立法會
Legislative Council

LC Paper No. CB(2)386/04-05
(These minutes have been seen by the Administration)

Ref : CB2/PL/AJLS

Panel on Administration of Justice and Legal Services

Minutes of meeting
held on Monday, 22 November 2004 at 4:30 pm
in Conference Room A of the Legislative Council Building

Members present	:	Hon Margaret NG (Chairman) Hon LI Kwok-ying, MH (Deputy Chairman) Hon Albert HO Chun-yan Hon Martin LEE Chu-ming, SC, JP Hon Miriam LAU Kin-yee, GBS, JP Hon Emily LAU Wai-hing, JP Hon Audrey EU Yuet-mee, SC, JP Hon KWONG Chi-kin
Member attending	:	Hon Alan LEONG Kah-kit, SC
Member absent	:	Hon MA Lik, JP
Public Officers attending	:	Item V Ms Elsie LEUNG, GBM, JP Secretary for Justice Mr Robert ALLCOCK Solicitor General Mr Stephen WONG Kai-yi Deputy Solicitor General Miss Michelle TSANG

Senior Assistant Solicitor General
Legal Policy Division

Mr Paul TSANG
Senior Government Counsel

Ms CHANG King-yiu
Director of Administration

Miss Eliza LEE
Deputy Director of Administration

Items VI and VII

Mr Robert ALLCOCK
Solicitor General

Mr Stephen WONG Kai-yi
Deputy Solicitor General

Mr Michael SCOTT
Senior Assistant Solicitor General

Ms Kitty FUNG
Senior Government Counsel

Attendance by invitation : Item V

The Hong Kong Bar Association

Mr P Y LO

Item VI

The Law Society of Hong Kong

Mr Michael Lintern-Smith
President

Mr Patrick MOSS
Secretary General

Professional Indemnity Scheme Action Group

Mr Larry KO

		Ms Hilary CORDELL
		Ms Therese CHOW
		Mr Rene Hout
		Mr Victor CHAN
		Mr Sundara KRISHNAN
		Mr Solomon C CHONG
		Ms Lucille AU
		Ms May TAM
		Item VII
		The Law Society of Hong Kong
		Mr Michael Lintern-Smith President
		Mr Patrick MOSS Secretary General
Clerk in attendance	**:**	Mrs Percy MA Chief Council Secretary (2)3
Staff in attendance	**:**	Mr Arthur CHEUNG Senior Assistant Legal Adviser 2
		Mr Watson CHAN Head, Research and Library Services Division (for item IV only)
		Miss Kitty LAM Research Officer 8 (for item IV only)
		Mr Paul WOO Senior Council Secretary (2)3

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I. Confirmation of minutes of meeting
(LC Paper No. CB(2)245/04-05 – Minutes of meeting on 9 November 2004)

The minutes of the meeting held on 9 November 2004 were confirmed.

II. Information papers issued since the last meeting

2. Members noted that the following papers had been issued –

(a) LC Paper No. CB(2)125/04-05 – Request for review and amendment of section 18(3) of the Hong Kong Court of Final Appeal Ordinance by Mr CHAN Siu-lun;

(b) LC Paper No. CB(2)206/04-05(01) – Reply from the Secretary of the Law Reform Commission on "Conditional fees"; and

(c) LC Paper No. CB(2)239/04-05(01) – Reply from the Judiciary Administrator on "Guide to Judicial Conduct".

III. Items for discussion at next meeting
(LC Paper No. CB(2)248/04-05(01) – List of outstanding items for discussion

LC Paper No. CB(2)248/04-05(02) – List of follow-up actions)

3. Members agreed that the following items should be discussed at the next regular meeting on 14 December 2004 –

(a) 2004 annual and biennial review of financial eligibility limits of legal aid applicants;
(b) Statute Law (Miscellaneous Provisions) Bill 2005; and

(c) Solicitor Corporations Rules (paragraphs 47 and 50 below refer).

Law reform relating to domestic violence

4. The Chairman said that while the findings of the Report of the Review Panel on Family Services in Tin Shui Wai would be followed up by the Panel on Welfare Services (WS Panel), this Panel could keep in view the progress of introducing legislative measures to implement the relevant recommendations of the Review Panel.

5. Ms Miriam LAU pointed out that the Law Reform Commission (LRC) had issued a Report on Stalking in October 2000 and expressed concern about the progress of reforming the law relating to domestic violence. She added that the report of the LRC's Subcommittee on guardianship and custody chaired by her would

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soon be issued. The Chairman said that the controversial part of the Report on Stalking was about the possible effect of anti-stalking legislation on certain journalistic activities. She suggested that the Panel request LRC to advise on the progress of the law reform relating to domestic violence.

(*Post-meeting note* – As a subcommittee had been formed in the current session under the WS Panel to deal with issues relating to family violence, the Chairman agreed that it was not necessary for this Panel to follow up the recommendations on law reform relating to domestic violence contained in the LRC Report on Stalking. Members were advised of the position vide LC Paper No. CB(2)297/04-05 issued on 30 November 2004.)

IV. Proposed research outline on limited liability partnership and liability capping legislation for the practice of law in selected places
(LC Paper No. CB(2)248/04-05(03) – Proposed research outline prepared by the Research and Library Services Division)

6. Head, Research and Library Services Division (H/RL) briefed members on the proposed research outline. He informed members that the research project intended to study and compare how legal practices limited their liability through limited liability partnership (LLP) or legislation in the following places –

(a) The State of New York of the United States;

(b) England and Wales of the United Kingdom; and

(c) New South Wales of Australia.

7. Ms Miriam LAU said that as there were different attributes of LLPs and liability capping legislation in the places under study, the research should provide an analysis, with documented information if available, on the effect and influences of LLPs and liability capping legislation on legal practices. The Chairman suggested that the assistance of the Law Society of Hong Kong could be sought in providing information which might be useful in conducting the research. H/RL noted the views.

RLSD

8. Ms Audrey EU pointed out that LLPs were not confined solely to the legal profession but also other professional practices. She opined that while the scope of the research should not be too wide, it would be useful to give a brief coverage of different professions as well.

9. H/RL explained that the research would highlight generally the operation of LLPs and liability capping legislation in relation to other professional practices. This would be covered in the research report. However, the research was not intended to go into a detailed study of different professions in order that the overall study could be brought within a manageable scope, with the major focus being placed on the legal practice.

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10. The Chairman and Mr LI Kwok-ying opined that as the study would be a time-consuming exercise, a preferred approach would be to have the major focus placed on the legal practice first. The Chairman added that the views from members of other professions might be sought at a later stage if considered necessary.

11. The Chairman and Ms Audrey EU opined that some information should be provided on common measures in the operation of LLPs for different professional practices to protect the public interest. Research Officer 8 replied that such information would be gathered.

RLSD

12. H/RL informed members that the research project was expected to be completed for discussion of the Panel at its meeting in March 2005.

V. Reciprocal enforcement of judgments in commercial matters between the HKSAR and the Mainland

(LC Paper No. CB(2)248/04-05(04) – Written submission from Mr P Y LO

LC Paper No. CB(2)248/04-05(05) – Paper provided by the Administration

LC Paper No. CB(2)1431/01-02(01) – Letter dated 20 March 2002 from the Administration enclosing a paper on "Reciprocal enforcement of judgments in commercial matters between the HKSAR and the Mainland"

LC Paper No. CB(2)2020/01-02(01) – Paper dated May 2002 from the Administration on "Result of the consultation exercise on the proposed reciprocal enforcement of judgment arrangement"

LC Paper No. CB(2)225/04-05(01) – Relevant extract from the minutes of the meeting on 27 May 2002)

13. Secretary for Justice (SJ) said that she welcomed the opportunity to attend the meeting to explain the progress of the Administration's discussion with the Mainland authorities on the proposed arrangement for reciprocal enforcement of judgments (REJ) in commercial matters between the HKSAR and the Mainland. She said that the matter had not been accurately reported in the press recently, hence causing misunderstandings. She made the following clarifications –

(a) discussion between the HKSAR and the Mainland on the establishment of a mechanism for REJ (the Arrangement) had yet been concluded. In early November 2004, during his visit to Hong Kong, the President of the Mainland's Supreme People's Court, Mr Xiao Yang, explained that despite that active discussions had been going on, there were still differences between both sides as regards the preferred arrangement to be adopted. The media's report that a concluded agreement could be signed by the end of 2004 was not correct;

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(b) although the Mainland authorities wished that the scope of the Arrangement could be extended to include, inter alia, judgments on matrimonial and employment matters, the HKSAR considered that such cases should be excluded in view of the vast differences which existed in the laws of the HKSAR and the Mainland in relation to those areas. The HKSAR maintained the view that the scope of the Arrangement should remain as originally proposed, i.e. covering only money judgments given by a court of either the Mainland or the HKSAR exercising its jurisdiction pursuant to a valid choice of forum clause contained in a commercial contract. In fact, in the latest version of the draft Hague Convention on Recognition and Enforcement of Foreign Judgments, to which the Mainland was one of the member parties, cases involving employment, consumer, matrimonial and family matters were excluded;

(c) on the issue of protection of the public interest, the Administration considered that the elements of the proposed Arrangement as described in paragraph 13 (b) above, as well as the safeguards under which registration of a judgment under the Arrangement might be refused or set aside, provided sufficient safeguards to ensure that the interests of the parties would not be prejudiced. In this connection, the Administration had conducted a consultation exercise two years ago to gather views from relevant concerned parties, including this Panel, and to seek their support for the Administration to negotiate with the Mainland authorities for an agreement on the proposed Arrangement; and

(d) this matter was last discussed by the Panel at its meeting on 22 March 2004, during which Mr Robert Allcock, Solicitor General, made a report on the latest progress. Since an informal meeting held in February last year, both sides did not have any opportunities to meet until October 2004 when the informal meeting resumed. At that latest informal meeting, no agreement on the proposed Arrangement had been reached, and thus no report was made to the Panel. Members would agree that details of the negotiation should not be made public when the negotiation was still underway. Hence, there did not exist any deviation from the original position or "black box operation".

14. SJ further informed members that the Mainland had concluded bilateral agreements on mutual enforcement of judgments in civil and commercial matters with France, Italy, Spain, Greece, Egypt, Cyprus and Morocco. She agreed to provide
Adm copies of the agreements to the Panel and the Hong Kong Bar Association for their reference.

15. Director of Administration supplemented that any discussion between the HKSAR and the Mainland which involved deviation from the principles and direction of the original proposal would be reported to the Panel. She said that the

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Arrangement eventually agreed upon by the HKSAR and the Mainland authorities would need to be underpinned by local legislation in the HKSAR before it might take effect in Hong Kong. Under the existing arrangements, the Administration would consult the Panel in the context of the legislative proposal.

Submission from the Hong Kong Bar Association

16. Mr P Y LO thanked SJ for her clarification about the progress of the Administration's discussion with the Mainland authorities on the Arrangement which had answered the queries raised in his written submission. Mr LO advised members that the Bar Association's opinions on the subject matter as contained in its submission in April 2002 had remained unchanged. He further informed members that the Chairman of the Bar Association had asked him to convey the following views to the Panel –

(a) the Arrangement proposed to cover judgments given by the Intermediate People's Courts or above. As there was a large number of such courts in different provinces and municipalities in the Mainland, this gave rise to concern about the quality of justice and judicial decisions rendered by the courts;

(b) the criteria for determining whether cases fell within the jurisdiction of the Intermediate People's Courts or above and the HKSAR's District Court or above might be different and should be looked into. Certain cases could be heard and determined by the courts in one place but not in the courts in the other place for reasons such as the nationality of the litigating parties; and

(c) the time limits for initiating proceedings for enforcement of judgments in the HKSAR and the Mainland should be clarified.

17. On the issue of finality of judgments, Mr P Y LO informed members that between 2002 and 2004, there were two additional High Court cases (one in the Court of Appeal and the other in the Court of First Instance) which raised the issue of whether the judgment of a Mainland People's Court was final and conclusive under the common law. He pointed out that the civil proceedings in the Mainland allowed a procedure for the lodging of a protest against a judgment of a People's Court. The protest procedure could result in a re-trial of the case by the same court. Also, the law on civil procedure in the Mainland provided no time limit for initiation of the protest procedure, thus creating uncertainty as to the effect of the judgment after it had been made. Applying the conflict of law rules in common law jurisdictions which held that a judgment liable to be abrogated or varied by the court that pronounced it was not a final judgment, it was arguable that the judgment of a Mainland People's Court was not final and conclusive.

18. SJ responded as follows –

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(a) the objective of the Arrangement was to provide the parties to a commercial contract under the Arrangement with an additional venue for the effective enforcement of judgments, by agreeing that the court of either place or the courts of both places would have jurisdiction. The Arrangement would also assist in promoting Hong Kong as a centre for legal services and resolution of commercial disputes. However, the objective of the Arrangement was not to change the judicial system in the Mainland. Efforts to enhance exchanges between the HKSAR and the Mainland were continuing. These included delegations of judicial officers and legal practitioners from the Mainland to attend training and exchange programmes in Hong Kong. This could have a positive effect on improving the legal and judicial systems in the Mainland;

Adm

(b) the Administration would undertake some research in relation to the issue raised in paragraph 16(b) above and provide the information for the Panel's consideration; and

(c) in relation to paragraph 16(c) above, the Arrangement would not change the time limit for enforcement of judgments in the Mainland, which was a matter for the Mainland's judicial system. The time limit applied equally to arrangements for reciprocal enforcement of judgments between the Mainland and other foreign jurisdictions.

Issues raised by members

19. Ms Miriam LAU made the following comments –

(a) the major factor for the successful implementation of the Arrangement was confidence of the contracting parties in submitting cases to the jurisdiction of the courts of the HKSAR and the Mainland. The confidence issue had to be addressed in the light of the different legal and judicial systems and the system of enforcement in the two places. In this connection, the experience in implementing the arrangements for reciprocal enforcement of arbitral awards between the HKSAR and the Mainland which had been concluded a few years ago could be useful reference; and

(b) the Arrangement should initially cover only claims in the region of $500,000 to $1 million. The limit could be raised at a later stage having regard to the experience in the implementation of the Arrangement.

20. On the issue raised by Ms Miriam LAU in paragraph 19(a) above, SJ informed members that the Administration was seeking assistance from the Mainland authorities in providing statistics on applications for enforcement of Hong Kong arbitral awards in the Mainland. The Administration would also request the two legal professional bodies and relevant organizations to provide information on any complaints they had about non-enforcement of Hong Kong arbitral awards in the

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Adm Mainland. The Administration would inform the Panel of the responses in due course.

21. The Chairman pointed out that the Administration had previously provided information on enforcement of Mainland arbitral awards in Hong Kong during the period from 2000 to 2003 vide a paper issued to members in July 2004. She requested the Clerk to re-circulate the paper for members' information.

(*Post-meeting note* : The above-mentioned paper (LC Paper No. CB(2)3142/03-04(01)) was re-issued to the Panel on 1 December 2004.)

Adm 22. With regard to paragraph 19(b) above, SJ said that Ms Miriam LAU's proposal would be taken into consideration in the Administration's future meetings with the Mainland authorities.

23. The Chairman referred to paragraph 24 of the Bar Association's submission in April 2002 (LC Paper No. CB(2)2020/01-02(01)), in which the Bar Association recommended that the HKSAR should conclude REJ arrangements only with those regions of the Mainland where there were substantial economic activities involving foreign direct investment and where the current improvements to the Mainland judicial system were more advanced. The Bar Association had suggested Tianjin, Shanghai, Guangdong for consideration. She sought the Administration's views on the proposal.

24. Ms Miriam LAU supported designating certain well-developed places in the Mainland as "trial points" at the initial stage to assess the implementation and effectiveness of the Arrangement. She said that if the trial scheme proved to be successful, confidence in the Arrangement would be boosted and the implementation could be extended to other places in the Mainland. Ms Audrey EU pointed out that as both the HKSAR and the Mainland had agreed that a step-by-step approach should be adopted, the proposal of "trial points" for the initial implementation of the Arrangement would be a step in that direction. It would help the authorities to assess the problems and difficulties which might be encountered in enforcing judgments in the Mainland.

25. SJ replied that the proposal of setting up "trial points" in the Mainland had not been considered in previous discussions with the Mainland authorities. She considered that there might be difficulties in deciding the criteria for determining which places and regions in the Mainland were qualified as "trial points". She also cautioned that any proposals which imposed unilaterally certain restrictions on the Mainland might not get easy acceptance by the Mainland authorities, given the principle of reciprocity on which the Arrangement was based. Nevertheless, she

Adm agreed to give consideration to the proposal.

26. Mr Martin LEE asked how judgments obtained by fraud or in breach of natural justice in the Mainland which prejudiced the interests of a Hong Kong party would be dealt with. The Chairman added that the Bar Association's submission in April 2002 had also raised the concern about judgments improperly obtained in the Mainland.

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27. SJ responded that the Arrangement could not rule out the possibility of judgments improperly obtained. Under the safeguards applicable to the Arrangement, registration of a judgment obtained by fraud or in breach of natural justice might be refused or set aside. She added that the seeking of redress in such cases would have to be pursued in accordance with the law.

28. In response to the Chairman, SJ said that the Administration would take into account the concern raised by the Bar Association and Mr P Y LO about the uncertainty relating to finality and conclusiveness of judgments of the People's Courts. She said that in concluding the Arrangement, both the HKSAR and the Mainland would come to a decision on how the issue of final and conclusive judgments should be resolved.

29. SJ added that she had noted that the Bar Association had proposed that the Mainland authorities should consider the approach of adopting regulations similar to those issued by the Supreme People's Court on Recognition of Civil Judgments of Courts of Taiwan Region (1998). In the view of the Bar Association, the adoption of such an approach could achieve the purpose of promoting Hong Kong as a centre for resolution of disputes involving a Mainland party, while setting aside the issue of reciprocity (i.e. enforcement of Mainland judgments in Hong Kong) to be resolved in due course. SJ pointed out that enforcement of Taiwan judgments in the Mainland was an exceptional example in which both the Mainland and Taiwan decided on their own as to their respective enforcement procedures. SJ explained that Article 95 of the Basic Law provided that the HKSAR might maintain juridical relations with the judicial organs of other parts of the country through consultations and in accordance with law, and they might render assistance to each other. The Administration had reservations about asking the Mainland authorities to make judicial interpretations unilaterally for the sake of enabling HKSAR judgments to be more easily enforced in the Mainland, without reciprocal arrangements from the HKSAR. SJ said that she seriously doubted whether the Mainland authorities would accept the proposal.

VI. Professional Indemnity Scheme of the Law Society of Hong Kong

(LC Paper No. CB(2)226/04-05(01) – Background brief prepared by the LegCo Secretariat

LC Paper No. CB(2)248/04-05(06) – Paper provided by the Administration)

30. At the invitation of the Chairman, Mr Michael Lintern-Smith reported on the latest position of the review of the Professional Indemnity Scheme and the way forward as follows –

(a) at an Extraordinary General Meeting held last week, members of the Law Society of Hong Kong voted in favour of a Qualifying Insurers Scheme (QIS). Since then, the Law Society had, with the assistance of an experienced legal professional from UK, commenced the procedure of drafting a new set of rules for the purpose of putting in place a QIS to replace the existing scheme;

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(b) in drafting the rules, reference would be drawn on the experience and legislation in UK with regard to the operation of the QIS model for legal practitioners there. The Law Society anticipated that the initial draft of the rules would be available before the end of 2004, which could then be circulated among members of the profession in early January 2005. It would take six to eight weeks for reviewing the draft rules by the relevant committees of the Law Society before submitting them for the approval of the Council of the Law Society. The Law Society believed that a QIS model could be put forward by the end of May 2005, and thereafter submitted for the approval of the Chief Justice and to the Legislative Council for scrutiny. Meanwhile, the Law Society would commence discussion with the insurance sector concerning the practicalities involved in implementation, such as matters relating to setting requirements for the qualifying insurers and procedures for inviting applications for certification as qualifying insurers etc; and

(c) while the Law Society would endeavour to overcome the time constraints and technicalities with regard to implementation of the QIS, the major problem which the profession now faced appeared to be the opposition of the Administration to the scheme. The Law Society would work closely with the Administration with a view to achieving a compromise.

Issues raised by members

Protection of consumer interests

31. The Chairman referred members to the Department of Justice's paper which explained the Administration's position (LC Paper No. CB(2)248/04-05(06)). In brief, the Administration was of the view that a QIS would expose a consumer to the risk of a complete loss if his or her solicitor's insurer went insolvent, since a single insurer would provide cover for each solicitor. At the present stage, the Administration would not support the introduction of such a scheme as it would not provide adequate protection for consumers. If the Law Society decided to proceed with a QIS, the Administration hoped that it would build into the scheme some mechanism for providing consumers with protection in the event of insurer insolvency. At the request of the Chairman, Mr Michael Lintern-Smith responded to the Administration's views as follows –

(a) the Administration's comment that a QIS would expose a consumer to the risk of a complete loss in the event of insurer insolvency was not correct. At present, on average, the amount involved in claims made against solicitors was in the region of one to two million dollars. A large part of the claims would in practice be met by the solicitors' firms concerned. Moreover, under the proposed QIS, there would be substantial deductibles which were anticipated to amount to as high as $200,000 to $500,000 per claim;

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(b) the Law Society considered that the Commissioner of Insurance should have the means and the ability to exercise effective supervision to ensure that the qualifying insurers, being licensed insurance companies, were prudent insurers. The Law Society would explore the possibility of adopting the re-insurance arrangements for spreading the risks as in the case of a Master Policy Scheme (MPS) as a method to address the Administration's concern;

(c) the Administration acknowledged that the current arrangements had placed considerable financial burden on solicitors, and accepted that this burden needed to be reduced. The President of the English Law Society, who visited Hong Kong recently to conduct a forum for members of the Law Society, had described the present scheme as a "Rolls-Royce" scheme for the public as well as for the solicitors. In the experience of England and Wales, the enormous claims resulting from the increase in litigation, as well as the insurance market situation, had necessitated a change and a shift in the degree of protection afforded to the public by moving to a QIS; and

(d) under the QIS in UK, there was no mechanism built into the scheme for providing consumers with protection in the event of insolvency of the insurer as suggested by the Administration. The Law Society believed that such protection should more appropriately be provided by the Administration and through other measures such as a Policyholders' Protection Fund (PPF).

32. The Solicitor General (SG) explained that the key issue of concern to the Administration in relation to any proposed scheme was safeguarding of consumers' interests when an insurer went into liquidation. The Administration understood that under the existing scheme, consumers enjoyed minimum risks because solicitors as a whole had to make up for any shortfall of the compensation, and that had imposed a huge burden on members of the profession. He said that the Administration was prepared to consider a new scheme which did not provide a full safeguard to the extent of that provided under the current scheme, but the scheme nevertheless should provide adequate protection for the consumers as well as for solicitors. The Administration was concerned that under a QIS, consumers could be left without a remedy if there was insolvency of the insurer, and that would lead to huge public outcry if large amounts of claims were left unsettled. It was not apparent that a QIS as presently envisaged would provide adequate consumer protection. He added that in the UK, the QIS was supported by a PPF. However, in Hong Kong, it was too early at this stage to say whether and, if so, when a PPF would be up and running.

33. SG said that at the present stage the Administration could not express support for a QIS but it certainly would work constructively with the Law Society to produce a result which in its view would be acceptable in the public interest as well as in the interest of solicitors.

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34. SG added that in the view of the Administration, an MPS subject to certain safeguards, e.g. the arrangements for more than one insurer and for the insurers to take out re-insurance, would provide better consumer protection than a QIS.

35. In response to the Chairman, Mr Larry KO said that a QIS was what members of the Law Society had voted for twice and their wish should be fulfilled. The Professional Indemnity Scheme Action Group (PIS Action Group) did not see justifications for the Administration to oppose the scheme. Under the QIS, all the qualifying insurers would be licensed and well-established insurance companies based in Hong Kong and subject to the close supervision of the Commissioner of Insurance. QIS was a viable scheme given the experience in England and Wales. The PIS Action group was of the view that action must be taken as quickly as possible to enable the necessary rules to be passed so that a QIS which was preferred by members of the profession could be put in place by September 2005 when the insurance arrangements under the current unfair scheme expired.

36. Mr Solomon CHONG questioned whether the Administration's objection to the QIS and preference for an MPS were backed up by any opinion survey. He urged that a QIS should be implemented without delay as there was already a broad consensus of members of the profession.

37. Ms Hilary CORDELL said that the Administration was concerned that consumers would be getting less protection under the QIS than they presently had. In her view, the appropriate question which should be asked in considering a new scheme was whether it would give reasonable protection to the consumers and at the same time treat members of the profession fairly and equitably. A QIS backed by qualifying insurance companies which were effectively regulated under the checks and balances exercised by the Commissioner of Insurance would be a sufficient scheme for the profession.

38. Ms CORDELL added that with the absence of a satisfactory land title system for secondary mortgaged properties, the preponderance of claims arising from conveyancing against solicitors experienced over the past years remained a problem to be addressed. Since 1998, 90% of the value of claims was related to conveyancing transactions. The PIS Action Group strongly supported introducing necessary amendments to the Land Titles Ordinance to provide a land title system to speed up the registration of secondary mortgaged properties.

39. Ms Miriam LAU said that the Administration had accepted that the existing scheme was an expensive scheme and should be changed. In its paper, the Administration expressed support for an MPS which would have safeguards including a minimum of four nominated insurers and the requirement for those insurers to take out re-insurance. Ms LAU considered that such an MPS would be an equally expensive scheme to the profession. She said that if the Administration insisted on having a "full-proof" scheme, the costs would be unbearable to the solicitors, and it was unfair for the Administration to set the rules and for the solicitors to pay the bill. Ms LAU declared interests that she was one of the members of the profession who had to pay the insurance premium.

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40. Ms Miriam LAU urged the Administration to reconsider its bottom-line of consumer protection, and give assurance to members of the profession that it would work together with the Law Society within time to ensure that a new scheme would become operational by September 2005.

41. SG responded that the Administration was not asserting that consumer protection was its only consideration, although it was a major issue of concern. In so far as the issue of indemnity insurance for solicitors was concerned, the Administration's position was that it was its duty to consider both the public's interests as well as the interests of solicitors.

42. In response to the Chairman, Mr Michael Lintern-Smith said that under a QIS, the first line of protection was the insurers who were insurance companies well-recognized in the world market. Those insurers would be acceptable to the Commissioner of Insurance. He added that under the QIS, it might be possible for solicitors to carry cover with more than one insurance company. The scope might also be extended to enable solicitors to choose an insurer to cover specifically conveyancing risks, and place insurance with another insurer for the other aspects of his practice.

43. Ms Emily LAU said that she had great sympathy for solicitors in view of the hardship they faced. However, in pursuing the issue in question, the Administration would not be fulfilling its proper duty if it was not doing its best to protect the public interest. Hence a proper balance should be struck. She added that while Members of the Legislative Council would be prepared to cooperate with the Administration and the Law Society in finding a quick solution, they would carefully scrutinize the relevant rules and examine matters particularly those which were controversial in nature. The rules would not find an easy passage in the Council if the matters were not satisfactorily addressed. She opined that as time was of the essence, the Administration and the Law Society should work out the details of the future scheme as soon as possible and come to an agreement on arrangements which were acceptable to the profession as well as to the community at large.

PPF

44. Mr Martin LEE opined that it was harsh on the solicitors to share the burden of compensation through no fault of their own. He considered that the Administration should proceed with the establishment of a relief fund such as a PPF without delay.

45. SG informed members that the possibility of a PPF was actively being pursued. He had discussed with the Acting Commissioner of Insurance before this meeting and was advised that the public consultation exercise had been concluded. A report on the way forward was being prepared and was expected to be issued in early 2005.

Way forward

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Law Society/ Adm

46. The Chairman requested the Law Society and the Administration to revert to the Panel as soon as both parties had agreed on a broad outline of the scheme.

VII. Solicitor Corporations Rules
(LC Paper No. CB(2)247/04-05(01) – Background brief prepared by the LegCo Secretariat)

47. Concerning the progress of drafting of the Solicitor Corporations Rules, Mr Patrick MOSS informed members that he had lately received a revised version of the draft rules from the Law Draftsman, which contained minor proposed amendments. The amended version had been issued to members of the Law Society's Working Party for comments. Mr MOSS proposed to the Panel that the item be deferred for discussion at the next meeting on 14 December 2004, in view of the shortage of time for the Law Society to consider the revised version of the draft rules.

48. In response to the Chairman's enquiry, SG said that the Department of Justice had a detailed look at the draft rules and was satisfied that the rules were not ultra vires the primary legislation. The Department was also satisfied with the legal policy aspects of the rules. At present, it was a matter of fine-tuning of the rules before submitting the rules to the Council for scrutiny under the negative vetting procedure.

49. Ms Audrey EU opined that as the rules involved public interest issues, it was preferable to provide the draft rules to the Bar Association for its views. The Chairman said that as both the Law Society and the Bar Association were independent self-regulating bodies, it might not be necessary to seek the Bar Association's views on the rules. Ms Miriam LAU said that it was not necessary to seek the Bar Association's comments on matters relating to solicitors' practices. She considered that it would suffice to provide a copy of the draft rules to the Bar Association in due course.

Law Society

50. The Panel requested the Law Society to provide the revised draft rules for discussion at the next meeting on 14 December 2004.

VIII. Any other business

Visit to the Judiciary
(LC Paper No. CB(2)165/04-05(05) – Visits conducted by the Panel in the 2002-03 and 2003-04 sessions)

51. Members agreed that a visit to the Judiciary should be conducted in this session. The Chairman requested the Clerk to liaise with the Judiciary Administration regarding the arrangements.

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(*Post-meeting note* : In response to the Panel's request, the Judiciary Administration proposed that a visit be conducted in the second quarter of 2005.)

52. The meeting ended at 6:40 pm.

Council Business Division 2
Legislative Council Secretariat
13 December 2004