

# 立法會

## *Legislative Council*

LC Paper No. CB(2)1590/04-05

(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 Thursday, 31 March 2005 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-ye, GBS, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon KWONG Chi-kin
- Member attending** : Hon TAM Heung-man
- Members absent** : Hon Emily LAU Wai-hing, JP  
Hon MA Lik, JP
- Public Officers attending** : Item IV  
  
Mr James O'NEIL  
Deputy Solicitor General (Constitutional)  
  
Mr Michael SCOTT  
Senior Assistant Solicitor General  
  
Ms Cathy WAN  
Senior Government Counsel  
  
Mr Alan LO  
Principal Assistant Secretary for Financial Services and the  
Treasury (Financial Services)

Item V

Mr Stephen WONG Kai-yi  
Deputy Solicitor General (General)

Mr Michael SCOTT  
Senior Assistant Solicitor General

**Attendance by  
invitation** :

Item IV

The Consumer Council

Ms Wendy CHAN  
Senior Legal Counsel

The Law Society of Hong Kong

Mr Michael LINTERN-SMITH  
President

Mr Patrick MOSS  
Secretary General

Hong Kong Institute of Certified Public Accountants

Mr Edward K F CHOW  
President

Mr Paul F WINKELMANN  
Convenor of the Professional Risk Management Committee  
Liability Reform Working Group

Ms Winnie C W CHEUNG  
Chief Executive & Registrar

Mr Stephen CHAN  
Director (Standard Setting)

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

Item IV

Ms Elyssa WONG  
Acting Head (Research and Library Services Division)

Miss Kitty LAM  
Research Officer 8

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**I. Confirmation of minutes of meeting**

(LC Paper No. CB(2)1013/04-05 –Minutes of special meeting on 25 January 2005)

The minutes of the special meeting held on 25 January 2005 were confirmed.

**II. Information papers issued since the last meeting**

(LC Paper No. CB(2)1037/04-05(01) –Letter dated 3 March 2005 from Hon Margaret NG to the Secretary for Justice on acceptance of advantages by judges and judicial officers

LC Paper No. CB(2)1037/04-05(02) –Letter dated 4 March 2005 from the Secretary for Justice in response to Hon Margaret NG's letter on acceptance of advantages by judges and judicial officers

LC Paper No. CB(2)1127/04-05(01) –Letter dated 15 March 2005 from the Hong Kong Society of Notaries on "Examination for admission of notaries public"

LC Paper No. CB(2)1127/04-05(02) –Letter dated 16 March 2005 from the Law Society of Hong Kong on "Criminal legal aid fees system")

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)1142/04-05(01) – List of outstanding items for discussion

LC Paper No. CB(2)1142/04-05(02) – List of follow-up actions)

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3. Members agreed that the following items should be discussed at the next meeting on 25 April 2005 –

- (a) Reform of the law of arbitration; and
- (b) Budgetary arrangements for the Judiciary.

*(Post-meeting note : At the request of the Administration and with the agreement of the Chairman, the item “Reform of the law of arbitration” was deferred to a future meeting. The agenda was revised with the inclusion of another item “Court procedure for repossession of premises – Review of the Lands Tribunal Ordinance (Cap. 17) and the Lands Tribunal Rules (Cap. 17A).)*

Establishment of a third law school at the Chinese University of Hong Kong

4. In response to Ms Audrey EU’s enquiry, the Clerk informed members that pursuant to the decision of the Panel at its meeting on 24 January 2005, she had approached the Administration, the Chinese University of Hong Kong, and the law schools of the University of Hong Kong and the City University of Hong Kong regarding the scheduling of a meeting to discuss the item. The relevant parties had agreed to send representatives to attend the Panel meeting to be held on 23 May 2005.

**IV. Limited liability for professional practices**

(RP04/04-05 – Research Report on "Limited Liability Partnership and Liability Capping Legislation for the Practice of Law in Selected Places"

LC Paper No. CB(2)1099/04-05(01) – Submission from the Hong Kong Institute of Certified Public Accountants)

Research Report on "Limited Liability Partnership and Liability Capping Legislation for the Practice of Law in Selected Places"

5. Acting Head, Research and Library Services Division (H(RL)(Ag)) gave a powerpoint presentation on the Research Report. The Research Report examined the basic concepts of forms of business structures to limit liability, with particular reference to limited liability partnership (LLP) in the practice of law, and studied how solicitors limited their liability through LLPs or professional standards schemes in three selected jurisdictions, namely, England and Wales of the United Kingdom (UK), the State of New York (NY) in the United States, and the New South Wales of Australia (NSW).

6. In brief, an LLP was a vehicle for doing business which combined the limited liability feature of a limited company and the flexibility of the internal organisation of a general partnership. It rendered the privilege of limited liability to the innocent members/partners so as to insulate their personal assets from claims incurred by the faults of other members/partners. With regard to the three jurisdictions studied –

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- (a) the LLP option was practised in the UK and NY. It was open to all types of business in the UK, whilst limited to around 40 licensed professions in NY. Under the LLP statutes in UK and NY, members/partners of an LLP were liable for their own faults, but not for each other's acts or omissions solely by virtue of being a member/partner of that LLP; and
- (b) NSW had not adopted LLPs but there was in place liability capping legislation which limited liability capping to members of those occupational associations which had set up their own professional standards schemes approved by the Professional Standards Council (PSC). The capping of liability covered the members of the associations regardless of whether they had personal involvement in the wrongful act or not. Under the Solicitors Scheme, in particular, the maximum liability for each claim depended on the number of principals in the legal practice.

7. In response to Ms Audrey EU's question, H(RL)(Ag) said that in NSW, the liabilities of the professionals were capped at the levels specified in the respective professional standards schemes. Under the Solicitors Scheme, the maximum amount of liability of persons in a legal practice was determined by the number of principals in the firm, and solicitors must take out insurance for an amount not less than the limited liability. The levels of liability were set out in the table under paragraph 5.3.12 of the Research Report. She added that a recent survey had shown that most consumers were fully compensated for damages, and the PSC was not aware of any large claims across the professions that were above the maximum limits since the introduction of the professional standards schemes.

Views of the Hong Kong Institute of Certified Public Accountants (HKICPA)

8. The Chairman thanked the HKICPA for providing a written submission entitled "A Case for Professional Liability Reform in Hong Kong" for the Panel's consideration and invited representatives from HKICPA to brief members on its views.

9. Mr Edward CHOW said that HKICPA considered that professional liability reform in Hong Kong should be taken forward without delay to address the problems arising from joint and several liability under general partnerships. In the view of HKICPA, the joint and several liability framework was no longer appropriate in the present commercial and business environment, as it resulted in liability wholly disproportionate to the contribution of any particular defendant to the overall loss. HKICPA had proposed a three-pronged approach to deal with the problems, namely –

- (a) introduction of a system of proportionate liability under which the liability of a defendant was limited to that proportion of the damages suffered by a plaintiff which was directly referable to that defendant's degree of fault. This system would reduce the risk that professionals in

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general partnerships had to pay more than their fair share of the loss when they only had partial responsibility for that loss, or where the claim against them emanated from others' negligence. The risk of unfair and unlimited exposure to liability was amply demonstrated by cases of collapse of major accounting firms, such as the Enron/Arthur Andersen debacle, which resulted from a catastrophic claim;

- (b) repeal of the relevant provision in section 165 of the Companies Ordinance to allow auditors to agree contractually with their clients on limits for the auditors' liability in respect of audit work. Limiting liability contractually was already standing practice for a number of professions and businesses, including accountancy firms in relation to their non-audit activities; and
- (c) introduction of LLPs which would remove the risk for the innocent partners but leave the claimant with a remedy against the LLP and the individual partner or partners responsible for the alleged breach of duty. The system of LLPs had been in existence in some other jurisdictions and there was no reason for Hong Kong to be lagging behind other jurisdictions.

Views of the Law Society of Hong Kong

10. Mr Michael LINTERN-SMITH said that restriction of liability was an issue in which many professions, including the legal, medical and the accounting professions, had shown great interest. It was perceived as a modern day approach to achieving a balance between having a structure suitable for professional practices on the one hand and protection of the public's interests on the other, moving away from the old concept of professional practitioners being liable for every single penny which they owned in the event of any negligent act on their part. From the perspective of the Law Society, whether reforms on limiting liability should be introduced required careful consideration of the following issues –

- (a) the operation of the new system which allowed solicitors to incorporate their practices through solicitor corporations and the effect of incorporation on limiting liability;
- (b) advantages of the proposed option of LLPs advocated by the professions; and
- (c) arguments as to whether restriction of liability could be agreed upon contractually between professional practitioners and their clients.

11. Mr LINTERN-SMITH pointed out that while solicitor corporations were seen as a vehicle offering limitation on liability, they still left the negligent members of the corporation exposed to a claim in tort. An LLP model, as opposed to general partnership operating on the principle of joint and several liability, would protect the non-culpable partners.

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12. Mr LINTERN-SMITH further informed members that the Law Society had formed a Working Party on Limited Liability Partnership to consider matters relating to the introduction of LLPs in Hong Kong. He drew members' attention to the Working Party's report, which was attached in Annex B to the submission of the HKICPA.

Views of the Administration

13. Deputy Solicitor General (Constitutional) (DSG(C)) said that the Administration would take into account the views of the Law Society and HKICPA in studying the matter. Partnership has been a business model for many years and is not limited to the legal or accountancy professions. Introduction of LLP could affect a wide range of professions and businesses. Introduction of proportionate liability, to displace the familiar concept of joint and several liability would involve a fundamental change to the general law of tort. Such proposals had to be considered carefully. Moreover, issues relating to protection of the public's interests must be taken into account, as the change to limiting liability would have the effect of shifting the burden of risk from the professional practitioners to their clients. He pointed out that as had been stated in the HKICPA's paper, the Government's Standing Committee on Company Law Reform (SCCLR) had considered a submission made by HKICPA in October 2003 on auditors' liability. SCCLR was of the view that the proposal of proportionate liability raised by HKICPA should be referred to the Law Reform Commission for further study. The Law Society also provided a paper on LLPs in August 2004 for the Administration's consideration, and discussion with the Department of Justice (DOJ) on the proposal had taken place since then.

14. DSG(C) further said that although the issue of limiting liability was first raised by the solicitors profession, other sectors of the community including a variety of trades and businesses had also made proposals on the matter. Among others, the insurance industry had proposed that personal injuries and employees' compensation awards should be capped. The medical profession had suggested that medical negligence awards should be capped. The taxi industry had recommended that awards under third party claims should be capped. The major issue in question, i.e. the limiting of compensation that might be awarded in relation to a claim, was one of considerable complexity and had wide ramifications not only for the legal and financial professions but also for other sectors which shared a common concern about a potential risk of huge liabilities. DSG(C) said that at the present stage, it would not be appropriate for the Administration to make any commitment to introduce any forms of limiting liability without undertaking a wide-ranging assessment of the impact on professional practices and businesses and the public. He informed members that DOJ would take forward the preparation of a paper on the subject with inputs from relevant policy bureaux. It was expected that the paper would be completed in about five to six months. Upon completion, the paper would be submitted for the consideration of a policy committee in the Administration to decide on the way forward.

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15. In response to the Chairman, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services) said that DOJ would be responsible for taking the lead in the study of the matter which concerned a reform of civil tort law. The Financial Services and the Treasury Bureau would be assisting DOJ in the work.

Adm

16. The Chairman requested the Administration to inform the Panel of the progress of its study before end of the current legislative session.

Issues raised

17. Ms Audrey EU sought the views of the HKICPA and the Law Society on their preferred options of professional liability reform, and the urgency of the reform.

18. Mr Edward CHOW responded that HKICPA had listed out in the table in page 20 of its submission the liability reform measures introduced in Hong Kong and some other jurisdictions. The information showed that Hong Kong was trailing behind other jurisdictions in terms of liability reforms as Hong Kong had only adopted professional incorporation practices, whilst jurisdictions elsewhere had put in place other liability protection measures including LLPs, proportionate liability, statutory liability cap and ability of professions to limit liability contractually. He said that professionals played a vital role in the efficient operation of capital markets, and a liability reform was urgently needed to bring Hong Kong in line with what had already been adopted in other major financial centres and to enable Hong Kong to compete with them on a level playing field. Otherwise, the increasing risk of big multi-national accounting/auditing firms being forced to exit from the Hong Kong market due to catastrophic cross-border claims, for which the firms might have a small share of the responsibility, would be detrimental to maintaining Hong Kong as a world-class financial centre.

19. Mr Edward CHOW reiterated that the HKICPA had recommended the three reform measures as proposed in its submission and as highlighted by him earlier at the meeting (paragraph 9 above). He said that of the three proposals, the HKICPA appreciated that the proportionate liability model would take a relatively longer time for study. Hence, the HKICPA preferred a step by step approach in pushing ahead with liability reform measures. However, he stressed that reform was urgently in need.

20. Mr Edward CHOW further informed members that HKICPA had more than 24,000 members and close to 10,000 registered students. The larger firms, in particular, were providing training for the inexperienced who chose to enter the profession as a long-term career. He said that it would be a very sad situation if more and more qualified and well-trained people continued to leave the profession because of the risk of unlimited liability and the absence of equitable measures to protect them against such risk. In his view, grave problems already existed and all parties including the profession, the Government and the legislature should do their best in finding workable solutions as soon as possible.



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21. Mr Paul WINKELMANN supplemented that in the absence of urgent liability reforms to limit professional liability, Hong Kong could end up with a capital market environment which was unable to work orderly and efficiently. This would be detrimental to the investing public. He cautioned that there were worrying signs to support the concern, as indicated by the large number of accounting/auditing firms in Hong Kong refusing to provide services in areas of work perceived to be of high risk. He said that the situation was different in overseas counterparts which operated on a different liability platform with liability limiting measures.

22. Mr Michael LINTERN-SMITH said that it was the Government's policy to promote Hong Kong as a financial/services centre of excellence. In order to achieve the objective, Hong Kong had to attract the best professional talent into the professions. Other jurisdictions including Singapore, which was often quoted as a keen competitor of Hong Kong, had already introduced LLPs. He pointed out that although the number of solicitors practising in Hong Kong was increasing, it was increasing at a rather slower rate and was not at pace with the number of law students graduating each year and becoming qualified to practise. Moreover, solicitors practice in Hong Kong was not seen as being attractive as it was before. Many solicitors had turned to other areas of business where they did not have to be saddled with, for example, the hefty insurance premiums required for practice and the spectre of having to bear huge liability in the event of there being a default by another member of the firm in which they practised. In the view of the Law Society, the Government should push ahead with reform measures, such as LLPs, as quickly as possible to provide an environment in which professionals would find it attractive to practise.

23. Mr LINTERN-SMITH added that the attraction of LLP was that it was a simple system and did not necessitate a review of the more complex issues such as restricting liability for tort, which should more probably be dealt with in the context of a Law Reform Commission study. The Law Society's recommended approach was to introduce LLPs as a matter of priority, and then look into other reform areas at some future points in time.

24. Mr LINTERN-SMITH further informed members that the Law Society's Working Party on Limited Liability Partnership had studied different models of LLPs in other places, and recommended an "Ontario cum New York model" for Hong Kong. The Working Party considered that the implementation of such model would require only simple amendments to the Partnership Ordinance and minor amendments to the rules of the Law Society. He pointed out that the Law Society had worked out the draft legislative amendments required for the introduction of LLPs in Hong Kong. The proposed amendments were attached in Annexure 5 to the Law Society Working Party's report.

25. Ms TAM Heung-man asked whether LLPs would be a short-term solution to address the problems faced by the accountancy profession. She also sought HKICPA's views on the effect of its three proposals on protection of consumers' interests.

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26. Mr Edward CHOW replied that HKICPA did not consider LLPs to be an alternative to the proportionate liability model. The two systems were of different nature and would operate differently in addressing different risks. In his view, the two models should be pursued separately.

27. Mr Edward CHOW further said that HKICPA was mindful of the need to protect consumers' interests. The HKICPA's proposal for proportionate liability was limited in scope and did not constitute a wholesale abandonment of the principle of joint and several liability. As explained in its submission, the HKICPA took the view that joint and several liability should continue to apply in personal injury actions and in cases where the damage or loss was caused by fraud, dishonesty or wilful default.

28. In reply to the Chairman, Ms Wendy CHAN said that the Consumer Council preferred to provide its views on how LLPs might impact on consumers' interest at a later stage.

29. Mr Albert HO asked whether introducing LLPs in Hong Kong, which might be seen as providing less protection for the consumers, would result in the professions being required to take out increased professional indemnity insurance.

30. Mr Michael LINTERN-SMITH replied that at present, solicitors were statutorily required to take out insurance up to a compulsory level. In practice, if solicitors considered that they were likely to incur risks over and above the compulsory level of insurance, they would purchase top-up insurance to cover the risk. Therefore, the risk to the public was reduced. He said that in all but the very exceptional cases there would be adequate insurance cover for the solicitors and their clients. The situation would not change if LLPs were to be introduced. He added that under LLPs, the party who suffered loss which resulted from the negligent act of a solicitor partner in the LLP could still claim against the responsible solicitor personally.

31. Mr Paul WINKELMANN said that currently accountancy firms in Hong Kong were unable to purchase professional indemnity insurance simply because it was not available in the open market. Instead, firms had to rely on their limited capital resources and in-house captive insurance vehicles which were unable to spread the risk. He further said that in the overseas models of LLPs, there was no compulsory insurance requirement on the firms but the firms were required to have minimum levels of capital.

32. Ms Miriam LAU opined that the LLP model was not a very drastic reform and the Administration might be over-concerned about its ramifications. She shared the concern that Hong Kong was behind others in introducing LLPs, and considered that the Administration should draw on the experience in other jurisdictions such as the UK and expedite the introduction of LLPs, while ensuring that members of the public would have full knowledge of the working of the system before actual

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implementation. The Administration should then assess the need for further measures at some later stage.

33. Regarding the impact of limiting professional liability on protection of the consumers, Ms Miriam LAU considered that a right balance between conflicting interests should be struck, as focusing attention solely on consumers' interests might at the same time sacrifice other aspects which would benefit the economy at large. She further pointed out that practical experience in other jurisdictions had shown that under LLPs, most of the claims could still be met in full.

34. DSG(C) replied that the Administration's position was that attention should not be focused solely on LLPs because other proposals for limiting liability had been raised by different sectors of the community. The Administration considered it necessary to take a broad view on the issues raised and prioritise them so that they could be dealt with more appropriately. He said that LLPs might well be a priority issue to be taken forward but in the end this would have to be decided by the Administration as a matter of policy after detailed consideration.

The way forward

35. The Chairman suggested and members agreed that the Panel should continue discussion on the relevant issues at another meeting, with particular reference to the report prepared by the Law Society's Working Party on Limited Liability Partnership. At the Chairman's request, Mr Michael LINTERN-SMITH agreed to arrange for representatives of the Working Party to attend the next meeting of the Panel to be held on 25 April 2005 to discuss with members on the Working Party's proposals.

Adm

36. The Chairman also requested the Administration to respond to the Working Party's report at the next meeting.

*(Post-meeting note : The Law Society subsequently informed the Panel that it could not be represented at the meeting on 25 April 2005. At its request, the item was deferred to the meeting in May 2005.)*

**V. Solicitor Corporations Rules**

(LC Paper No. CB(2)1164/04-05(01) –Letter dated 24 March 2005 from the Law Society of Hong Kong enclosing a set of the revised draft Solicitor Corporations Rules)

37. At the invitation of the Chairman, Mr Patrick MOSS introduced the draft Solicitor Corporations Rules, which provided for matters relating to approval of company or proposed company as solicitor corporation. He said that the draft Rules were provided for the information of the Panel on the understanding that they had yet to be approved by the Council of the Law Society and the Chief Justice.

38. Mr Patrick MOSS briefed the Panel on the draft Rules clause by clause.

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39. In response to the Chairman, Deputy Solicitor General (General) (DSG(G)) said that the Solicitor Corporations Rules would be made by the Council of the Law Society under section 73 of the Legal Practitioners Ordinance (Cap. 159) with the prior approval of the Chief Justice. DOJ had provided advice on the legislative drafting aspects of the Rules, and was satisfied that the legal policy aspects were in order.

Issues raised

40. In reply to the Chairman's enquiry, Mr Patrick MOSS clarified that by virtue of Rule 6(2), which provided that every member or director of a solicitor corporation should be a solicitor holding a current practising certificate, a solicitor corporation should not have non-solicitors to be its members. Every member of the solicitor corporation beneficially owned the share or shares he held in the company.

41. Referring to Rule 8(1), which provided that a member of a solicitor corporation should not create any charge or other third party interest over any shares in the corporation, Mr Albert HO asked whether a third party would be precluded from creating any charge over any shares held by a certain member of the corporation by way of execution of a judgment debt against the member of the corporation.

42. Mr Patrick MOSS replied that under Rule 8(1), it was the member of the solicitor corporation who should not create a charge or other third party interest. Therefore, if a third party by court action created a charge over the shares in the corporation, that third party would not be in breach of Rule 8(1).

43. Referring to Rule 10(2), Mr Albert HO asked whether a member of a solicitor corporation who was suspended from practice for more than six months could exercise any voting right in respect of the shares in the corporation registered in his name, after the initial six months of the suspension period had expired.

44. The Chairman pointed out that according to Rules 10(1) and (2), a member of a solicitor corporation who was suspended from practice would be allowed to have the shares registered in his name continue to be so registered for not longer than six months. During those six months the solicitor would be prohibited from exercising any voting right in respect of the shares. It therefore implied that if a member of the corporation was suspended from practice for more than six months, the shares would be de-registered from his name after the expiry of the first six months of suspension and he could not own the shares any more. Mr Patrick MOSS concurred with the Chairman's views. He added that the Legal Practitioners Ordinance provided that a solicitor could not practise during the period of suspension. What the other partners would do towards a partner who was not entitled to practise would be a matter for the individual partnerships. The suspended partner might de facto cease to be a partner. In the absence of any partnership agreement, the provisions of the Partnership Ordinance would apply.

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45. Mr Albert HO asked whether a partner suspended from practice could continue to receive income from the partnership. Mr Patrick MOSS said that there were no statutory provisions for that matter. In any case, individual partnerships had to be careful about the matter because it would involve sharing profits with a person who was unqualified to practise as a solicitor.

Law  
Society

46. Mr Albert HO asked whether the Law Society could prepare a standard memorandum and articles of association for the benefit of those who wished to set up solicitor corporations. Mr Patrick MOSS replied that it might not be appropriate for the Law Society to do so. However, he undertook to convey the idea to the Law Society for consideration.

Way forward

47. In reply to the Chairman, Mr Patrick MOSS informed members that the draft Rules were scheduled for consideration by the Law Society's Council at a meeting to be held on 12 April 2005. The Rules, after approval by the Council, would be submitted to the Chief Justice for his approval as soon as possible. It was hoped that the Rules could be brought into operation before the end of the current legislative session.

48. DSG(G) said that the Rules would be subject to the negative vetting procedure of the Legislative Council.

**VI. Any other business**

Visit to the Judiciary

49. The Chairman informed members that the Judiciary Administration had proposed that the visit to the Judiciary be held in the morning of 24 May 2005, to be followed by a lunch with the Chief Justice and members of the Judiciary. Regarding the programme of the visit, the Judiciary had proposed the following venues –

- (a) Small Claims Tribunal;
- (b) Lands Tribunal; and
- (c) a Magistrates' Court (either the Eastern or Kowloon City Magistrates' Court).

50. Members agreed to the proposed date and programme of the visit.

*(Post-meeting note : The Judiciary had subsequently proposed that to allow sufficient time for the tour of the Lands Tribunal and the Kowloon City Magistrates' Court and meeting with members of the Judiciary, the Small Claims Tribunal was taken out from the programme of the visit.)*

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Result of the consultation on options to follow up issues relating to the review of the  
Labour Tribunal  
(LC Paper No. CB(2)1032/04-05 – Result of the consultation)

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51. The Chairman drew members' attention to the result of the consultation with members of this Panel and the Panel on Manpower as to which of the two Panels should form a subcommittee to follow up relevant issues relating to the review of the Labour Tribunal.

52. Members noted that a major proportion of members of the Manpower Panel supported the formation of a subcommittee under the Manpower Panel, which would invite members of this Panel to participate in the work of the subcommittee as non-subcommittee Members. Members had no objection to the Manpower Panel forming a subcommittee to follow up the review. The Chairman requested the Clerk to inform the Panel on Manpower of this Panel's position.

Clerk

53. The Chairman said that the issue of enforcement of Labour Tribunal awards had been considered by the Judiciary's Working Party on the Review of the Labour Tribunal. The Working Party recognised that similar problems concerning enforcement of Tribunal awards also existed in the execution of judgments and orders of other levels of court, and it would be inappropriate for the Working Party to recommend measures solely in the context of awards made by the Labour Tribunal. The Working Party considered that the matter should be left to an overall review of enforcement of judgments in civil cases generally. The Chairman pointed out that as agreed at the meeting on 28 February 2005, she had written to the Director of Administration on 11 March 2005 to seek the Administration's views on, inter alia, how the existing mechanism of enforcement of court judgments in civil cases in general, and in labour and matrimonial cases in particular, could be improved. The response from the Administration was being awaited.

54. The Chairman suggested and members agreed that this Panel should follow up relevant issues relating to enforcement of judgments in civil cases separately. The item would be included in the Panel's list of outstanding issues.

55. The meeting ended at 6:30 pm.