

立法會
Legislative Council

LC Paper No. CB(2)710/04-05
(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 Tuesday, 14 December 2004 at 4:30 pm
in Conference Room B 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-ye, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon KWONG Chi-kin
- Member absent** : Hon MA Lik, JP
- Public Officers attending** : Item IV
Ms CHANG King-yiu
Director of Administration

Mr Benjamin CHEUNG
Director of Legal Aid

Miss Eliza LEE
Deputy Director of Administration

Mr William CHAN
Deputy Director of Legal Aid

Ms Jennie HUI
Acting Deputy Director of Legal Aid

Mrs Alice CHEUNG
Assistant Director of Administration

Item V

Mr Stephen WONG Kai-yi
Deputy Solicitor General

Mr Michael SCOTT
Senior Assistant Solicitor General

Ms Stella CHAN
Government Counsel
Legal Policy Division

**Attendance by
invitation** :

Item IV

The Hong Kong Bar Association

Mr Andrew BRUCE, SC

The Law Society of Hong Kong

Mr Patrick MOSS
Secretary General

Item V

The Law Society of Hong Kong

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 Paul WOO
Senior Council Secretary (2)3

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I. Confirmation of minutes of meeting

(LC Paper No. CB(2)386/04-05 – Minutes of meeting on 22 November 2004)

The minutes of the meeting held on 22 November 2004 were confirmed.

II. Information papers issued since the last meeting

(LC Paper No. CB(2)297/04-05 – Paper providing background information on measures to deal with family violence)

LC Paper No. CB(2)320/04-05(01) – Letter dated 1 December 2004 from the Judiciary Administration's on "Visit to the Judiciary in the 2004-05 session"

LC Paper No. CB(2)326/04-05(01) – Letter dated 26 November 2004 from the Secretary for Constitutional Affairs on "Applicability of HKSAR laws to offices set up by the Central People's Government in HKSAR"

LC Paper No. CB(2)412/04-05(01) - Letter dated 11 December 2004 from the Secretary for Constitutional Affairs on "Issues relating to the imposition of criminal liability on the Government")

2. Members noted that the above papers had been issued to the Panel.

III. Items for discussion at the next meeting

(LC Paper No. CB(2)385/04-05(01) - List of outstanding items for discussion)

LC Paper No. CB(2)385/04-05(03) - Letter dated 9 December 2004 from the Law Society of Hong Kong on the draft Solicitor Corporations Rules

LC Paper No. CB(2)315/04-05(01) - Letter dated 30 November 2004 from the Law Draftsman on "Drafting Counsel in the Department of Justice"

LC Paper No. CB(2)385/04-05(02) – List of follow-up actions)

3. Members agreed that the following items should be discussed at the next regular meeting on 24 January 2005 –

- (a) Solicitor Corporations Rules;
- (b) Government's policy on subsidiary legislation; and
- (c) Manpower position of drafting counsel in the Department of Justice.

Deletion of the post of Principal Executive Officer in Office of The Ombudsman

4. The Chairman informed members that the Director of Administration had proposed to brief the Panel on the above item. Members agreed that the Administration should be requested to provide an information paper for the Panel's

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consideration, before deciding whether the item should be discussed at a future meeting.

(Post-meeting note : The paper provided by the Administration was circulated to the Panel for consideration vide LC Paper No. CB(2) 602/04-05(01) on 10 January 2005. Members had no comments on the proposed deletion of the post and no suggestion was made that the matter should be discussed by the Panel before submission of the proposal to the Establishment Subcommittee.)

Costs for lodging appeals against trade effluent surcharge

5. Ms Audrey EU said that at the motion debate on “Reviewing the basis for charging the trade effluent surcharge and its appeal mechanism” held by the Council on 8 December 2004, Hon Tommy CHEUNG had voiced concern about the high costs for lodging appeals in relation to trade effluence surcharge. She proposed that the Administration be requested to provide information on the number of appeals handled by the Administrative Appeals Board and the costs for lodging appeals.

(Post-meeting note : After reconsideration, Ms Audrey EU decided that it would be more appropriate for the matter to be followed up by the Member concerned at the relevant Panel instead of this Panel.)

Closure and merger of Magistrates’ Courts

6. The Chairman said that in response to her oral question raised at the Council meeting on 8 December 2004, the Chief Secretary for Administration had advised that the Judiciary would seek to consolidate the nine magistracies into six by 2006. One magistracy had been closed and two others would cease operation in early 2005 and early 2006 respectively. She expressed concern about the impact of the closure and merger exercise on the operation of the Magistrates’ Courts (MCs).

7. The Chairman suggested that the Judiciary Administration be requested to provide more concrete information on the matter for the consideration of the Panel, including information on the existing caseloads of the MCs and how they would be re-distributed following the closure and merger exercise, the resulting changes in the staffing positions of the MCs as well as how court users had been affected by the closure and merger. Members agreed.

(Post-meeting note : The Clerk had followed up the matter by writing to the Judiciary Administration on 17 December 2004.)

IV. 2004 annual and biennial review of financial eligibility limits of legal aid

(LC Paper No. CB(2)367/04-05(01) - Paper provided by the Administration on "Annual and biennial review of financial eligibility limits of legal aid applicants")

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8. The Chairman welcomed representatives of the Administration, in particular Mr Benjamin CHEUNG, the new Director of Legal Aid (DLA), to the meeting.

9. Director of Administration (D of Adm) briefed members on the Administration's paper which reported on the outcome of the annual and biennial review of financial eligibility limits of legal aid applicants conducted by the Administration in 2004. She said that under the existing policy, the Administration conducted annual reviews of the limits to take account of movements in CPI(C) so as to maintain the real value of the limits, and biennial reviews to take account of changes in litigation costs. Having considered the outcome of the 2004 review, the Administration had come to the conclusion that –

- (a) there was a case to withhold adjustment of the financial eligibility limits of the Ordinary Legal Aid Scheme (OLAS) and the Supplementary Legal Aid Scheme (SLAS) pending the outcome of the next annual review due for August 2005, in view of the minor change in CPI(C) during July 2003 to July 2004 (i.e. +0.4%) and the small impacts on the limits; and
- (b) in view of the absence of costs statistics from the two legal professional bodies, and the inconclusive costs data from the Judiciary and the Legal Aid Department (LAD) which could not reflect the trend of private litigation costs during July 2002 to July 2004, there was little basis to propose any change to the financial eligibility limits of legal aid applicants on the basis of changes in litigation costs.

10. Regarding paragraph 9 (a) above, D of Adm informed members that based on the financial resources of the legal aid applicants whose applications were made between January 2004 and August 2004, the Administration estimated that if the limits were revised upward by 0.4%, three more applicants might become financially eligible for OLAS and two for SLAS per year. As the Council's approval was required to effect the adjustment by way of a resolution, the Administration considered that the time and administrative costs involved in the legislative process might not be commensurate with the marginal benefits for the legally aided persons.

Views of the legal professional bodies

11. In response to the Chairman, Mr Patrick MOSS said that the Law Society did not take issue with the Administration on minor adjustments of the financial eligibility limits. The position of the Law Society was that the Administration should conduct a "wholesale" review of the policy on legal aid. He further said that under the present financial eligibility limits, people eligible for legal aid were of limited means and could not afford to pay much contribution towards the costs of litigation. If the limits were raised hence enabling more people to be eligible for legal aid, the contributions could substantially be increased. This would not only serve the needs of the public better, but would also benefit the LAD by bringing in more revenue from those who could afford litigation at a higher contribution rate.

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12. Mr Andrew BRUCE agreed with Mr Patrick MOSS that an overall review of the legal aid system was needed. He said that provision of legal aid was not a matter of charity for small sectors of the community, but one which involved the access to justice for members of the public generally. The two legal professional bodies were deeply concerned that in Hong Kong, litigation in court represented by qualified lawyers was far beyond the means of too many people. Hence, something needed to be done urgently to improve the way legal aid was administered to help those in deserving cases. Mr BRUCE considered that making only piece-meal adjustments to the financial eligibility limits based on price and cost indices was a narrow approach inconsistent with the concept of access of justice.

Issues raised by members

Review of the legal aid system

13. Ms Miriam LAU supported a review on a revamp of the legal aid system. Referring to Mr Patrick MOSS's view that relaxation of the financial eligibility limits would generate more revenue, which in turn could be used to provide better legal aid services, Ms LAU suggested that an experiment could be tried out in SLAS, which was a self-sufficient and profit-making scheme.

14. The Chairman said that during past discussions on administration of legal aid, the Panel considered that the existing financial eligibility limits of legal aid applicants did not reflect the real needs of the community, and had urged the Administration to take forward a review of the current system. The Chairman requested the two legal professional bodies to join efforts in reviewing how the overall legal aid system could be improved in a way that would attract the wide support of the public. She said that the Panel would be happy to consider and follow up any proposals with the Administration. Ms Emily LAU shared the Chairman's view.

15. Mr Martin LEE agreed with Mr Patrick MOSS that a fundamental review of the legal aid system should be conducted. He said that with Hong Kong becoming a prosperous and civilised society vastly different from what it was when legal aid was first introduced, a liberal review of the legal aid policy under a brand new approach was urgently called for. He expressed deep disappointment at the present system which he considered had failed to adequately safeguard the public's right of access to justice.

16. Mr Martin LEE also considered that there was a strong case for expanding the SLAS, which was a profit making scheme, to benefit more legal aid applicants.

17. Mr Albert HO expressed the view that the present system of legal aid was grossly inadequate to cope with the demand of the applicants because of the unrealistically low financial eligibility limits. The Administration should protect the interests of those potential applicants who would be entitled to legal aid if the financial eligibility limits were adjusted correspondingly with the increase in CPI(C). He considered that as a matter of principle, the limits should be revised upwards, even though the adjustment would only benefit a small number of legal aid applicants.

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18. D of Adm responded that apart from the number of potential applicants who might be affected, other factors had also been taken into account, including the administrative and publicity costs of implementing the adjustment which appeared out of proportion with the possible benefits which the adjustment might derive. She also pointed out that the limits had only been revised since July 2004. Making frequent but less than substantive adjustments could cause confusion to the public. She said that the intention of the Administration was to withhold the adjustment temporarily, pending the outcome of the next annual review due for August 2005 which would cover the period from July 2004 to July 2005.

19. D of Adm further said that the Administration had previously reported to the Panel on the result of the five-yearly review (covering 1997 to 2002) of the criteria for assessing the financial eligibility of legal aid applicants. Arising from the comprehensive five-yearly review, the Administration had proposed a number of improvements to the approach for assessing the financial capacity of legal aid applicants. The Administration would seek to implement the proposed changes by legislative means. D of Adm said that the Administration welcomed further opportunities to exchange views with the Panel and the legal professional bodies and would consider new suggestions on measures to improve the provision of legal aid generally.

Discretion of Director of Legal Aid to waive the means test

20. Mr KWONG Chi-kin said that the labour sector had long been advocating for relaxing the eligibility criteria for grant of legal aid to assist employees, particularly those involved in insolvency and those in appeals brought by employers to the High Court against judgments of the Labour Tribunal. Experience had shown that many applications for legal aid by employees were rejected because of failure to pass the means test, and this had created great difficulties for the employees in pursuing their cases. Mr KWONG opined that as DLA was empowered to waive the upper financial eligibility limit for proceedings where human rights issues were involved, this discretionary power should be extended to cover the above-mentioned types of cases.

21. DLA responded that under the existing policy, both the merits and the means tests had to be passed for the grant of legal aid. In certain exceptional cases, such as cases involving human rights issues, DLA had the discretion to waive the upper financial eligibility limit where he considered it appropriate to do so. He added that in such cases, the legal aid recipients whose financial resources exceeded the eligibility limit might be required to pay a higher contribution towards the costs of litigation.

22. DLA further explained that in insolvency cases involving less than 20 claimants, the Commissioner for Labour, after taking into consideration the circumstances of the case, could directly approve relief payments from the Protection of Wages on Insolvency Fund, without the need for the employees to undergo the normal legal proceedings.

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23. The Chairman pointed out that a wide range of issues which covered similar concerns had been discussed by the Panel in the previous term. She asked the Clerk to collate relevant information from previous discussions and circulate it to members for reference.

Clerk

Litigation costs

24. In response to Ms Audrey EU, DLA said that a very high proportion of lawyers on the LAD's legal aid panels were willing to take up cases assigned to them. The fees paid to assigned lawyers were governed by the Legal Aid Ordinance and subject to assessment of the costs made by the Taxing Masters. Under normal practice, upon receipt of a bill, LAD would make an interim payment of a portion of the fees claimed, and depending on the amount allowed on taxation by the Taxing Masters, pay the balance on conclusion of the case. He added that LAD had no information on whether the fees paid to the assigned lawyers in legally aided cases were higher or lower than what they charged for cases conducted on a private basis.

25. The Chairman remarked that she was aware of cases where the assigned lawyers were asked by LAD to accept a lesser amount than what they should receive.

Recovery agents

26. Mr Patrick MOSS and Mr Andrew BRUCE pointed out that because of the difficulty in getting legal aid, many claimants not eligible for legal aid had turned to "recovery agents" to pursue their claims. These agents charged their clients a prescribed fee for the services. The way these recovery agents operated had sacrificed the interests of many litigants who had little knowledge of their legal entitlements. Mr KWONG Chi-kin added that he was aware that some workers, particularly claimants in employees' compensation cases, had sought assistance from recovery agents. He had advised against workers engaging such agents. In response to the request of the Chairman, he agreed to provide information on relevant cases to the Panel for reference.

27. The Chairman and Mr LI Kwok-ying said that the problem with recovery agents was that they were not people qualified to give proper legal advice. With profit-making motive, they would not act in a conscientious manner to protect the rights and interests of their clients as qualified lawyers would do. Ms Miriam LAU also agreed that the problem should be looked into as recovery agents, unlike legal professionals, were not subject to any regulatory controls.

28. Mr Patrick MOSS said that problems associated with uninsured recovery agents also occurred in England and Wales, where it was known that a number of these agents had gone into liquidation. He informed members that a working party of the Law Society had recently started to look into the issues relating to recovery agents generally. He anticipated that the working party might come up with some preliminary views in a few months' time.

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29. The Chairman opined that the issue of recovery agents could be further discussed by the Panel in future. She requested the Law Society to provide relevant information on its working party's deliberations for the consideration of the Panel in due course.

Way forward

30. The Chairman sought members' views on the proposal of the Administration not to adjust the financial eligibility limits pending the result of the next annual review in 2005. She said that in her view, the advantages of a minor adjustment should be weighed against the confusion which might be caused to the public by frequent changes to the limits. She was inclined to accept the Administration's proposal to withhold the adjustment of the limits temporarily. Mr LI Kwok-ying also supported the Administration's proposal.

31. Ms Emily LAU and Ms Miriam LAU said that they did not oppose to the Administration's proposal. Nevertheless, the Administration should proceed with an overall review with a view to bringing about general improvements of the legal aid system.

32. Mr Martin LEE said that the financial eligibility limits should be adjusted in accordance with the movement in CPI(C) even though the adjustment was a minor one. He stressed that regardless of whether an adjustment would be made, it was necessary for a comprehensive review of the whole legal aid system to be carried out.

33. D of Adm said that the Administration would take note of members' views. She expected that there would be ample opportunities for the Panel and the Administration to further discuss the relevant issues. Deputy Director of Administration added that the Administration was preparing the legislative amendments to implement the proposals arising from the last five-yearly review of the criteria for assessing financial eligibility of legal aid applicants. The relevant subsidiary legislation could be submitted to LegCo for scrutiny around the end of the first quarter of 2005 the earliest.

V. Statute Law (Miscellaneous Provisions) Bill 2005

(LC Paper No. CB(2)316/04-05(01) - Information paper provided by the Administration on the Statute Law (Miscellaneous Provisions) Bill 2005

LC Paper No. CB(2)383/04-05 - Paper attaching relevant extracts relating to proposed amendments to the Theft Ordinance and Legal Aid Services Council Ordinance contained in the Bill)

34. Deputy Solicitor General (DSG) briefed members on the Administration's paper (LC Paper No. CB(2)316/04-05(01)), which highlighted the major legislative proposals contained in the Statute Law (Miscellaneous Provisions) Bill 2005 (the Bill). He said that the proposed amendments were minor, technical and largely non-controversial but were important for the purpose of updating or improving existing legislation. Subject to approval by the Executive Council, the Bill was scheduled for introduction into LegCo on 9 March 2005.

Issues raised by members

Provisions related to the Theft Ordinance (Cap. 210)

35. Mr Martin LEE and Ms Miriam LAU supported the proposal to amend the definition of “deception” in section 17(4) of the Theft Ordinance to delete the words “or opinion” from the definition. Ms Miriam LAU, who was the Chairman of the Bills Committee on Theft (Amendment) Bill 1998, said that the Bills Committee had recommended that such amendment should be made to deal with the deception offences in the Theft Ordinance.

Proposals to amend the provisions of the Prevention of Bribery Ordinance (Cap. 201) (POBO) and the Independent Commission Against Corruption Ordinance (Cap. 204) (ICACO) related to the surrender of travel documents

36. The Chairman said that she doubted whether the proposed amendment to add a new provision to section 17A of POBO to provide that the subject of a section 17A(1) notice should not leave Hong Kong during its currency was technical in nature. Senior Assistant Legal Adviser 2 supplemented that the proposed amendment should be considered with reference to Article 31 of the Basic Law, which provided, inter alia, that holders of valid travel documents, unless restrained by law, should be free to leave the Region without special authorization. He further pointed out that a provision similar to section 17A(1) of POBO also existed in the Dangerous Drugs Ordinance (DGO). Therefore, whether or not a similar amendment to the DGO should be made should also be considered.

37. DSG explained that the proposed amendment to section 17A of POBO was to plug an existing loophole in the law that a section 17A(1) notice did not in fact prevent a person from leaving Hong Kong, since Immigration Officers had no power to prevent persons holding Hong Kong identity cards from leaving Hong Kong for Macau. Under the proposed amendment, it would be clearly stipulated that the subject of a section 17A(1) notice “shall not leave Hong Kong” during its currency.

38. The Chairman asked whether the proposed amendment to section 10 of the ICACO would provide an additional power of arrest to ICAC officers. DSG replied that the powers of arrest conferred upon ICAC officers prescribed in section 10 of ICACO did not refer to sections 17A(4) and 17C(1)(a) of POBO. The Administration considered that it was reasonable and appropriate to empower ICAC officers, in addition to police officers, to arrest under section 10 of ICACO as conferred by section 17A(4) and section 17C(1)(a) of POBO, and to take any persons so arrested before a magistrate in accordance with section 17A(4).

Provisions related to the Oaths and Declarations Ordinance (Cap. 11)

39. In response to the Chairman, DSG explained that at present, the Clerk to the Executive Council (ExCo) reported to the Director of the Chief Executive’s Office. Hence, the proposed amendment to transfer the power of administering the Oath of Secrecy made by the Clerk to ExCo from the Chief Secretary for Administration to the Director of the Chief Executive’s Office was to reflect this change of reporting.

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Provisions related to the Judicial Officers Recommendation Commission Ordinance (Cap. 92) (JORCO)

40. DSG explained that the proposal to extend the disclosure of interest requirement of Judicial Officers Recommendation Commission members to the selection process of any other judicial officers specified in Schedule 1 of the JORCO was intended to reflect the administrative arrangements already applied to remove any potential conflict of interest in the selection process of judges other than the judges of the Court of Final Appeal.

Provisions related to transfer of chairmanship of certain committees under the High Court Ordinance (Cap. 4), District Court Ordinance (Cap. 336), Criminal Procedure Ordinance (Cap. 221)

41. The Chairman opined that the proposed amendment to transfer the chairmanship of certain committees from the Chief Justice to the Chief Judge of the High Court was not technical in nature.

42. DSG and Mr Patrick MOSS pointed out that the committees covered in the proposals were Rules Committees under the respective Ordinances. DSG said that it was considered to be more appropriate to have the Chief Judge of the High Court rather than the Chief Justice to chair the relevant Rules Committees.

Provisions related to professional qualifications of judges and judicial officers

43. The Chairman said that the Administration should explain in more detail the policies relating to the proposed amendments which involved more than technical matters.

Provisions related to the Summary Offences Ordinance (Cap. 228)

44. Mr Martin LEE referred to the proposal to amend the Chinese text of section 4(28) of the Summary Offences Ordinance to remove a discrepancy in meaning between the English and Chinese text. The English text created an offence “when any person does any act whereby obstruction **may** accrue to a public place or to the shore of the sea, etc.” On the other hand, the Chinese text created an offence “when any person does any act whereby obstruction **actually** accrues to a public place or to the shore of the sea, etc.” The offence, therefore, was given a narrower meaning in the Chinese text. It was held by the Court of First Instance in a High Court case that as the English text was the original official text, which existed since 1932, from which the Chinese text was subsequently prepared and declared authentic in 1992, the meaning borne by the original official English text, should take precedence over the Chinese authentic text. Mr Martin LEE said that in his opinion, when there was a discrepancy between the two texts of a provision which defined an offence, the text which carried a more restrictive meaning should be adopted.

45. Ms Miriam LAU expressed a different view. She said that as the English text was the original official text, to adopt the Chinese authentic text to take precedence over the English text would deviate from the original legislative intent. Such an

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amendment, if considered necessary, would have to be taken forward in the context of a separate legislative amendment exercise instead of by way of an omnibus, miscellaneous provisions bill which sought to deal with only minor and non-controversial amendments.

46. The Chairman opined that reference could be made to section 10B(3) of the Interpretation and General Clauses Ordinance (Cap. 1), which provided that “Where a comparison of the authentic texts of an Ordinance discloses a difference of meaning which the rules of statutory interpretation ordinarily applicable do not resolve, the meaning which best reconciles the texts, having regard to the object and purposes of the Ordinance, shall be adopted.”

Provisions related to the Costs in Criminal Cases Ordinance (Cap. 492)

47. The Chairman pointed out that the Bar Association had provided written comments on the proposals to amend sections 9 and 13 of Cap. 492 in its letter dated 13 August 2004 to the Administration, a copy of which was at Annex J of the Administration’s paper. The Chairman said that in her view, the proposed amendments, which would enable the Court of Appeal or the Court of First Instance to order that costs be awarded to the other party where the prosecutor or a defendant unsuccessfully applied to the Court for a certificate under section 32 of the Hong Kong Court of Final Appeal Ordinance, involved policy rather than technical issues.

Provisions relating to the finality of appeals in various Ordinances

48. Mr Martin LEE supported the proposal to amend the various Ordinances concerned to give effect to a related judgment of the Court of Final Appeal. The proposed amendment sought to remove the finality provisions in the specific Ordinances which at present provided that a decision by the Court of Appeal in respect of disciplinary proceedings concerning particular professional practitioners should be final. Mr LEE said that the effect of the amendment was that an appeal could then go the Court of Final Appeal, hence removing the existing inconsistency in the appeal mechanism for different professions.

Proposed amendments to empower the Law Society Council to make rules under the Legal Practitioners Ordinance (Cap. 159) (LPO)

49. Ms Miriam LAU asked whether members of the legal profession had been consulted and had agreed on the proposed amendments which would empower the Law Society Council to make rules in respect of in-house solicitors.

50. DSG responded that the Corporate Counsel Association had been consulted and it had raised no objection. Mr Patrick MOSS informed members that all solicitors, including in-house solicitors, were subject to the Law Society’s regulation and fell within the existing regulatory framework of the LPO. The proposed amendments would clarify that the Law Society Council had the authority to make rules under LPO governing employed in-house solicitors, including rules restricting the type of work which these solicitors could or could not do and requiring the taking out of insurance cover if they were undertaking work which exposed them to

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members of the public. He added that whether or not an in-house solicitor should hold a practising certificate depended on the type of work that the in-house solicitor was doing. Mr MOSS further said that two members of the Corporate Counsel Association were serving as members of the Law Society's Working Party on Employed Solicitors' Code and they had not objected to the proposed amendments.

Proposed amendments for inclusion of representatives in the Standing Committee on Legal Education and Training under the Legal Practitioners Ordinance (Cap. 159)

51. DSG explained that the proposed amendments to provide for the inclusion of representatives of the Chinese University of Hong Kong (CUHK) in the Standing Committee on Legal Education and Training was to reflect the fact that CUHK was about to establish a law school, and therefore should be represented on that committee. The law school was expected to be established in 2006. Mr Patrick MOSS said that on the basis that the law school would be established, CUHK should be involved in the planning of legal education in Hong Kong.

52. Ms Audrey EU asked whether the establishment of a new law school at CUHK had been decided and approved after full consultation with all relevant parties and stakeholders. The Chairman doubted whether it was appropriate to introduce the amendments before the law school came into existence.

53. DSG responded that a deferred commencement clause in relation to the proposed amendments could be included in the Bill. How the matter should be appropriately dealt with could be further discussed in the course of examination of the Bill.

54. Ms Miriam LAU said that she supported measures to improve the planning of legal education and training in Hong Kong. However, she doubted whether it was desirable in terms of policy for the establishment of a new law school at CUHK at a time when there was an over-supply of legally qualified persons in Hong Kong who were having difficulties in finding employment in the legal profession.

55. Mr LI Kwok-ying opined that the provision of legal education and training should not be determined entirely by market demand for lawyers. He pointed out that in the experiences of places like the United Kingdom, many people with legal education actually worked in areas outside the legal profession such as in the administrative and managerial fields. He added that the proposed amendments sought to provide for CUHK, and not the proposed law school, to be represented on the committee.

56. Ms Audrey EU said that her concern about a new law school at CUHK arose from the recommendation of the University Grants Committee that for the future developments in the higher education sector, each institution would fulfil a unique role based on its strengths and areas of excellence. Public resources should accordingly be allocated to nurture such development. Ms EU doubted whether the establishment of a new law school at CUHK, in addition to the existing law schools at the University of Hong Kong and the City University of Hong Kong, would contribute to this endeavour.

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57. The Chairman said that the establishment of a new law school at CUHK fell outside the scope of the Bill, and might be discussed by the Panel as a separate issue if considered appropriate and necessary.

(Post-meeting note : Subsequent to the meeting, the Chairman instructed the Clerk to request the Administration to provide a paper explaining the impact of the proposed establishment of a third law school on the provision of legal services. The Administration's paper was circulated to the Panel vide LC Paper No. CB(2) 714/04-05 on 20 January 2005.)

Way forward

58. In response to the Chairman, DSG said that the Bill would contain more than 250 clauses which sought to amend 35 Ordinances. The drafting of the Bill was about to be completed. He added that while none of the proposed amendments had an urgent time factor with regard to implementation, the Administration would like the Bill to be passed as early as possible so as to put the relevant legislation in order.

59. The Chairman said that following the briefing given by the Administration on the Bill, it was a matter for the Administration to consider how to proceed further, having regard to the views expressed by members at the meeting. In her view, some of the proposed amendments carried policy implications which might need to be examined in detail by a bills committee. She suggested that the Administration might review the proposed amendments to see if some of the more controversial items should be removed from the Bill and dealt with by a separate law amendment exercise at a later stage.

60. The meeting ended at 6:35 pm.