4)1571/17-18(01).)

2. Mr HUI Chi-fung hoped that the Panel could discuss the work of the Coroner's Court as soon as possible in view of the long time taken in processing cases.

II. Items for discussion at the next meeting

- (LC Paper No. CB(4)965/17-18(01) - List of outstanding items for discussion
- LC Paper No. CB(4)965/17-18(02) - List of follow-up actions)

3. The Chairman recapped that at the Panel meeting on 26 March 2018, Mr HUI Chi-fung suggested that the Panel discuss reviewing the damages for bereavement under the Fatal Accidents Ordinance (Cap. 22) and indicated his intention to move a resolution at a Council meeting. The Chairman informed members that she had liaised with the Department of Justice ("DoJ") after the meeting and DoJ suggested to discuss the subject at the next regular meeting of the Panel. She also noted that Mr HUI had given a notice to the Council for moving a resolution to amend Cap. 22 at the Council meeting of 9 May 2018 and, in the letter to Mr HUI on 27 April 2018 (LC Paper No. CB(3)543/17-18), the President directed that the proposed resolution should be considered by the Panel first.

4. After discussion, members agreed to discuss the following items at the next regular meeting to be held on 28 May 2018 –

- (a) Proposed creation of two permanent posts of Principal Government Counsel, one each in the Civil Division and the Law Drafting Division of DoJ; and
- (b) Review of the damages for bereavement under the Fatal Accidents Ordinance (Cap. 22).

5. Mr HUI Chi-fung thanked the Chairman for arranging the Panel to discuss his proposal to increase the statutory sum to be awarded as damages for bereavement. He hoped that after the Panel had considered his proposal, the relevant resolution could be dealt with at the Council as soon as possible to benefit claimants.

III. Consultancy Report on "Enhancing Hong Kong's Position as the Leading International Arbitration Centre in Asia-Pacific" and the Government's response to the Report

(LC Paper No. CB(4)965/17-18(03) - Administration's paper on Consultancy Report on "Enhancing Hong Kong's Position as the Leading International Arbitration Centre in Asia-Pacific" and the Government's response to the Report

LC Paper No. CB(4)965/17-18(04) - Background brief on enhancing Hong Kong's position as the leading

international arbitration
centre in the Asia-Pacific
region prepared by the
Legislative Council
Secretariat)

6. At the invitation of the Chairman, Deputy Solicitor General (Policy Affairs) (Acting) of DoJ ("DSG(P)(Ag)") briefed members on the findings and recommendations in the Consultancy Report on "Enhancing Hong Kong's Position as the Leading International Arbitration Centre in Asia-Pacific" ("the Report"), and the Administration's response to the recommendations in that Report.

Views of the Hong Kong Bar Association

7. The Chairman invited Mr William WONG, SC and Ms Kim ROONEY, representatives of the Hong Kong Bar Association ("Bar Association"), to present their views. Mr William WONG, SC said that the Bar Association welcomed the Report and was pleased to note DoJ's response in promoting Hong Kong as the leading international arbitration centre in Asia-Pacific. He expressed concerns about:

- (a) DoJ's plan to enlarge the pool of arbitrators by training;
- (b) the latest plan of the Administration in respect of the Consultant's recommendation 8.1, i.e. a single peak body or council should be created to lead and coordinate efforts to promote Hong Kong as a leading dispute resolution hub;
- (c) whether there would be independent arbitration facilities provided instead of relying on those provided by the Hong Kong International Arbitration Centre having regard to the Consultant's recommendation 8.5, i.e. experienced and aspiring arbitrators and professionals should be encouraged to form non-profit making associations and given basic resources (such as office space and a secretariat) to do so; and
- (d) the criticism of Singapore's legal sector (one of Hong Kong's competitors in providing arbitration service) that Hong Kong was not neutral in disputes involving Mainland Chinese parties since it was part of China, and the Administration's responses and measures to address the criticism.

8. Ms Kim ROONEY acknowledged that some measures recommended in the Report had been implemented since its publication. She expressed the following views:

- (a) it was essential to adopt measures to strengthen the skills of legal and associated professionals in the arbitration community. The Bar Association was going to engage in technical and soft skills training of its members regarding arbitration used with other forms of alternative dispute resolution;
- (b) provision of independent facilities in the West Wing of the former Central Government Offices would encourage more arbitral institutions to set up offices in Hong Kong. The Administration might consider providing more support to address the needs of arbitral institutions; and
- (c) the Bar Association welcomed the continuing process of law reform of arbitration. It supported the Administration's efforts to reinforce Hong Kong's role in the provision of legal and dispute resolution-related training/capacity building opportunities for professionals and government officials from the Belt and Road countries.

Promotion of Hong Kong's arbitration services in the Mainland and in overseas countries

9. Ir Dr LO Wai-kwok indicated support for the recommendations in the Report and the Administration's response to it. He considered that the Administration should be more proactive in promoting Hong Kong as the international arbitration centre and, as a start, seize the opportunities offered by the Belt and Road Initiative and Guangdong-Hong Kong-Macao Bay Area ("Bay Area") development.

10. In response, DSG(P)(Ag) advised that the Administration had been organizing the biennial Hong Kong Legal Services Forum ("the Forum") in various cities in the Mainland including Shanghai, Guangzhou, Qingdao and Nanjing, and it would co-organize the Forum to be held in Guangzhou in September 2018. Apart from the Forum, the Administration had also been organizing various Belt and Road seminars in the Mainland, such as the one to be held in May 2018 in Nanning, at which it would introduce Hong Kong's international legal and dispute resolution services. She also advised that the Administration had paid promotional visits to various Belt and Road countries, in particular those in Southeast Asia or of the Association of Southern Asian Nations (ASEAN) such as Cambodia, Thailand, Malaysia,

Indonesia, Myanmar and Vietnam, and the Administration would continue with the relevant work.

11. DSG(P)(Ag) further said that, to increase the awareness of the legal and business sectors in the Belt and Road countries about Hong Kong law and to build up their confidence in Hong Kong's legal system, the Administration was studying measures to attract legal and dispute resolution professionals from the Belt and Road countries to come to Hong Kong. This would also help strengthen Hong Kong's ties with those countries. From a wider perspective, the Administration was also reviewing its publicity plan to more effectively promote the legal system and legal services in Hong Kong under "One Country, Two Systems", including Hong Kong's neutrality as an international dispute resolution centre.

12. The Chairman declared that she was an arbitrator in Hong Kong and was enlisted in the Panel of Arbitrators of the China International Economic and Trade Arbitration Commission, and she was teaching at the Law School of the City University of Hong Kong. She considered that "One Country, Two Systems" was an advantage to the Hong Kong's arbitration services which was welcomed by the Mainland and international clients. However, she was concerned that Hong Kong's role in providing arbitration services might soon be overtaken by Mainland cities such as Beijing, Shenzhen, Shanghai and Hangzhou in view of their fast-growing competitiveness in providing the services. Besides talks and promotional events, the Chairman urged the Administration to introduce concrete measures to help Hong Kong's arbitration services going global and enhancing its competitiveness, in particular through policy support. She also suggested that the Administration should closely liaise with law schools and arbitral institutions in Hong Kong and join hands with the Mainland side on the relevant work.

Specifying Hong Kong as the place for providing arbitration and dispute resolution services in contracts

13. The Deputy Chairman declared that he had been handling arbitration cases. He noted that it was the wish of the Mainland side that professional services, including legal and arbitration services, from Hong Kong be brought to the Bay Area. He asked about the strategic plan of the Administration to ensure that Hong Kong would become the arbitration centre for contracts on major or international infrastructural projects.

14. In response, DSG(P)(Ag) advised that one of the Administration's key efforts in promoting legal services was to promote the use of Hong Kong law as the governing law of transactions and Hong Kong as the place for dispute

resolution. Such promotional activities might take the form of visits, seminars, conferences and meetings.

15. The Deputy Chairman requested the Administration to review with the sector on whether the current promotional activities, such as participating in conferences, were effective in promoting Hong Kong's arbitration services.

16. Ir Dr LO Wai-kwok suggested that, for the contracts signed by government bureaux and departments on major international trade or infrastructural projects, the Administration should endeavor to specify using Hong Kong's arbitration or dispute resolution services in the contracts. The Chairman concurred with Ir Dr LO that efforts should be made to promote the use of Hong Kong's arbitration service when drafting contracts.

17. DSG(P)(Ag) said that while the Administration could not control the choice of places for arbitration services by users, it would help provide a favourable legal and policy environment to facilitate expansion of Hong Kong's arbitration services in the Mainland and in overseas markets. She stressed that the strengths of Hong Kong's legal services were not limited to dispute resolution but also in the provision of transactional legal services to facilitate the smooth completion of commercial transactions.

18. DSG(P)(Ag) added that Hong Kong had a competitive edge over other jurisdictions in providing legal and arbitration services in that it had a diverse range of professional legal and related services to choose from and an open legal system. In addition, most of the legal and dispute resolution practitioners in Hong Kong were familiar with the Mainland and international business and legal culture. They were biliterate and trilingual with extensive experience in handling cross-border commercial transactions and an international outlook. She said that DoJ would continue to promote the strengths of Hong Kong and would liaise with the two legal professional bodies on measures to be taken.

19. Ir Dr LO Wai-kwok pointed out that developing Hong Kong into an international arbitration hub would not only benefit the legal and arbitration practitioners but also the professionals in other sectors. He cited as example that, in disputes over contracts on infrastructural projects, engineers might take part in the arbitration process by providing their professional inputs. In that regard, the Hong Kong Institution of Engineers had set up the Alternative Dispute Resolution Committee to promote the use of appropriate forms of dispute resolution mechanisms for handling construction disputes and facilitate the provision of training on basic knowledge on the various forms of dispute mechanisms.

20. DSG(P)(Ag) responded that DoJ would continue to promote in the Mainland the strengths of Hong Kong's international legal and dispute resolution services and the role such services could play in the Belt and Road Initiative and the Bay Area development.

Administration of arbitration cases in the Mainland

21. The Deputy Chairman asked about the latest progress of the Administration in exploring with the relevant Mainland authorities the viability of allowing Hong Kong arbitral institutions to administer arbitration cases domestically in Mainland China, which was relevant to recommendation 8.17 of the Report.

22. DSG(P)(Ag) advised that the relevant work was in progress. Senior Assistant Solicitor General (Arbitration) of DoJ pointed out that the form of conducting arbitration in the Mainland was governed by Mainland law relating to arbitration, and there were special requirements of handling arbitration cases involving parties outside the Mainland.

Training for arbitration manpower

23. The Chairman invited views about the adequacy of arbitration training provided in Hong Kong and the demand for arbitration service. Mr William WONG, SC pointed out that many people who had completed the courses on arbitration could not get arbitration work easily. He considered that it was important to broaden the pool of arbitrators and provide more opportunities to lawyers interested in joining the arbitration industry with fewer obstacles. He suggested that DoJ should work with various arbitral institutions in Hong Kong, the Bar Association and The Law Society of Hong Kong ("Law Society") to broaden the access of aspiring arbitrators to arbitration opportunities.

24. The Deputy Chairman considered that, to facilitate less experienced lawyers in developing their career as arbitrators, they should be given opportunities to gain relevant working experience after receiving arbitration training. In his view, in the course of promoting Hong Kong's legal services to the Mainland and overseas, the Administration should consider engaging more less experienced lawyers with a view to widening their exposure. He also urged DoJ to join hands with other government bureaux such as the Commerce and Economic Development Bureau ("CEDB") to promote Hong Kong's legal and arbitration services. In reply, DSG(P)(Ag) said that DoJ had been promoting Hong Kong's legal and dispute resolution services in collaboration with different bodies including CEDB, Hong Kong Trade Development Council, and the two legal professional bodies.

(At 5:35 pm, Mr CHAN Chi-chuen drew the attention of the Chairman that a quorum was not present. The Chairman directed that members be summoned. The meeting resumed after four minutes when a quorum was present.)

25. Ms Kim ROONEY supplemented that, to help the less experienced lawyers and other professionals aspiring to be arbitrators gain experience in arbitration, there had been some ongoing activities and programmes organized by the Hong Kong based arbitral institutions, law firms and arbitration practitioners, including internship programmes, tribunal secretary training programmes and arbitration workshops.

Conditional fee and contingency fee for arbitration

26. The Deputy Chairman expressed the concern that, while the availability of conditional fees and contingency fees was an important factor for users to decide whether to use Hong Kong's arbitration services, such fees were not covered in the Report. Pointing out that lawyers in some competing jurisdictions could legally charge conditional fee and contingency fee, he urged the Administration to conduct a consultation in this regard as soon as possible. Otherwise, Hong Kong might lose its competitiveness as an arbitration and dispute resolution centre.

27. In reply, DSG(P)(Ag) advised that the Administration was open-minded to the suggestion of introducing conditional fees for arbitration and understood that the two legal professional bodies were consulting their members on the suggestion. However, she maintained that two important principles had to be borne in mind, i.e. the measure(s) should seek to enhance Hong Kong's position as a leading centre for providing international arbitration and dispute resolution services in the Asia-Pacific Region; and the measure(s) would not compromise the professional standards and ethics of the legal profession. In response to the Deputy Chairman's enquiry, Ms Kim ROONEY indicated that the Bar Association welcomed a consultation on the above suggestion.

28. Mr William WONG, SC added that there was always a concern from clients that the cost of arbitration in Hong Kong was very high. He urged that measures should be taken to bring down the cost and increase the efficiency of arbitration services in Hong Kong.

Maritime arbitration

29. The Chairman pointed out that apart from commercial arbitration, there was a great demand for maritime arbitration services. However, specialized

arbitrators in that area had been in short supply in Hong Kong. She asked about the Administration's plan to expand the market for such services. In reply, DSG(P)(Ag) said that the Administration took heed of the demand for maritime arbitration services and was studying measures to develop such services in Hong Kong. She added that since the subject was still under study, no concrete recommendation could be provided at the moment.

30. Mr William WONG, SC agreed that maritime arbitration was a developing area of arbitration services in Hong Kong and noted that there were a number of maritime arbitral institutions which had set up their branch offices in Hong Kong. Mr WONG said that London was traditionally the best international maritime arbitration centre owing to the wide range of relevant specialist's services available there. Hong Kong could make reference to London's experience if it aimed to develop its maritime arbitration services centre.

IV. Review of the Director of Legal Aid's First Charge

(LC Paper No. CB(4)965/17-18(05) - Administration's paper on review of the Director of Legal Aid's First Charge)

V. Proposed legislative amendments pursuant to the review of the Supplementary Legal Aid Scheme

(LC Paper No. CB(4)965/17-18(06) - Administration's paper on proposed legislative amendments pursuant to the review of the Supplementary Legal Aid Scheme

LC Paper No. CB(4)965/17-18(07) - Paper on the review of the Supplementary Legal Aid Scheme prepared by the Legislative Council Secretariat (updated background brief))

31. The Chairman proposed and members agreed to combine agenda items IV and V for discussion. Representatives from the two legal professional bodies, the Administration and members were invited to exchange views on matters relating to both subjects.

Briefing by the Administration

32. At the invitation of the Chairman, Deputy Secretary for Home Affairs(1) ("DSHA(1)") briefed members on the outcome of the review on the Director of Legal Aid ("DLA")'s First Charge ("DLA's first charge") and the way forward, which was detailed in LC Paper No. CB(4)965/17-18(05).

33. DSHA(1) then briefed members on the proposed legislative amendments pursuant to the review of the Supplementary Legal Aid Scheme ("SLAS"), the details of which were set out in LC Paper No. CB(4)965/17-18(06).

Views of the Hong Kong Bar Association

34. At the invitation of the Chairman, Mr Ruy BARRETTO, SC and Mr Nicholas PIRIE presented the views of the Bar Association, which were detailed in the submissions referenced LC Paper Nos. CB(4)1014/17-18 (01) and (02).

35. Mr Ruy BARRETTO, SC said that when reviewing the amount of maintenance to be exempted from DLA's first charge, the Administration should take into account the changes in the cost of legal services which could not be reflected by the changes in Consumer Price Index (C) ("CPI(C)"). In cases of serious hardship faced by the legally-aided persons, DLA should be allowed the discretionary power to waive the first charge in entirety.

36. As regards the legal aid services in general, Mr Ruy BARRETTO, SC commented that the progress in reforming the legal aid services had been slow and minimal, and requested the Legal Aid Services Council ("LASC") to draw up a timetable for enhancing the legal aid services as soon as possible. He also related the Bar Association's views that the financial eligibility limits ("FELs") for legal aid had been underestimated as the figures were based on the average legal cost of one side but not the average legal costs of both parties, and that the Administration should take into account the inflationary changes in legal costs when considering the level of FEL for SLAS.

37. Mr Nicholas PIRIE supplemented that the increasing number of unrepresented litigants in the High Court and District Court in the past decade indicated that access to justice for the public, in particular the sandwich class, had been diminishing. The Bar Association considered that FELs for legal aid should be carefully reviewed, given the significant decline in the grant of civil legal aid.

Views of The Law Society of Hong Kong

38. At the invitation of the Chairman, Mr Dennis HO presented the views of the Law Society. Mr HO said that the Law Society welcomed the Administration's proposal on the adjustments of DLA's first charge. He said that the Law Society had made similar proposal for more than two years and requested that the Administration should implement the proposal as early as practicable. Mr HO further said that, in the long run, the Administration should explore the feasibility of waiving DLA's first charge for the maintenance payments, which were crucial to pay for the legally-aided persons' living expenses.

39. Concerning the scope of legal aid services, Mr Dennis HO said that the Administration should consider including claims against the Incorporated Owners ("IOs") under SLAS so as to enhance the protection for individual owners. Noting that a cross-sector working group established by DoJ was studying the Law Reform Commission of Hong Kong's proposal on class actions, the Law Society considered that the Administration should simultaneously consider the proposal to include class action under SLAS, instead of waiting for any proposed reform to permit class action to have taken shape.

Director of Legal Aid's First Charge

Amount of maintenance that might be exempted from the Director of Legal Aid's First Charge

40. Ms YUNG Hoi-yan shared the Bar Association's views that, when reviewing the amount of maintenance to be exempted from DLA's first charge, the Administration should not only rely on the general price movement as measured by CPI(C) as some major items of living expenses for the legally-aided, such as high rents, might not be fully reflected. Ms YUNG urged the Administration to review the current mechanism and take into account other factors that could more realistically reflect the financial burden faced by the legally aided.

41. In response, DLA explained that after the proposed adjustment to DLA's first charge had come into effect, a person who was granted legal aid to take divorce proceedings would only need to pay out of the monthly maintenance the amount in excess of \$8,660 to contribute to the actual legal costs incurred. He pointed out that according to the statistics maintained by the Legal Aid Department ("LAD"), the amount of monthly maintenance ordered to the legally aided would seldom exceed \$8,660 as it would often be the case that their spouses or former spouses were also in financial hardship.

Therefore, the proposed amount of maintenance to be exempted from DLA's first charge would be considered adequate.

42. Mr Dennis HO suggested that, in the longer term, the Administration should consider waiving DLA's first charge for matrimonial cases where maintenance was ordered. He pointed out that, in accordance with section 18A(5)(a) of the Legal Aid Ordinance (Cap. 91), DLA's first charge did not apply to any interim payment under an order or an agreement having the same effect as an order and this provision covered payment ordered for personal injury cases. In view of this, Mr HO considered that it was unreasonable that the maintenance ordered to be paid to the legally-aided person in matrimonial proceedings, which was his/her living expenses, should be subjected to DLA's first charge.

43. The Deputy Chairman concurred with Mr Dennis HO's view and urged the Administration to consider Mr HO's suggestion. In response, DLA advised that the exemption of the interim payment for personal injury cases from DLA's first charge was a statutory requirement. However, he undertook to further consider Mr HO's suggestion.

44. Dr Junius HO said that while waiving DLA's first charge for all payment of maintenance in matrimonial proceedings as suggested by the Law Society might be too drastic, the Administration should consider providing more relief to legally-aided persons by further increasing the amount of maintenance that might be exempted from DLA's first charge in view of the hefty fiscal reserves.

45. Mr James TO said that DLA's first charge for payment of maintenance should not be waived in entirety in order to ensure a prudent use of public money. He said that a legally-aided person who litigated at public expense should be required to contribute towards the costs and expenses incurred by LAD, if possible. In order to assist more legally-aided persons, he urged the Administration to further increase the proposed amount of maintenance that might be exempted from DLA's first charge.

46. In response, DSHA(1) and DLA said that the Administration would take into consideration the views expressed by members and the two legal professional bodies as appropriate in future reviews.

Amount of the Director of Legal Aid's First Charge that might be waived in cases of serious hardship

47. Dr Junius HO said that Administration's proposal to increase the amount of DLA's first charge to be waived in cases of serious hardship specified in section 19B(1)(a) of Cap. 91 from \$57,400 to \$103,510 was inadequate. In order to enhance the benefit to the legally-aided persons, he suggested that the Administration should further raise the amount to be waived to \$150,000.

48. Ms YUNG Hoi-yan concurred with the Bar Association's view that DLA should be allowed to exercise discretion to entirely waive DLA's first charge in case the legally-aided person was facing serious hardship. She added that some litigants had chosen not to be represented by lawyers in matrimonial disputes to avoid contribution towards the legal costs and expenses incurred, while the increasing number of unrepresented litigants had caused unnecessary delay in court proceedings. In view of the above, she urged the Administration to waive DLA's first charge for legally-aided persons in matrimonial proceedings.

49. In response, DSHA(1) explained that the Administration's proposal to adjust the amount of DLA's first charge that might be waived in cases of hardship from \$57,400 to \$103,510 represented an increase of about 80%. He said that the proposal had taken into account the general price movement as measured by CPI(C) since July 1996 up to July 2017 and the substantial increase of 48% to FEL of the Ordinary Legal Aid Scheme from \$175,800 to \$260,000 in May 2011. DSHA(1) further said that given the objective factors considered, the proposal would not only address the needs of legally-aided persons, but also ensure the prudent use of public money.

Legislative timetable

50. In response to members' enquiries, DSHA(1) advised that the Administration would introduce the relevant legislative amendments into the Legislative Council in the 2018-2019 session.

Supplementary Legal Aid Scheme

Expansion of the scope of the Supplementary Legal Aid Scheme

51. The Deputy Chairman was disappointed to note that, after years of discussion, SLAS had not yet covered a number of claims such as those against IOs of a multi-storey building, claims over shareholder disputes, trusts and compulsory sale of land. He said that some of them had been

long-standing requests raised by the Bar Association and the Law Society in previous reviews of SLAS. To enhance access to justice for the public, he urged that the scope of SLAS should be expanded to include more types of cases.

52. In response, DSHA(1) said that the Administration was open-minded to possible options for expanding the scope of SLAS on an incremental basis, but it had to have regard to the legal issues involved and upholding the principles underlying SLAS. He also said that the views of stakeholders, including members of the Panel and the two legal professional bodies, would be relayed to LASC which would study the issues involved and make recommendations to the Administration in due course.

53. The Chairman noted that there was an increasing trend of legal disputes in the Mainland involving Hong Kong permanent residents, some of them might encounter difficulties in defending a legal action in the Mainland owing to a lack of means. Therefore, she suggested that the Administration explore the feasibility of providing Hong Kong permanent residents with legal aid services which covered litigation cases, in particular criminal cases, in the Mainland.

Claims against the Incorporated Owners of a multi-storey building

54. Mr James TO noted that the Bar Association was disappointed at LASC's recommendation in 2016 of not including claims against IOs of a multi-storey building. In view of this, he enquired about the reasons for excluding this type of claims from the scope of SLAS.

55. DSHA(1) explained that, at that time, LASC noted the Competition Ordinance (Cap. 619) was in full force and the Competition Commission had kicked off its "Fighting Bid-rigging Cartels" Campaign. Therefore, LASC recommended that claims against IOs of multi-storey buildings should not be included in SLAS at that moment and the issue might be re-visited in due course. In response to Mr James TO's further enquiry, DLA explained that under SLAS, legal aid was available for lodging claims against IOs of a multi-storey building involving personal injuries or death.

56. Mr Ruy BARRETTO, SC pointed out that many old buildings in Hong Kong were in dilapidated condition without proper maintenance, and had posed safety risks to the public. As SLAS only covered claims involving personal injuries or death arising from incidents, members of the public were unable to seek legal aid for taking legal action against IOs which refused to carry out necessary repair and maintenance works. Mr Nicholas PIRIE said that it was necessary for the Administration to adopt a proactive approach and

expand the scope of SLAS to cover cases which would help improve the safety and maintenance of old buildings. Sharing similar concerns, the Chairman considered that the Administration should carefully study the suggestions of Mr BARRETTO and Mr PIRIE to safeguard public interests.

Financial eligibility limits for legal aid applicants

57. The Chairman noted that FEL for SLAS was currently set at \$1,509,980 after several rounds of reviews. She said that the Administration should further relax the current level of FEL for SLAS to enhance access to justice, in particular the middle class. The Chairman also concurred with the view of the Bar Association that, when reviewing the level of FEL for SLAS, the Administration should take into account the changes in legal costs.

58. In response, DSHA(1) explained that FEL of SLAS was adjusted in accordance with the CPI(C) movements which reflected the expenditure patterns of households in the relatively high expenditure ranges. He also said that, when examining relevant proposed resolution for raising FELs of legal aid applicants, members of the Subcommittee on Proposed Resolution under Section 7(a) of the Legal Aid Ordinance (Cap. 91) had put forth suggestions on how to gather information on litigation costs for the purpose of conducting the biennial review of FELs. DSHA(1) assured members that the Administration would take into account the views of the Legislative Council Members and the two legal professional bodies, as well as continue to monitor the operation of SLAS and keep its FEL under review.

(At 6:42 pm, the Chairman suggested and members supported extending the meeting for 15 minutes to 7:00 pm.)

Transfer of the legal aid portfolio

59. Mr Ruy BARRETTO, SC enquired about the progress of transferring the legal aid portfolio from the Home Affairs Bureau to the Chief Secretary for Administration's Office ("CSO"). In reply, DSHA(1) advised that subject to the passage of the Appropriation Bill 2018, LAD would be re-positioned and made directly accountable to the Chief Secretary for Administration with effect from 1 July 2018. The Administration would ensure a seamless transition of the legal aid portfolio. He added that, after the transition, CSO would continue to follow up with the on-going reviews undertaken by the Administration, listen to the views of the Panel, the Bar Association and the Law Society on legal aid related issues, and ensure the delivery of quality legal aid services.

VI. Any other business

60. There being no other business, the meeting ended at 6:51 pm.

Council Business Division 4
Legislative Council Secretariat
1 February 2019