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Panel on Administration of Justice and Legal Services

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 25 June 2018**

Legal education and training in Hong Kong

Purpose

This paper provides an account of past discussions of Legislative Council ("LegCo"), in particular the Panel on Administration of Justice and Legal Services ("the Panel"), on legal education and training in Hong Kong.

Background

Present system of legal education and training in Hong Kong

2. In general, the present system of legal education and training in Hong Kong involves three stages, namely (i) an academic stage (i.e. Bachelor of Laws "LLB" or Juris Doctor "JD"); (ii) a vocational course (i.e. Postgraduate Certificate in Laws ("PCLL")) and (iii) a workplace apprenticeship (i.e. training contract or pupillage).

3. In Hong Kong, LLB and JD courses are currently offered by the law schools of the University of Hong Kong ("HKU"), the City University of Hong Kong ("CityU") and The Chinese University of Hong Kong ("CUHK") ("the three law schools"). PCLL is administered by these three law schools only. The definition of PCLL in the Legal Practitioners Ordinance (Cap. 159) ("LPO") refers to the PCLL programmes of HKU, CityU and CUHK, and the Trainee Solicitors Rules (Cap. 159J) provides that a person may only enter into a trainee solicitor contract if he or she passed PCLL. Thus, under the current legislative framework, it is not

possible for any other institution to provide a PCLL programme which will enable its graduates to gain recognition and admission as solicitors under LPO.

4. The three law schools enjoy self-accreditation status and that, empowered by statutes, they were established to run the PCLL programmes. According to the Administration, the three law schools are the exclusive course providers, and played an important role as the gatekeepers to the legal profession at two points in the process: first, at the entry point into PCLL (i.e. between stages (i) and (ii) as described in paragraph 3 above) and second, at the exit point from PCLL which is the entry point to the legal profession (i.e. between stages (ii) and (iii) as described in paragraph 3 above).

Common Entrance Examination and comprehensive review on legal education and training in Hong Kong

5. According to The Law Society of Hong Kong ("the Law Society") in December 2013,¹ members of the legal profession had expressed views that there was a lack of consistency in the PCLL examinations. Queries had also been raised as to why entrance to the profession was not administered by the profession itself since the Council of the Law Society had been given the statutory power to prescribe the admission requirements including the passing of examinations under LPO. As a result, the Law Society resolved to undertake a consultation with the stakeholders (ran from 1 December 2013 to 14 February 2014) on the feasibility of implementing a common entrance examination ("CEE") as a means of admitting individuals to practice as solicitors in Hong Kong.

6. On the other hand, the Standing Committee on Legal Education and Training in Hong Kong ("SCLET")² resolved on 18 December 2013 to conduct a comprehensive review on legal education and training in Hong Kong ("the Comprehensive Review") with a view to enhancing the system to meet the challenges of legal practice and the needs of Hong Kong. The consultants appointed by SCLET to conduct the Comprehensive Review published a consultation paper in October 2015.³ Amongst others, views were invited on

¹ LC Paper No. CB(4)225/13-14(03)

² SCLET is a statutory committee established in 2005 by section 74A of LPO. Its main functions include keeping under review the system and provision of legal education and training in Hong Kong and to make recommendations on such matters. Amongst others, SCLET is empowered under LPO to keep under review, evaluate and assess the academic requirements and standards for PCLL admission. SCLET comprises 17 members representing the Judiciary, the Department of Justice, the Education Bureau, the Law Society, The Hong Kong Bar Association, the three universities, the Federation for Self-financing Tertiary Education, as well as members of the public.

³ The consultation paper is available at <http://www.sclet.gov.hk/eng/pdf/cone.pdf>

whether CEE proposed by the Law Society might be considered as taking over PCLL as an entrance threshold into the legal profession, or whether CEE might be treated as an alternative or additional route to enter the legal profession.

7. On 6 January 2016, the Law Society announced that its Council had decided that, starting from 2021, a person might only enter into a trainee solicitor contract if that person had passed a CEE. CEE will be set and marked by the Law Society. The Law Society will require certified completion of the PCLL course but will not require any examination to be set by PCLL providers.

Major views and concerns of Members and relevant stakeholders

8. The Panel discussed the issues relating to legal education and training in Hong Kong at its meetings held on 16 December 2013, 27 April 2015 and 25 April 2016 and 26 June 2017. The Hong Kong Bar Association ("the Bar Association"), the Law Society, the Administration and deputations also attended the meetings to give views on the subject. Main deliberations on the subject are set out in the ensuing paragraphs.

Implementation of a Common Entrance Examination

Reasons for implementing a Common Entrance Examination

9. Noting from the three local law schools in Hong Kong that their PCLL programmes had all along been operating smoothly, members raised concerns about the reasons for the Law Society to propose a CEE for admission as solicitors in Hong Kong.

10. The Law Society explained in December 2013 that currently, entrants to the solicitors' profession comprised law graduates who had been examined by different examinations and tested by different standards. Although the three law schools in Hong Kong ran their self-accredited PCLL programmes subject to the benchmarks issued by the Law Society and the Bar Association, the three law schools had the autonomy to admit students and conduct their own PCLL examinations. In view of the changes that had taken place in the last decade or so,⁴ the Law Society considered it increasingly important to ensure that solicitors possessed the necessary professional knowledge and skills, as well as to maintain consistency in the assessments and standards of entrants to the solicitors'

⁴For instance, increase in the number of providers of PCLL programmes, possession of more diversified qualifications by PCLL applicants, widening of scope of services provided by solicitors and growing presence of foreign lawyers in Hong Kong.

profession. The proposed CEE would enable students from different universities to compete fairly in a single examination.

11. Some members queried whether there was concrete evidence showing that there was inconsistency in the standards of the entrants to the legal profession. The Law Society responded that the employers in different law firms had reflected their views about the inconsistent standards of law graduates from different law schools. Among others, employers had pointed out that the passing rates of the three law schools were different.

12. The three law schools were not convinced that there were justifications to introduce a CEE which was a major change to the existing system. They considered that the PCLL programmes had been running for years and the law schools were not aware of any major criticism on the quality of the programmes. To address the concern about the inconsistent criteria adopted by the three law schools, School of Law of CityU suggested that consideration could be given to requiring PCLL applicants to pass a common test set by the three law schools.

13. In the view of the Bar Association, CEE could only test the theoretical knowledge of the candidates and could not replace the training of PCLL which also covered some very practical aspects in preparation for the students to enter into the profession. The Law Society stressed that it was not the intention of CEE to abolish or replace the existing PCLL programmes, nor to create an additional hurdle for entry to the legal profession.

Implementation of a Common Entrance Examination as an alternative route to qualify as lawyers in Hong Kong

14. Some members considered that the proposed CEE was worth pursuing, as it might provide an additional route for young people to pursue a career in the legal profession in Hong Kong. They pointed out that law graduates who failed to get admitted to the PCLL programmes for not attaining a good second class honour law degree would unlikely succeed in any second attempt to apply for admission to the PCLL programmes number of PCLL. Some members considered that the law schools should not be the "gatekeeper" to select new entrants to the legal profession but instead the legal profession itself should have the final say on whether to accept a person as a member of the profession or not.

15. Hong Kong Shue Yan University Alumni Association considered that similar to other professions, a CEE should be introduced to provide as an alternative route for law graduates to qualify as lawyers in Hong Kong and no ceiling should be set on the number of times a law graduate could sit for CEE until he/she passed CEE. Law Students' Society of the CityU Students' Union and the Business and Professionals Alliance for Hong Kong also considered that, apart

from increasing PCLL places, the feasibility of implementing a CEE as an alternative route for entering the legal profession should be explored.

16. The Law Society advised that under the original design of CEE, intending trainee solicitors would still have to go through with PCLL or pass relevant examinations and complete relevant courses as may be prescribed by the Law Society.

Proposed model of "Commonly Recognized Assessment"

17. At the meeting held on 25 April 2016, members noted that the Law Society was proposing a CEE in the format of a centralized assessment, so that PCLL students of the three universities did not have to take two sets of examinations.

18. The Law Society advised that it would consult the three universities as well as the Bar Association after it had come up with the details on implementing CEE. In the course of considering all matters relating to CEE, the Law Society would also consider the model of "Commonly Recognized Assessments" proposed by the three law schools and the findings and recommendations of the Comprehensive Review.

Implications on the barrister branch of the profession

19. Members were concerned about the implications of the proposed CEE on the barrister branch of the profession. Expressing great reservation on the introduction of CEE, the Bar Association advised that the utmost concern was that if the examination papers of all core PCLL subjects that were required to be taken by all PCLL students were set and marked by the Law Society, prima facie, it would be very unsatisfactory for students intending to become barristers to sit for examinations which were set and marked by the Law Society.

20. The Law Society advised that CEE would not affect the entry to the barrister branch of the profession, and it was not proposed to abolish PCLL qualification.

Review of the Postgraduate Certificate in Laws programmes

Call for more Postgraduate Certificate in Laws programme places

21. Members had been raising concern over the adequacy of PCLL places in Hong Kong. At the Council meeting on 23 Oct 2013, a Member raised a question on the respective numbers of LLB and JD graduates from local and overseas universities applying for and being admitted or not admitted to the PCLL programmes run by the three universities and their success rates.

22. The Administration advised that the total number of admitted PCLL students as a percentage to the total number of PCLL applications received by the three law schools had been quite stable over the past three academic years, i.e. from 2010-2011 to 2012-2013 ranging from 41% to 46% in respect of students with local qualifications and 42% to 43% in respect of students with non-local qualifications. Given that law graduates could lodge multiple applications for PCLL admission, the actual "success rate" of applicants should be even higher.

23. Noting that there is a general call for more PCLL places, members were concerned about the measures to be taken by the three law schools to address the call.

24. Faculty of Law of HKU advised that the quality of the students admitted into the PCLL programmes would be lowered should the PCLL places be significantly increased. In addition, the market for legal services might well be unable to absorb the additional PCLL graduates. Faculty of Law of CUHK also pointed out that there were constraints on the number of PCLL students which the law schools could admit, as the PCLL programme, being a hands-on and skill-based programme, was labour-intensive.

25. The Administration advised that the current provision of government funding for the PCLL programmes was already an exception to the Government's general policy of funding undergraduate programmes only. Moreover, strictly speaking, there was no restriction on the number of PCLL places to be offered each year since the law schools could admit self-financed students. The relevant consideration was the availability of facilities, accommodation and experienced teaching staff.

26. To enable more law graduates with good academic results to become solicitors, a member enquired whether the Law Society would consider administering an open qualifying examination for admitting a certain number of law graduates to enter into the solicitors' profession. The Law Society advised that it had studied different routes to admission as solicitors, including a CEE in the form of an open qualifying examination. Balancing the interests of all relevant stakeholders, the Law Society considered that the present proposed format of CEE was the best option for the time being to ensure professional standards and provide fair access to those PCLL students who had the ability to qualify as a solicitor.

Admission to Postgraduate Certificate in Laws programmes

27. As admitting into a PCLL programme was the only route for law graduates to become lawyers, some members urged the three law schools to consider admitting those law graduates who had failed to gain admission into the PCLL

programme in the past but who had subsequently attained certain number of years of legal work experience; or alternatively requiring these law graduates to pass an open examination administered by the law schools. The Bar Association was also in favour of widening the pool of students for admission to PCLL.

28. At the Panel meeting in April 2016, Faculty of Law of HKU advised that the Faculty had launched a pilot scheme to interview borderline PCLL applicants and admit them after taking into account, amongst other things, their interview performance and legal working experience.

29. Faculty of Law of CUHK advised that the Faculty had a task force looking at providing an alternative route for those who did not succeed on the basis of academic performance for admission into its PCLL programme. The Faculty also planned to increase its PCLL places in 2016-17.

30. The School of Law of CityU advised that it had set aside a few places for those applicants who had failed in their first-time application to the PCLL programme by taking into account, in particular, their working experience. It would review how the admission policy to the PCLL programme should be further revised.

Latest position

31. On 15 May 2018, SCLET released the final report of the consultants on the Comprehensive Review ("Final Report").⁵ The Final Report comprises 38 recommendations in total, covering various aspects of Hong Kong's system and provision of legal education and training. According to SCLET in May 2018, it will carefully study the Final Report in the coming months, before it tenders its comments and recommendations on the way forward to the Government for consideration in due course.

32. Prior to the release of the Final Report, SCLET issued a consultants' interim report in October 2017. SCLET received the Law Society's response to the interim report on 8 May 2018.⁶ The Law Society stated that they were willing to put an immediate moratorium on the implementation of CEE, on the basis that the unified law school could in fact be established within three years. However, in the meantime, as an interim alternative entry path to those who either are not able to gain entry to PCLL or prefers to undertake some other qualified vocational training, the Law Society will "establish the 'Law Society Examination'" which is currently estimated to take effect as early as the academic year 2019-2020.

⁵ <http://www.sclet.gov.hk/eng/pub.htm>

⁶ http://www.sclet.gov.hk/eng/pdf/lawsociety_20180508.pdf

Subsequently, the consultants of the Comprehensive Review made observations on the Law Society's response of 8 May 2018 to their interim report, which are also uploaded to SCLET's website.

33. The Subcommittee on Practising Certificate (Solicitors) (Amendment) Rules 2018 ("Rules") has raised a number of questions to the Law Society on CEE and LSE during the examination of the Rules at its meetings on 29 May and 5 June 2018. The Law Society considered that it would be more appropriate to discuss the matter at the Panel meeting to be held on 25 June 2018 under the agenda item on "Legal education and training in Hong Kong".

34. DoJ proposes to discuss the Final Report at the Panel meeting in June 2018. The Bar Association, the Law Society and deputations from relevant bodies have been invited to give views on the subject.

Relevant papers

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

Council Business Division 4
Legislative Council Secretariat
21 June 2018

Background brief on Legal education and training in Hong Kong

List of relevant papers

Meeting	Date	References
Panel on Administration of Justice and Legal Services	16 December 2013 (Item III)	<u>Agenda</u> <u>Minutes</u>
	27 April 2015 (Item III)	<u>Agenda</u> <u>Minutes</u>
	25 April 2016 (Item III)	<u>Agenda</u> <u>Minutes</u>
	26 June 2017 (Item III)	Agenda Minutes
Council meeting	23 October 2013	<u>Administration's reply to an oral question raised by Hon Abraham SHEK (Question 1)</u>