

立法會
Legislative Council

LC Paper No. CB(2)2572/99-00
(These minutes have been seen
by the Administration and
cleared with the Chairman)

Ref : CB2/PL/AJLS

Legislative Council
Panel on Administration of Justice and Legal Services

Minutes of meeting
held on Tuesday, 20 June 2000 at 4:30 pm
in Conference Room A of the Legislative Council Building

Members Present : Hon Margaret NG (Chairman)
Hon Jasper TSANG Yok-sing, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Hon Mr Ambrose LAU Hon-chuen, JP
Hon Emily LAU Wai-hing, JP

Members Absent : Hon Martin LEE Chu-ming, SC, JP
Hon James TO Kun-sun
Hon Mrs Miriam LAU Kin-ye, JP

Public Officers Attending : *Item III*
Mr Michael SCOTT
Senior Assistant Solicitor General

Ms Kitty FUNG
Government Counsel, Legal Policy Division

Item IV
Ms Elsie LEUNG, JP
Secretary for Justice

Mr Peter CHEUNG, JP
Deputy Director (Administration)

Item V

Ms Elsie LEUNG, JP
Secretary for Justice

Mr Robert ALLCOCK, BBS
Solicitor General (Ag)

Mr Clement MAK
Secretary for Constitutional Affairs (Ag)

Item VI

Mr Michael SCOTT
Senior Assistant Solicitor General

Ms Kitty FUNG
Government Counsel, Legal Policy Division

**Attendance by :
Invitation**

Item V

Hong Kong Bar Association

Mr Ronny TONG, SC
Chairman

Professor Johannes CHAN

Item VI

Hong Kong Society of Notaries

Mr Peter W H MARK
President

Mr Lester G HUANG
Vice-President

Mr Robin M BRIDGE
Council Member

Ms Christine W S CHU
Hon Secretary

Clerk in Attendance : Mrs Percy MA
Chief Assistant Secretary (2)3

Staff in Attendance : Mr Jimmy MA, JP
Legal Adviser

Mr Paul WOO
Senior Assistant Secretary (2)3

Action
Column

I. Confirmation of minutes of meeting
(LC Paper No. CB(2)2364/99-00 - Minutes of meeting on 21 March 2000)

The above minutes were confirmed.

II. Information paper issued since last meeting
(LC Paper No. CB(2)2186/99-00(01) - The Chairman's letter dated 31 May 2000 to the Chief Secretary for Administration on the applicability of the Personal Data (Privacy) Ordinance to "State" organs stationed in the Hong Kong Special Administrative Region and related issues)

2. Members noted that the above paper had been issued.

III. Revision of judiciary fees and charges
(LC Paper No. CB(2)2359/99-00(02) - Paper provided by the Administration)

3. Senior Assistant Solicitor General (SASG) briefly introduced the Administration's paper on the Judiciary's proposal to increase the fees for all judicial services, including those prescribed under the Legal Practitioners (Fees) Rules (LP(F)R), by 8.5 % on average in order to achieve full cost recovery. There were five types of fees under the (LP(F)R) which had been identified for revision. The Administration would like to seek the Panel's views on the fees proposed for revision as set out in Annex II (i.e. those relating to requests made to the Registrar of the High Court for entry on the roll of solicitors and barristers, for registration of a notary public, for application for admission as a solicitor and a barrister) as well as the level of fee revision for the identified fees.

4. The Chairman asked whether the two legal professional bodies had been consulted on the proposed fee increases. The Administration replied in the negative. The Chairman said that she had received no protest from the bodies in this respect after the relevant papers were circulated to them.

5. The Chairman expressed reservation about the fee revisions. She said that in her opinion, the identified fees were chargeable for services which involved relatively simple tasks. This, coupled with the present situation of an economic downturn and deflation, created doubts as to whether the proposed fee increases were justified.

6. In response, SASG said that it was the Government's policy that fees should in general be set at levels sufficient to recover the full costs of providing the services. In view of the large number of fees collected by the Judiciary, the Administration considered it appropriate that these fees should be revised on a global costing basis with a view to achieving an overall breakeven. He added that most of the fees specified in Annex II of the paper were last revised in 1994. The Administration felt that the global costing method of assessing fees should enable fees to be more easily payable by individuals generally. He drew members' attention to Annex I of the paper which set out a cost and cost-recovery computation prepared by the Judiciary in respect of the services provided by the Judiciary for the year 2000-2001. The computation revealed that there would be a shortfall, and an increase by 8.5% of the fees was required to achieve full cost recovery.

7. Referring to Annex II of the Administration's paper, Mr TSANG Yok-sing said that the revised level of fees was calculated on the basis of an estimated number of transactions per annum in respect of the services provided. He enquired what would be the effect on cost and therefore the rate of fees charged on the users if the actual number of transactions turned out to be significantly greater or less than the estimated number.

8. SASG said that he could not provide a breakdown of the time and manpower in providing the services. However, he could ask the Judiciary to provide the information should members wish to have more details.

9. In summing up, the Chairman said that while the proposed increases were not hefty, in view of the concerns expressed by some members, the Administration should provide explanations as to why fee revision for the various judicial services should be conducted on a global costing basis instead of on an individual item basis. The Administration should also consider whether other ways of calculating judiciary fees should be adopted for the purpose of recovering the full costs of providing the services in future exercises.

Adm

IV. Appointment of Solicitor General
(LC Paper No. CB(2)2359/99-00(03) - Paper provided by the Administration)

10. Secretary for Justice (SJ) briefed members on the Administration's paper which explained the present position concerning the filling of the post of Solicitor General (SG) which had been left vacant since 1 September 1998 following the completion of agreement of the former post-holder. She advised that a recruitment exercise launched in July 1998 had failed to secure a suitable candidate for the post. In view of the general freeze of recruitment to the civil service in 1999-2000 and with the need to restructure the Legal Policy Division, the Department of Justice (D of J) had not launched another selection exercise in late 1999 to fill the post. The current position was that the D of J had applied to the Central Joint Panel of the Civil Service Bureau (CSB) and the Finance Bureau in April 2000 for approval to conduct another open recruitment exercise in 2000-2001. Approval of the Central Joint Panel had just been given and the D of J would proceed with the necessary recruitment procedures as soon as possible. She added that the recruitment exercise would be conducted in parallel with consideration of the applications of qualified and eligible serving officers in the legal/judicial group of departments so as to widen the selection base.

11. The Administration tabled a paper on "Filling of vacancies at the Law Officer Rank" and a copy of the newspaper advertisement for the post of SG to be published on 24 June 2000 for members' reference (the papers have been circulated vide LC Paper Nos. CB(2)2432/99-00(01) and (02) after the meeting).

12. The Chairman referred to paragraph 3 of the Administration's paper which stated that in the last recruitment exercise the Selection Board had made a recommendation to the CSB in October 1998 but a candidate had subsequently withdrawn his application in July 1999 on personal grounds. The selection exercise was concluded in September 1999 with no offer of appointment. The Chairman enquired about the reason for the long period of time which the recruitment exercise had taken.

13. SJ replied that the last exercise was not exceptionally protracting. She referred members to the paper on "Filling of vacancies at the Law Officer Rank" which showed that the time taken for the filling of the posts of SG, Director of Public Prosecutions and Law Draftsman during the period from October 1993 to June 1997 ranged from five to nine months. She said that the delay experienced in the last recruitment exercise for the post of SG was due to some unforeseen factors as explained in the Administration's paper. She said that this had not adversely affected the work of the D of J. Since September 1998, the vacant post of SG had been filled on an acting basis in accordance with normal civil service practice. The purpose and effect of such an acting arrangement was to ensure that the functions of the post were properly carried out, despite there being no substantive post-holder.

14. SJ then explained the duties of SG and the requirements for the post as specified in the newspaper advertisement. In response to Mr Albert HO, SJ said that there was no nationality requirement for the post. However, an eligible applicant

should be a Hong Kong permanent resident.

15. Mr Ambrose LAU asked whether the requirements for the post of SG had changed after the reunification. Deputy Director (Administration) (DD(A)) replied that apart from the status of permanent resident which was not a pre-requisite before the reunification, other requirements were basically the same. SJ added that as a result of the localization policy for the civil service, more than 90% of staff in the D of J were Hong Kong permanent residents. This requirement should not pose any difficulty in filling the post of SG.

16. The Chairman noted that only 10 applications were received from both in-service candidates and private legal practitioners in the last recruitment exercise, and that the Administration had considered that only one applicant was suitable for the post of SG. She said that judging from what were specified in the recruitment advertisement, there did not seem to be any particularly harsh requirements which needed to be fulfilled by applicants. She asked whether the Administration had conducted a review to identify the factors which deterred people from applying for the post.

17. DD(A) replied that the response to the last recruitment exercise was not disappointing. Past experience showed that the number of applications for a vacancy in the D of J at DL6 level or above was normally below 10. SJ said that out of the 10 applicants, some were found not to have possessed the requisite amount of experience and knowledge in the field of legal policy. She further advised that in the last recruitment drive, she had made personal approaches to encourage members of the legal profession to apply for the post. A feedback which she got was that the remuneration for the post of SG was a factor which weighed considerably in a private practitioner's decision to apply for the post.

18. The Chairman said that she understood that there were many people in the legal profession who saw great satisfaction in participating in the development of a new constitutional order conducive to the successful implementation of "one country, two systems" and safeguarding a high degree of autonomy in Hong Kong. However, since the handover, a number of incidents had cast doubt on people's minds as to whether the D of J had been making its best efforts to preserve the rule of law. She said that the concern that there were insurmountable obstacles in achieving those goals could be a deterrent factor for people who might have wished to apply for the post of SG.

19. SJ said that "one country, two systems" and the advent of the Basic Law were unprecedented matters for Hong Kong. Hence, it was not surprising that people's views differed with respect to how to give effect to those matters, and worries occasionally arose. The concerns could only be addressed in the course of time and the Administration would be doing its best to remove those concerns. She stressed that the D of J had always acted in full compliance with the law including the Basic

Law and there was no question of it doing things which were detrimental to safeguarding the rule of law in Hong Kong.

20. Ms Emily LAU asked SJ whether she had heard of sayings that some members of the legal profession were reluctant to apply for the post of SG because they were not satisfied with her work as head of the D of J. SJ replied in the negative.

21. Mr Albert HO asked whether an applicant's political beliefs would be a relevant factor for assessing the applicant's suitability for the post of SG. He enquired whether applicants had been asked to express how they felt about certain politically sensitive issues, such as the Hong Kong Standard case and the Chief Executive's request for the Standing Committee of the National People's Congress (NPCSC) to interpret certain provisions of the Basic Law etc.

22. In reply, SJ said that the last selection exercise to fill the post of SG was conducted before the Hong Kong Standard case and the NPCSC interpretation. She said that while candidates would be asked to express views on certain matters during the selection interview, the intention was to assess the candidate's ability to make sound judgments rather than to test their political inclinations. She assured that there was no "political vetting" in the appointment of civil servants. A candidate would not be ruled out on the basis of his political beliefs.

23. Ms Emily LAU noted that the vacant post of SG had been filled on an acting basis since September 1998 with Mr Robert ALLCOCK acting in the post for most of the period. She queried whether such a long period of acting appointment was unusual.

24. SJ advised that Mr ALLCOCK had been continuously acting in the post of SG since August 1999, during which period one of his major tasks was to oversee the conducting of a restructuring exercise of the Legal Policy Division. The restructuring exercise had recently been completed. She explained that an important reason for the delay in filling the post of SG was that in accordance with the Government's policy of containing the size of the civil service, retention of vacancies and recruitment of outside candidates to any office on the civil service establishment on civil service terms and conditions should only be made in 2000-2001 with the approval of the Central Joint Panel.

25. In response to the Chairman, SJ advised that it would take about 5-9 months to announce the result of a recruitment exercise in the past. The Administration intended to fill the post of SG as soon as possible.

V. Rule of law and related matters

(LC Paper No. CB(2)1950/99-00(01) - The Chairman's letter dated 5 May 2000 to the Administration;

LC Paper No. CB(2)2312/99-00(01) - Letter dated 7 June 2000 from the Hong Kong Bar Association; and

LC Paper No. CB(2)2359/99-00(04) - Paper provided by the Administration)

26. SJ advised that the Administration's paper sought to respond to a letter from the Chairman dated 5 May 2000 to the Administration which requested the Administration to explain why it refused to give an unequivocal assurance as demanded by some members at the Panel's meeting on 18 April 2000 that it would not again seek an interpretation of the Basic Law (BL) from the NPCSC. In the Chairman's letter, it had also been pointed out that a similar demand had been made by the Bar Association that the Government should undertake not to request an interpretation from the NPCSC except through judicial referral under BL 158(3).

27. SJ said that the stance of the Administration was that there was no sufficient justification for the Government to make such an assurance. She said that, firstly, as previously explained in numerous speeches and articles, the Government firmly believed that the request for an NPCSC interpretation in May 1999 was lawful and constitutional. The submission of the report to the State Council by the Chief Executive (CE) for an interpretation was in accordance with the CE's constitutional duties under BL 43 and BL 48(2), and the request for interpretation had the majority support of the LegCo. Furthermore, the Court of Final Appeal (CFA) in its judgment handed down in December 1999 in Lau Kong Yung case had made no adverse comments on the request for NPCSC interpretation. Secondly, it would be irresponsible for the Government to make the assurance because it could not rule out the possibility of a need to seek an NPCSC interpretation again in the future under justifiable circumstances.

28. SJ further pointed out that there were constitutional limitations as to what could be done in relation to the seeking of an NPCSC interpretation. The Administration had repeatedly emphasized in the past that an interpretation would not be sought save in wholly exceptional circumstances; the NPCSC had rarely exercised its power to interpret national laws; and a request for interpretation of the BL would not be lightly made or accepted.

29. Acting Secretary for Constitutional Affairs informed members that the LegCo Panel on Constitutional Affairs had held several special meetings in 1999 to discuss the need for a formal mechanism to govern the circumstances in which the CE might seek an NPCSC interpretation of the BL. The diverse views expressed by LegCo Members, the legal profession, academics and other parties concerned could be summarized as follows -

- (a) no restrictions should be imposed on the CE in exercising his constitutional duties in accordance with BL 43 and BL 48(2) including reporting to and requesting assistance from the State Council when the CE encountered problems in the implementation of the BL;

- (b) some considered that a formal mechanism should be established to set out the circumstances under which the CE would make a request for an NPCSC interpretation in future, while some took the view that a formal mechanism should be established to regulate the CE's power in submitting future requests; and
- (c) some were of the view that a formal mechanism should not be considered at all as it would simply legalize or rationalize the CE's request.

He also echoed the views expressed by SJ in paragraphs 27 and 28.

30. On SJ's comment on the lawfulness of the CE's request for interpretation of the BL, the Chairman pointed out that the legality of the CE's request was not an issue which the CFA had been asked to judge. Therefore, the fact that the CFA had made no adverse comments on the CE's request in its judgment given in December 1999 did not necessarily prove that the request was lawful.

31. In response to the invitation of the Chairman to give views on the subject, Mr Ronny TONG said that the views held by the Bar Association on the subject had been elaborated in its previous submissions. In short, the Bar Association questioned the legality of the CE's request on the basis that the BL did not provide any mechanism for the CE to seek an interpretation of the BL from the NPCSC. In view of the Administration's stance on the issue, he raised the following points for the Administration to respond to -

- (a) Since there was no certainty that an NPCSC interpretation would necessarily resolve the problem faced by the Government of the Hong Kong Special Administrative Region (HKSAR), he asked whether the HKSAR Government had ascertained whether an NPCSC interpretation would assist in solving the right of abode issue before a request for interpretation was made; and
- (b) In view of the different views on whether the NPCSC interpretation in June 1999 concerned affairs within or outside the limits of Hong Kong's autonomy, and the Administration's refusal to undertake not to seek an NPCSC interpretation in future, he asked whether any future request for an NPCSC interpretation should be restricted to provisions of the BL which concerned affairs outside the limits of Hong Kong's autonomy; and
- (c) According to the Government, the NPCSC interpretation in June 1999 was not subject to the limitations set out in BL 158(3) as the request was not made pursuant to BL 158(3). He asked the Administration to

clarify.

32. SJ made the following responses -

- (a) The NPCSC interpretation given in June 1999 concerned BL 22(4) and BL 24(2)(3) relating to the issue of right of abode in the HKSAR. The HKSAR Government had no prior knowledge of what the NPCSC interpretation of those provisions would be. Before the request for interpretation was made, the Administration had carefully considered the views of the Preparatory Committee on those provisions which had been endorsed by the NPC. The request for interpretation was made in the belief that the NPCSC would give due weight to the Preparatory Committee's views;
- (b) The CE's request for interpretation was made on the basis of BL 158(1) which conferred the power of interpretation of the BL on the NPCSC in general and unqualified terms; and
- (c) As the CE's request was not made under BL 158(3), the restrictions in BL 158(3) would not apply.

33. Mr Ronny TONG said that it was stated in BL 158(3) that "*...when the Standing Committee makes an interpretation of the provisions concerned, the courts of the Region, in applying those provisions, shall follow the interpretation of the Standing Committee. However, judgments previously rendered shall not be affected.*" In view of this provision, he asked the Administration whether it would in any future reference request the NPCSC to refrain from making any interpretation of the provisions of the BL which would have the effect of overturning a ruling of the CFA on the same provisions.

34. SJ said that the restriction provided under BL 158(3) applied to an interpretation sought by the CFA in respect of the matters specified in that Article. She opined that the restriction did not bind an interpretation made pursuant to the unqualified power of interpretation of the NPCSC under BL 158(1).

35. The Chairman said that the courts, in seeking an interpretation of the BL from the NPCSC through the CFA under BL 158(3), would be subject to certain restrictions. However, the HKSAR Government would not be subject to any restriction in seeking an NPCSC interpretation of the same BL provision by route of BL 158(1). This gave rise to the concern that the HKSAR Government could overturn the CFA judgment by seeking an interpretation from the NPCSC under BL 158(1).

36. SJ said that it was a misconception that the HKSAR Government as a losing party to proceedings before the CFA could ask the NPCSC to overrule the CFA's decision. She said that the true position was that the NPCSC interpretation given in

June 1999 did not undo the CFA judgment made in January 1999 on the right of abode case. The CFA judgment in favour of certain right of abode persons remained unchanged despite the NPCSC interpretation. It was only that the Hong Kong courts would be bound by the NPCSC interpretation in adjudicating future cases. SJ further informed members that proceedings were currently in progress before the CFA where a major issue to be decided was whether and if so how the NPCSC interpretation had affected the people involved in the right of abode case.

37. The Chairman said that the view that the CE, as opposed to the CFA, was not subject to any limitation in seeking an NPCSC interpretation of the BL, would give rise to public concern. The concern would be all the more justifiable when it came to litigation involving matters of constitutional importance to which the HKSAR Government was a party. She said that the Administration should seriously consider the ways to address the concern.

38. Mr Ronny TONG asked whether the HKSAR Government would in future refrain from seeking an NPCSC interpretation of provisions of the BL which fell within the limits of the HKSAR's autonomy.

39. SJ replied that an undertaking of that nature would restrict the scope of the referral and the NPCSC's power of interpretation under BL 158(1). In deciding whether or not to resort to an NPCSC interpretation on matters within the autonomy of the HKSAR, the Administration would have to consider whether the problem in question could be handled by the HKSAR itself or needed to be resolved with the assistance of the NPC.

40. Acting Solicitor General (SG(Ag)) supplemented that sometimes it might not be easy to determine whether or not a particular issue was within the HKSAR's autonomy. This was demonstrated in the right of abode case in which there had been conflicting arguments as to whether or not BL 22(4) was within the limits of the autonomy of the HKSAR. The NPCSC interpretation in the end held that it was not and that the CFA should have sought the NPCSC's clarification on the relevant provisions of the BL before the CFA made its ruling. He added that while the Administration could not give an undertaking as requested, the question of whether or not the issue concerned should fall within the autonomy of Hong Kong would weigh heavily in the decision whether or not to seek an NPCSC interpretation.

41. Mr Ronny TONG asked that in the event that a CFA judgment on certain provisions of the BL was unacceptable to the Government, e.g. BL 27 and BL 39 on freedom of expression, whether the Government would request the NPCSC to interpret the BL provisions to override the CFA's judgment.

42. SJ responded that NPCSC could only interpret the BL and other national laws that applied to Hong Kong, but it could not interpret local legislation. She added that in the recently decided flag desecration case, the court adjudicated on the basis of the

National Flag and National Emblem Ordinance which was a local legislation. She opined that in cases involving local legislation, the need to seek an interpretation from the NPCSC came into play only when there was inconsistency between certain provisions of the local legislation and the BL.

43. Mr Albert HO pointed out that at the hearing of the United Nations Human Rights Committee conducted in October 1999, a large number of delegates from the participating States had expressed deep concern about the CE's request for NPCSC interpretation of the BL and its impact on the independence of the Hong Kong courts. He opined that by invoking the unrestrained power of interpretation under BL 158(1), the NPCSC's interpretation in June 1999 had heightened the fear that the HKSAR Government might in future request the NPCSC to interpret provisions of the BL even though the provisions fell within the autonomy of the HKSAR.

44. Ms Emily LAU said that in order to preserve confidence in Hong Kong's judicial independence, the successful implementation of "one country, two systems" and a high degree of autonomy in the HKSAR, the HKSAR Government should not seek NPCSC interpretation save for matters relating to defence and foreign affairs and other matters outside the autonomy of the HKSAR.

45. SG(Ag) said that it was impossible for the HKSAR Government to say for sure that it would not request the NPCSC to interpret certain provisions of the BL again because one could not foresee what would happen in the future. The Government could only state that an interpretation would only be sought in highly exceptional circumstances and when it was considered to be imperative in the public interest to do so. To suggest that the Government would seek an NPCSC interpretation simply because it found a court decision unacceptable was a distortion of the real picture. He added that, to put matters into perspective, the NPCSC interpretation in June 1999 concerning the right of abode issues arose from the need to clarify the original intention of the BL and to overcome the grave problem arising from the CFA's judgment which could not be resolved otherwise than with the assistance of the Central People's Government.

46. SJ reiterated that the concern arising from the right of abode case that the seeking of NPCSC interpretation had undermined the judicial independence and the rule of law in Hong Kong was unfounded. She pointed out that last year, three senior retiring judges had spoken about their perception of the rule of law in Hong Kong after the handover of sovereignty and they all agreed that the NPCSC interpretation was not in breach of the rule of law, nor had it posed any threat to judicial independence in Hong Kong. Similar views were also expressed in the recently published European Commission's Report and other international articles and commentaries. She also quoted Mr Christopher PATTEN - the former Governor of Hong Kong - as saying that "one country, two systems" and a high degree of autonomy in Hong Kong remained intact after the reunification; that Hong Kong continued to be one of the freest cities in Asia; and that the concerns with regard to the

preservation of the rule of law in Hong Kong should not be exaggerated.

VI. Admission of Notaries Public in Hong Kong

(LC Paper No. CB(2)2359/99-00(05) - Paper provided by the Administration;
and

LC Paper No. CB(2)2404/99-00(01) - Letter dated 16 June 2000 from the Law
Society of Hong Kong)

47. The Chairman informed members that she had proposed to discuss this item as a result of having received a letter from a member of the legal profession expressing concern about the rules and regulations relating to the admission of notaries public which had yet to be put in place following the passage of the Legal Practitioners (Amendment) Ordinance 1998. The amendment ordinance empowered the Council of the Society of Notaries (the Society) to make rules to provide for the requirements for appointment as a notary public. She asked the Administration to explain the long time taken to draft the rules and the likely timing for finalizing the rules.

48. SASG briefed members on the Administration's paper which explained the present position of the matter. He advised that in accordance with the policy responsibility for the Legal Practitioners Ordinance, the Legal Policy Division of the D of J would prepare drafting instructions upon receipt of the drafting proposals from the Council of the Society. The Law Draftsman, who had the duty to ensure that the proposal for new legislation was conceptually sound and legally effective, would in turn act on the finalized drafting instructions to transform the drafting proposals into legislation. He added that seven sets of rules and regulations needed to be made under the Ordinance. The drafting process was near completion in respect of four sets of rules. Proposals and clarifications in respect of the other three sets of rules were being examined by the D of J. It was difficult for the Department to estimate the timing for the rules to be finalized but it would endeavour to finish the task as soon as possible.

49. At the invitation of the Chairman, Mr Lester HUANG of the Society explained the complications in preparing the draft rules which were summarized as follows -

- (a) It was a challenging task for the Society to draft the rules and regulations because there were no precedents on which any of the rules could be based. The Society had to spend time to properly identify the relevant parameters which the new rules would need to define, and to integrate these into sensible directions for instructions to be drawn up for the Law Draftsman;
- (b) Before the reunification, notarial examinations had never been staged in Hong Kong. They were set and marked in England under the auspices of the Faculty Office of the Archbishop of Canterbury. The syllabus

was what it then was in the UK. As Hong Kong had now become an SAR of the People's Republic of China, a country whose jurisprudence with regard to notaries public was somewhat different, notarial practice in Hong Kong had also changed. Much time and effort therefore had been put into researching into the syllabus for the examination, and developing the literature and courses which potential candidates would find relevant and helpful in preparing for the examination. The logistics of holding an examination in Hong Kong were also daunting;

- (c) Concerning the rules for admission, they had to be worked out afresh because of the severance of the link with their counterparts in the UK. The Society had to ensure that the new mechanism, which departed from then existing practices, would work satisfactorily;
- (d) On the professional indemnity rules, which required notaries public to be properly insured for the protection of members of the public, the Society had to conduct detailed discussions with its members, the Law Society as well as the Administration with a view to working out arrangements to be included in the rules so that notaries could continue to practise without undue burden; and
- (e) Regarding the disciplinary proceedings rules, the new legislation provided for a disciplinary conduct mechanism. The Society had referred to many sets of disciplinary rules including those for solicitors and barristers in Hong Kong. Considerable time had been spent in designing a system which would meet the specific requirements of the notaries in Hong Kong.

50. In response to the Chairman, Mr Lester HUANG advised that there was an increase in the number of notaries public after the reunification. The increase reflected the number of people who had passed the relevant examination for admission before 1 July 1997 but who applied for admission after the reunification. Apart from these, there had been no new admissions after the reunification.

51. Mr Albert HO declared interest as a member of the notaries. He opined that in view of the above-mentioned constraints faced by the Society in drafting the rules, the Administration should assist in every possible way to put in place a new regime as early as possible. Echoing his view, the Chairman asked what assistance had been rendered by the Administration in this regard.

52. Government Counsel replied that the D of J had played an active part in studying and advising on the various proposals put forward by the Society. Detailed discussions between the two resulted in a lot of rethinking and consequentially substantive amendments to the proposals. The Administration was of the view that other than those technical and legal aspects with respect to the drafting of the rules on

which it could provide advice and assistance, matters relating to the content of the rules should better be left to the autonomy of the Society itself.

53. Mr Lester HUANG said that the Society had been working closely with the D of J which had provided the assistance the Society had asked for. He reiterated that much of the problems encountered stemmed from the fact that the Society, in formulating the draft rules, had to start off "with a clean slate".

54. The Chairman said that she had not originally anticipated the difficulties faced by the Society to be of such an extent as explained by the Society. She requested the Society to prepare a paper to set out an overview of the Society's proposals and the progress which had been made concerning the draft rules. She suggested that the paper could be discussed by this Panel in the new term of LegCo.

Society of
Notaries

VII. Any other business

55. The Chairman said that this being the last meeting of the Panel in the current LegCo term, she wished to take the opportunity to thank all parties concerned, including all members of the Panel, the Administration, the two legal professional bodies as well as the staff of the LegCo Secretariat and the Simultaneous Interpreters, for their contribution to the work of the Panel.

56. There being no other business, the meeting ended at 6:45 pm.

Legislative Council Secretariat

6 September 2000