立法會
Legislative Council

LC Paper No. CB(2)2502/04-05
(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, 27 June 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-yee, 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 Mr Stephen WONG Kai-yi Deputy Solicitor General Mr Godfrey KAN Senior Government Counsel Items V and VI Mr Stephen WONG Kai-yi Deputy Solicitor General Mr Michael Scott Senior Assistant Solicitor General

Miss Kitty FUNG
Senior Government Counsel

Attendance by invitation : Item IV

Hong Kong Institute of Arbitrators

Ms Sylvia SIU
President

Mr Samuel WONG
Ex-Officio (Past President)

Mr CHAN Yiu-kei
Member

The Chartered Institute of Arbitrators (East Asia Branch)

Mr Glenn HALEY
Branch Chairman

Mr Doug WARDALE
Branch Secretary

Hong Kong International Arbitration Centre

Mr Philip YANG
Chairman

Mr Robin PEARD
Vice Chairman

Mr Christopher TO
Secretary General

The Hong Kong Construction Association Ltd.

Mr David SUFF
Vice President of HKCA and Chairman of Civil Engineering Committee

Dean LEWIS
Partner of Masons and legal adviser to HKCA

The Hong Kong Bar Association

Mr Russell COLEMAN

Item V

The Law Society of Hong Kong

Mr Peter LO
President

Mr Patrick MOSS
Secretary General

Mr Chris HOWSE

Professional Indemnity Scheme Action Group

Mr Benny YEUNG

Ms Hilary CORDELL

Mr Sundara KRISHNAN

Ms May TAM

Item VI

The Law Society of Hong Kong

Mr Colin COHEN
Member of the Working Party on Solicitors' Accounts Rules

Ms Helen MACKENZIE
Member of the Working Party on Solicitors' Accounts Rules

Mr Patrick MOSS
Secretary General

Ms Angela LI
Assistant Director, Regulation and Guidance

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 Mrs Fonny TSANG Legislative Assistant (2)3

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I. Confirmation of minutes of meeting

(LC Paper No. CB(2)2057/04-05 – Minutes of the meeting on 25 April 2005)

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

II. Information papers issued since the last meeting

(LC Paper No. CB(2)1680/04-05(01) – Information on number of Deputy Judges and judicial officers

LC Paper No. CB(2)1760/04-05(01) – Letter dated 30 May 2005 from the Administration on progress of review of juvenile justice system

LC Paper No. CB(2)1772/04-05(01) – Press release issued by the Judiciary on 1 June 2005 on chambers hearings in civil proceedings

LC Paper No. CB(2)1772/04-05(02) – Practice Direction 25.1 : Chambers Hearings in Civil Proceedings in the High Court, the District Court, the Family Court and the Lands Tribunal

LC Paper No. CB(2)1772/04-05(03) – Practice Direction 25.2 : Reports on Chambers Hearings not open to the public

LC Paper No. CB(2)1776/04-05(01) – An updated summary of views of deputations/members of Panel on Administration of Justice and Legal Services and Panel on Manpower on review of the Labour Tribunal and related issues

LC Paper No. CB(2)1793/04-05(01) – Law Society's letter dated 1 June 2005 to the Director of Administration and its position paper on "The System of Remuneration of Solicitors for Conducting Criminal Legal Aid Work"

LC Paper No. CB(2)1898/04-05(01) – Referral from Subcommittee on International Organizations (Privileges and Immunities) (World Trade Organization) Order concerning drafting approach for preparing local legislation

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LC Paper No. CB(2)1899/04-05(01) – Information on the number of Saturday sittings at the District Court and the Magistrates' Courts from 1 June 2004 to 31 May 2005

LC Paper No. CB(2)2089/04-05(01) – Paper provided by the Judiciary Administration on chambers hearings in civil proceedings)

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)2060/04-05(01) – List of outstanding items for discussion

LC Paper No. CB(2)2060/04-05(02) – List of follow-up actions)

3. Members agreed that the following items should be discussed at the next meeting –

(a) Budgetary arrangements for the Judiciary;

(b) Chambers hearings in civil proceedings;

(c) Review of sexual offences in Part XII of the Crimes Ordinance; and

(d) Review of legislative provisions containing the drafting formula "to the satisfaction" of an enforcement agency.

4. Members also agreed that the next regular meeting should be held at 4:30 pm on 13 July 2005 instead of 25 July 2005 as originally scheduled.

(*Post-meeting note* : After consultation with the Administration, the meeting was rescheduled to be held at 4:30 pm on 12 July 2005.)

Criminal legal aid fee system

5. Members noted that the Bar Association had made a submission to the Legal Aid Services Council on "Review of Legal Aid in Criminal Cases" (circulated to the Panel vide LC Paper No. CB(2)1588/04-05(01) on 18 May 2005) and the Law Society had provided a position paper on "The System of Remuneration of Solicitors for Conducting Criminal Legal Aid Work" (circulated vide LC Paper No. CB(2)1793/04-05(01) on 6 June 2005). The Chairman asked the Secretariat to request the Administration to provide a substantive response to these two documents. The issue would be followed up in the next legislative session.

Recovery agents

6. Members noted that the Special Committee on Recovery Agents of the Bar

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Association had produced its report (circulated to the Panel vide LC Paper No. CB(2)1516/04-05(01) on 10 May 2005) and the Law Society had issued a circular to its members on the subject matter (circulated vide LC Paper No. CB(2)1609/04-05(01) on 19 May 2005). The Chairman asked the Secretariat to write to the Administration for its views on when the issue could be followed up.

(*Post-meeting note* : The Administration advised in writing on 12 July 2005 that it would be happy to exchange views with the Panel on this issue at an appropriate time.)

Review of the Labour Tribunal and related issues

7. In response to Ms Emily LAU's question, Mr KWONG Chi-kin, Deputy Chairman of the Panel on Manpower, informed members that the Panel would follow up the relevant issues in the next legislative session.

IV. Reform of the law of arbitration

(LC Paper No. CB(2)1792/04-05(01) – Paper provided by the Administration on the Report of the Committee on Hong Kong Arbitration Law of The Hong Kong Institute of Arbitrators

LC Paper No. CB(2)2049/04-05(01) – Submission from the Hong Kong Construction Association Ltd. on the recommendations in the Report of the Hong Kong Institute of Arbitrators

LC Paper No. CB(2)2049/04-05(02) – Letter dated 21 June 2005 from the Law Society of Hong Kong on reform of the law of arbitration)

8. Deputy Solicitor General (DSG) briefed members on the Administration's paper on the Report issued by the Committee on Hong Kong Arbitration Law of The Hong Kong Institute of Arbitrators (HKIArb) in April 2003, the views of professional bodies on the Report and the Department of Justice (DOJ)'s proposal to take forward the recommendations.

9. In the main, the Report recommended that the Arbitration Ordinance (Cap. 341) should be redrawn to make it more user-friendly, in view of criticisms that the Ordinance was too complex and difficult to understand. At present, the Ordinance provided for two regimes for the conduct of arbitrations in Hong Kong, depending on whether the arbitration agreement was international or not. The regime for domestic arbitrations was largely based on UK arbitration legislation, while the regime for international arbitrations was based on the Model Law of the United Nations Commission on International Trade Law (the Model Law). In comparison with the law for domestic arbitration, the Model Law limited opportunities for judicial intervention and supervision, while granting more autonomy to the parties and the arbitral tribunal. The Report proposed to apply the Model Law equally to both domestic and international arbitrations in Hong Kong. This would result in a unitary

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regime whereby the distinction between the two types of arbitrations in the Ordinance would be abolished.

10. DSG informed members that having considered the opinion of concerned bodies, DOJ shared the view that the Arbitration Ordinance should be simplified. DOJ believed that the adoption of the HKIArb Committee's proposals, which had been modified after taking into account the views of concerned parties, including the Hong Kong Construction Association (HKCA) which represented probably the largest user of domestic arbitrations in Hong Kong, could meet many of the objections to a unitary regime for arbitrations. DOJ proposed to set up a working group consisting of representatives of the profession to assist it in preparing drafting instructions and draft legislation to implement those proposals. DOJ also proposed to issue the draft legislation as a consultative document before deciding on its ultimate form. It would further consult the Panel on progress in due course.

Views of HKCA

11. Mr Dean LEWIS said that the HKCA was fully in agreement that the Arbitration Ordinance was in need of simplification. Regarding the adoption of a unitary regime for arbitrations, the HKCA's position was that it preferred the retention of a domestic regime for the construction industry, because nearly all arbitrations in the construction industry were domestic arbitrations. The domestic regime had carried with it certain fundamental rights and protections of domestic users of arbitrations, including the right to appeal to the court and other opportunities of judicial supervision and assistance. The HKCA was concerned that the adoption of a unitary regime would remove these protections. Mr LEWIS further said that in the course of consultation, HKCA's concerns had been raised and considered by the HKIArb's Committee. The Report of the Committee had tried to address these concerns by allowing, in construction cases, an easier way for users of standard form contracts to opt in to certain provisions of the current domestic regime which provided for the protections. The HKCA considered the proposal satisfactory, and was prepared to accept it subject to the final drafting of the legislation.

12. Members noted the written submission from the HKCA to the Panel. In the submission, HKCA explained that subsequent to the publication of the Report, it had further proposed the inclusion of a deeming provision in the draft legislation to the effect that where a principal contract opts-in to the provisions in the domestic regime, then all sub-contracts and associated contracts would be deemed to have also done so.

Views of the Chartered Institute of Arbitrators (East Asia Branch)

13. Mr Glenn HALEY said that the Chartered Institute of Arbitrators (East Asia Branch) supported redrawing and simplifying the Arbitration Ordinance. It also supported the adoption of a unitary regime for arbitrations in Hong Kong, subject to detailed consideration of the concerns stated in the HKCA's submission.

Views of the Bar Association

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14. Mr Russell COLEMAN said that the Bar Association had been fully involved in the preparation of the Report of the HKIArb's Committee as it had two members sitting on the Committee. He said that the Bar Association supported the recommendations in the Report and the adoption of a unitary regime for arbitrations in Hong Kong.

Views of the Law Society

15. The Chairman referred members to the letter dated 21 June 2005 from the Law Society to the Panel. She said that the Law Society had stated that it was in broad agreement with the need for a new Arbitration Ordinance and for the approach set out in the Administration's paper. The Law Society had also stated that it would like to be represented on the working group to be set up to assist the Administration in the drafting of the legislation.

Declaration of interest

16. Ms Emily LAU declared that the Frontier had received a donation of $250,000 from the HKCA in 2004 to undertake a research project on long-term housing strategy. The Frontier was among some of the political groups which received the funding from HKCA. Mr Albert HO also declared that the Democratic Party had received a donation from HKCA for research.

Issues raised

17. Mr Martin LEE enquired about overseas jurisdictions which had adopted a model similar to the present proposed unitary regime. Senior Government Counsel replied that DOJ had examined the position in about 60 jurisdictions. It was found that about 20 jurisdictions provided for separate regimes for domestic and international arbitrations, while about 30 jurisdictions provided for a unitary arbitration regime. He added that different jurisdictions approached the subject differently in the light of their particular circumstances. Mr Robin PEARD pointed out that Annex 6 to the Administration's paper set out the jurisdictions with a unitary arbitration regime, covering both Model Law and non-Model Law jurisdictions.

18. Ms Emily LAU said that despite support from respondents for redrawing the Arbitration Ordinance to provide for a unitary regime for both domestic and international arbitrations, reservations about the proposal had been raised by interested parties, including the HKCA. She considered that the concerns should be fully addressed to ensure that the protections accorded to users of arbitration under the current system would not be diminished.

19. Mr Dean LEWIS said that the position of the HKCA was that it would prefer to retain the current domestic arbitration regime. However, as it was the wish of the HKCA not to hold back the development of arbitration, particularly international arbitration, in Hong Kong, HKCA was prepared to accept the proposed adoption of a

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unitary regime, provided that there would be a simple method of opting in to the provisions under the current domestic regime with the associated rights and protections.

20. Mr Robin PEARD, Chairman of the HKIArb's Committee, responded that there was a broad consensus among all parties that the Arbitration Ordinance should be simplified as far as possible for arbitration users, taking into account, among others, the increasing number of arbitration cases conducted in Hong Kong and arbitrators from other places to conduct the arbitrations, including a large number of arbitrators from the Mainland of China. Referring to the concerns of the HKCA set out in its submission to the Panel, Mr PEARD said that the HKIArb's Committee was of the view that they could be addressed by the modified proposals, under which users of standard form contracts in the construction industry who wished to opt-in to the provisions of the former domestic regime of arbitration would automatically be permitted to do so. Such provisions included appeal on point of law, determination of a preliminary point of law by the court, consolidation provisions and one arbitrator in default of agreement etc. Mr PEARD added that the revised proposals could also address many of the issues set out in paragraph 19 of the Administration's paper on the counter arguments for a unitary regime. He said that these matters would be further pursued in detail in the working group to be set up by the Administration.

21. DSG referred members to paragraphs 25 to 28 of the Administration's paper, which explained the HKCA's concerns and how they might be addressed.

22. Mr Samuel WONG said that as the terms in the standard form contracts were not individually negotiated by the parties concerned, there was a case for allowing a greater scope of court intervention and supervision under appropriate circumstances in order to provide better protection to users of the standard form contracts. In this regard, he supported that assistance of the court should be provided, where necessary, in cases where the arbitration was conducted between two domestic entities, and certain provisions under the existing domestic arbitration regime could be automatically opted in by the parties.

23. Mr Martin LEE asked whether, notwithstanding that the Administration was in general support of the proposals of the HKIArb's Committee, there were justified arguments against adopting a unitary regime on the basis of the Model Law. DSG responded that the arguments against a unitary regime had been listed out in paragraphs 19(a) to (v) of the Administration's paper. DOJ's preliminary view was that the arguments in paragraphs 19(a) to (c) were of particular relevance. They were –

> "(a) Domestic parties are less likely to be on an equal footing and the weaker parties may require special protection from the courts.
>
> (b) Parties to domestic arbitrations are not as likely as parties to international arbitrations to be able to select other jurisdictions as the place of arbitration. If a unified system were adopted they would, in

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practice, be subject to it by default.

(c) The SAR Government may wish to exercise tighter control over domestic arbitrations which involve its own residents, than it would wish to exercise in relation to international arbitrations which may only take place in Hong Kong because of geographical convenience."

24. Referring to the argument stated in paragraph 19(a) of the Administration's paper, Mr Philip YANG said that UK retained a unitary system of arbitration law governing domestic and international arbitrations under the Arbitration Act 1996. The Act contained specific provisions which provided protection of domestic users of arbitration. He considered that protection of domestic parties to arbitration was not a sufficient ground for rejecting a unitary regime, and the issue could be dealt with in the perspective of appropriate law drafting to decide which particular types of users of arbitration would require protection and how such protection could be offered.

25. Mr Philip YANG further informed members that the regime for domestic arbitrations in Hong Kong was still largely based on the UK Arbitration Act 1950, which was already outdated. Hence, the arbitration legislation in Hong Kong was urgently in need of modernisation.

26. Mr Russell COLEMAN referred to paragraph 19(p) of the Administration's paper, which stated that an argument against adopting a unitary regime was that individual arbitrators in domestic arbitrations might not be familiar with the law, and hence the right to apply for permission to appeal against a domestic arbitration award on a question of law should be retained. Mr COLEMAN expressed the view that the argument only pinpointed the need for competent arbitrators to handle arbitrations and deal with questions of law, rather than be used as a ground for opposing the adoption of a unitary arbitration regime. Ms Sylvia SIU supplemented that there were no formal qualifications required of arbitrators. To redraft and simplify the Arbitration Ordinance, which was extremely difficult to comprehend even for the arbitrators, would facilitate understanding of the law and the working of the arbitration system.

27. Mr Albert HO asked whether it was anticipated that the adoption of a unitary regime for arbitration would create greater demand for arbitration services in Hong Kong, and whether the supply of competent arbitrators was sufficient to cope with the demand. Ms Sylvia SIU responded in the positive. She said that the HKIArb and other arbitration bodies had been making every effort to promote arbitration in Hong Kong and Hong Kong as an arbitration centre in the region, as well as providing courses and training for arbitrators in Hong Kong. She added that jurisdictions elsewhere had reckoned the high standard of arbitration services provided in Hong Kong and more and more of them had turned to Hong Kong for settling disputes through arbitrations. Mr Samuel WONG opined that the Government should engage more local arbitrators to conduct arbitration cases so as to provide more opportunities for local arbitrators to build up their experience and expertise.

28. The Chairman noted that there was a difference between domestic and

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international arbitrations concerning the appointment of arbitrators in default of an agreement. She suggested that the Administration's working party should consult arbitrators in detail in relation to the arrangement.

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29. Mr Martin LEE and Ms Miriam LAU expressed the view that while the arbitration bodies and the practitioners were generally in support of a unitary regime, it was important that the consumers, i.e. the parties seeking arbitrations, could be benefited. Ms Miriam LAU called upon the Administration to include a broad representation of stakeholders in its working group so that a wide body of opinions could be solicited and considered. Mr Martin LEE asked whether the views of the Consumer Council had been sought. DSG noted the views. He said that the Consumer Council had not been consulted at this stage but it could be asked to provide comments in future discussions.

30. Mr Robin PEARD drew members' attention to footnote 14 of the Administration's paper, which stated that section 15 of the Control of Exemption Clauses Ordinance (Cap. 71) provided protection to consumers who were parties to a domestic arbitration agreement. The concerns about applying the Model Law to domestic arbitration related only to business-to-business contracts.

31. Ms Audrey EU referred to the recent arbitration of the Eastern Harbour Crossing toll increase, which had given rise to tremendous public outcry. She pointed out that the Administration had explained that it was very difficult to appeal the arbitration decision, which allowed the toll increase. The public, however, had no knowledge about the arbitration proceedings which had been held in private. Ms EU sought the deputations' views on whether, in domestic arbitration cases involving substantial public interest and the Government as a party to the arbitration, and where there was no avenue of appeal of the decision, the arbitration proceedings should be open to the public.

32. Mr Philip YANG responded that an important feature of arbitration was that confidentiality should be respected. Mr Robin PEARD considered that it was reasonable to allow arbitration proceedings to be made public under justifiable circumstances. However, it might require legislative measures for its implementation. Mr Samuel WONG said that arbitration was conducted by consent of the parties concerned. Hence, in his view, subject to agreement by the parties at the time of entering into the arbitration agreement, the arbitration proceedings could be made public.

Way forward

33. The Chairman concluded that the Panel supported the Administration to proceed to the next stage of the work, i.e. formation of a working group to draft legislation and to issue the draft legislation as a consultative document. She requested the Administration to revert to the Panel on progress and development in due course.

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V. Professional Indemnity Scheme of the Law Society

(LC Paper No. CB(2)2060/04-05(03) – Background brief prepared by the Secretariat on Professional Indemnity Scheme of the Law Society

LC Paper No. CB(2)2060/04-05(04) – Paper provided by the Law Society of Hong Kong on the proposed Qualifying Insurers Scheme (QIS) and summary of the principal provisions of the 4th draft of the QIS Rules

LC Paper No. CB(2)1903/04-05(01) – 4th draft of the Solicitors' Professional Indemnity Qualifying Insurance Rules)

34. Mr Peter LO invited members to make reference to the paper provided by the Law Society, which explained the proposed Qualifying Insurers Scheme (QIS) for solicitors and the principal provisions of the 4th draft of the QIS Rules.

35. At the invitation of the Chairman, Mr Benny YEUNG, Mr Sundara KRISHNAN and Ms Hilary CORDELL from the Professional Indemnity Scheme Action Group (the Action Group) presented their views on the progress of putting in place a new indemnity scheme to replace the existing scheme (their speaking note was issued to the Panel vide LC Paper No. CB(2)2174/04-05(01), the Law Society and the Administration after the meeting). Their views were summarised as follows –

(a) the Action Group was extremely disappointed that a QIS could not be implemented by October 2005 which was the commencement of the next indemnity year under the current scheme, resulting in the present scheme having to be extended, and solicitors suffering the risks of mutual liability, for a further year;

(b) the Law Society should take efficient action to obtain information from insurers, including the terms and conditions under the QIS and the likely costs of QIS to different types of solicitors firms. The Law Society should also require its appointed consultant to provide the market response and pricing information. Such information should be given to members of the Law Society as soon as possible to enable them to consider the viability of the QIS option;

(c) the Action Group wanted the future scheme to be one without mutual liability, other than to a very limited extent if absolutely necessary, and without subsidisation of contributions. The scheme should be affordable and viable over the long term, and work with proper regard to risk containment. In the view of the Action Group, title insurance would be the best means to achieve this; and

(d) the Action Group would like to request the Law Society to provide regular progress reports on the timetable and workplan for the implementation of the new scheme. The membership of the working

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committee of the Law Society should be expanded, and the Society should arrange forums to which representatives of the insurance industry and the Administration would be invited to discuss the QIS and the stakeholders' concerns.

Issues raised

36. In response to the Chairman's enquiry about the Administration's position, DSG said that the Administration was aware of the financial burden that the arrangements under the current scheme had placed on solicitors, i.e. solicitors were made the insurers of last resort for each other, and accepted that the burden needed to be reduced. However, the Administration had a duty not only to consider the interests of solicitors but also the wider public interest. The stance of the Administration was that it would not oppose the introduction of a new scheme to replace the existing scheme, provided that the new scheme could afford sufficient protection of consumers' interests, i.e. safeguarding of the interests of solicitors' clients in the event of insurer insolvency. He added that DOJ was working closely with the Law Society on the matter but had not yet made a firm decision on the matter. In this connection, the Administration had requested the Law Society to provide for its consideration further justifications as to why a QIS would be acceptable in the public interest.

37. The Chairman said that during the Panel's previous discussions, the Administration had stated that it would not be able to support a new scheme unless it was backed up by safeguards including an "insurance on insurance" arrangement and a Policyholders' Protection Fund (PPF). She asked whether the Administration was still insisting on such measures, taking into account the Law Society's explanation on the features of the proposed QIS and the protective measures which would be available, e.g. scrutiny on the practice of solicitors firms and strict risk management procedures which would be imposed on solicitors firms by the insurers. She further pointed out that in the United Kingdom (UK), where both QIS and PPF were in operation, the QIS was not covered under the PPF.

38. DSG replied that DOJ had identified a number of issues about the proposed QIS and was prepared to take them up with the Law Society. The DOJ would review its position and revert to the Panel, once the response from the Law Society was received and considered.

39. At the request of the Chairman to respond to the views expressed by the Action Group, Mr Chris HOWSE made the following comments –

(a) at the Extraordinary General Meeting (EGM) of the Law Society held on 16 November 2004, the majority of members of the Society voted for the QIS option to replace the existing scheme;

(b) after the EGM, a committee chaired by him with representatives including the Action Group was authorised to draw up the minimum

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terms and conditions for the QIS, which were being negotiated by the Law Society with more than 40 prospective insurers. Expressions of interest had been received from the majority of them. The Law Society expected that the consultant appointed by it could complete a report by end of July 2005 on the response from commercial insurers, and the minimum terms and conditions could be finalised in August 2005. A Qualifying Insurers Agreement (QI Agreement) with the insurers would be drafted after the minimum terms and conditions were agreed and the qualifying insurers identified;

(c) an exercise which was being discussed with insurers was that some of the solicitors firms that fit into the representative profiles would be invited to participate in a costing exercise with an intending insurer, with an understanding that the results of the exercise would be given to members of the Law Society for information on a no-names basis. The exercise would require the participating firms to provide certain information material to the insurers, e.g. particulars about the firms' areas of work and the number of claims notifications made to them within a specified period of time in the past. It was hoped that the result of the exercise would give solicitors firms some indication of the likely pricing and the costs of the QIS. The costing exercise was expected to be undertaken in around September 2005; and

(d) there would be interim meetings with members of the Law Society before finalisation of the whole structure of the QIS and arriving at a decision on the viability of the QIS, which was anticipated to be achieved in early 2006. It was expected that solicitors firms could then deal with the insurance arrangement under the new scheme between May to September 2006.

40. Regarding the minimum terms and conditions, Mr Chris HOWSE pointed out that it was almost certain that commercial insurers would insist on retaining the right to reject a claim for late notification. Mr HOWSE said that he had been sitting on the Claims Committee of the Law Society since 1996, and had found that a very large proportion of the claims considered by the Claims Committee involved late notification. Under the current scheme, a claim would only be thrown out in the rare and special circumstances of it resulting in substantial prejudice to the solicitors' indemnity fund. However, a commercial insurer was likely to reject a claim on the ground of late notification. Apart from this, there might be other different tests applied by commercial insurers in relation to the assessment of claims which required the Law Society to negotiate with the insurers with a view to achieving the best possible terms for its membership.

41. The Chairman asked whether the Claims Committee of the Law Society would be retained under the QIS to continue to handle claims, and if so, whether this would be stipulated in the QI Agreement.

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42. Mr Chris HOWSE replied that the issue had not been resolved yet as there were arguments for and against the retention of a claims committee. He said that the response of the insurance market would have a bearing on the ultimate decision on the matter. He added that the benefits of a claims committee included –

(a) as members serving on the claims committee provided their services free, there would be cost saving for the insurers as far as the handling of the claims was concerned; and

(b) a claims committee could more competently discharge the function of reporting professional malpractices and misconduct which it found in the course of examining claims.

43. In response to the Chairman's question on the timeline for implementation, Mr Chris HOWSE said that the target of putting in place the QIS by September/October 2006 would be achievable. Mr Peter LO added that the pressing issue was the early finalisation of the minimum terms and conditions acceptable to both the members of the Law Society and the insurers. The Law Society would consider the views of all concerned parties and stakeholders as the negotiation progressed. DSG said that the Law Drafting Division of DOJ would offer its best professional services on drafting matters after receiving the draft rules from the Law Society. He expected that it would take about three months for the Division to consider the draft rules before submission of the rules for the Chief Justice's approval.

44. Ms Miriam LAU expressed concern about the ability of the Law Society to implement the new scheme before October 2006, as there were still complex and controversial issues to be resolved before the Law Society could actually proceed with the work on the draft rules, and taking into account the time required for completion of the legislative process. She urged the Law Society to expedite the work, and engage its membership in forum discussions with a view to reaching decisions on the way forward at the earliest opportunity.

45. Mr Albert HO asked whether there would be the possibility of retaining the existing scheme if the QIS in its final form was ultimately rejected by members of the profession.

46. Mr Chris HOWSE responded that the membership had by a majority voted that they preferred a QIS to a Master Policy Scheme. As said, the next step would be to finalise the minimum terms and conditions under the QIS and to agree with the interested insurers on the terms and conditions after negotiation. The Law Society had sought the assistance of a leading counsel from UK in drawing up the minimum terms and conditions, which were considered to be the most favourable to members of the profession. However, in the event of the insurers coming back and insisting on terms which the membership found unacceptable, or where the pricing and costs were found to be prohibitively high as shown by the costing exercise, it would be open to the membership to further decide whether the QIS option should be dropped.

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47. Mr Peter LO said that the Law Society would be responsive to its members' views, and would seek to apprise its members of the progress of implementing the new scheme through various channels, including posting the information on the Society's website. Where necessary, meetings of its membership would be convened to discuss matters. Mr HOWSE said that the Law Society was bound by the resolution passed at the EGM on 16 November 2004 which authorised it to proceed with the QIS. Therefore, another general meeting of its membership would have to be held if a decision to change direction was to be made and endorsed.

48. Ms Miriam LAU suggested that a title insurance scheme should also be considered as a fall-back alternative to a general indemnity insurance scheme, as it was found that most of the claims against solicitors firms arose from conveyancing work undertaken by the firms.

49. Mr Peter LO said that the law required the provision of indemnity insurance of solicitors against claims for civil liability arsing out of practice. In his view, the possibility of adopting interim measures which fell short of the statutory requirement would be limited. He added that under title insurance, the person insured would be the owner of the property, not the solicitor. To use title insurance to absorb the liability of solicitors arising from civil claims would be a complex matter which required detailed consideration.

50. Ms Hilary CORDELL said that she had been engaged in discussions on the issue of title insurance with parties including the former President of the Law Society and the QIS consultant engaged by the Law Society. In the course of discussion, she had undertaken to produce a detailed paper on how a title insurance scheme could work to alleviate the financial burden the indemnity requirement had imposed on solicitors. She explained that the idea of a title insurance scheme was that there would be a single insurance policy to provide insurance cover to a number of insured parties, including the solicitor undertaking the conveyancing work. It was hoped that the policy could ultimately be used as a document, with effect like that of a certificate of title, to enable secondary-mortgaged properties to be properly registered, hence tidying up the title registration system.

Way forward

51. The Chairman considered that the Panel should follow up the progress of implementation of the QIS in the light of the concerns raised. She requested the Law Society to update the Panel on developments so that the Panel could continue discussion when the new legislative session began.

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52. The Chairman requested the Administration to provide a written response to the Panel to explain its position on the proposed QIS and its views on whether the proposed QIS would offer reasonable and adequate protection of the public interest, taking into consideration the information provided by the Law Society.

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VI. Solicitors' Accounts (Amendment) Rules
(LC Paper No. CB(2)2060/04-05(05) – Paper provided by the Law Society of Hong Kong)

53. Mr Colin COHEN briefed members on the paper provided by the Law Society on the proposed amendments to the Solicitors' Accounts Rules in relation to the requirement for solicitors to account to their clients for interests on monies deposited with them.

54. In brief, the paper explained that a Practice Direction J was issued by the Law Society to its members in 1997, which required solicitors to deposit a client's money in an interest bearing account and to account to the client for any interest earned. However, in view of the declining interest rates since 1997, the administrative costs for solicitors in calculating and accounting for the interest accrued frequently exceeded the interest earned. Accordingly, the Practice Direction was suspended in January 2004 until such time as interest rate reached the level payable in January 1997 when the Practice Direction was promulgated. The latest position was that the Council of the Law Society decided in June 2005 to make it mandatory, by way of the amendment rules, for solicitors to account for interest earned if –

(a) the client's monies deposited were of an amount specified in column 1 of the Schedule to the rules;

(b) the monies had been retained in the account continuously for a period specified in column 2 of the Schedule; and

(c) the amount of the interest thus accrued exceeded $500.

55. In response to DSG's enquiry, Mr Colin COHEN clarified that the amount of interest which solicitors should pay to their clients would be the amount in excess of $500, the $500 being the administrative costs for solicitors in calculating and accounting for the interest accrued. DSG suggested that this should be clearly explained in the rules to avoid misunderstanding. Mr COHEN considered that this was a drafting issue which the Law Society Council would consider in further consultation with DOJ.

56. In response to the Chairman, Mr Colin COHEN said that the Consumer Council had been consulted on the proposed amendments.

57. The Chairman said that so far as policy was concerned, the Panel had no objection to the proposed amendments. She added that Members would have the opportunity to examine the new rules upon their introduction into LegCo.

58. The meeting ended at 6:45 pm.

Action

Council Business Division 2
Legislative Council Secretariat
31 August 2005