

立法會
Legislative Council

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(These minutes have been seen
by the Administration)

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Panel on Administration of Justice and Legal Services

Minutes of meeting
held on Monday, 27 March 2006 at 4:30 pm
in Conference Room A of the Legislative Council Building

- Members present** : Hon Margaret NG (Chairman)
Hon James TO Kun-sun
Hon Miriam LAU Kin-ye, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon MA Lik, GBS, JP P
- Member attending** : Hon TAM Heung-man
- Members absent** : Hon LI Kwok-ying, MH (Deputy Chairman)
Hon Martin LEE Chu-ming, SC, JP
- Public Officers attending** : Item IV
Ms Elizabeth TSE
Deputy Secretary for Financial Services and the Treasury
(Treasury)
Miss Eliza LEE
Deputy Director of Administration
Judiciary Administration
Miss Emma LAU
Judiciary Administrator

Mr Augustine L S CHENG
Deputy Judiciary Administrator (Operations)

Item V

Mr Stephen WONG
Deputy Solicitor General
Department of Justice

Ms Kitty FUNG
Senior Government Counsel
Department of Justice

Item VI

Mr James O'NEIL
Deputy Solicitor General (Constitutional)
Department of Justice

Mr Alan LO
Principal Assistant Secretary (Financial Services)
Financial Services and the Treasury Bureau

**Attendance by
invitation** :

Item V

The Law Society of Hong Kong

Mr Peter LO
President

Mr Patrick MOSS
Secretary General

Mr Nick HUNSWORTH
Member of QIS Working Party

Ms Vivien LEE
Assistant Director, PIS

Professional Indemnity Scheme Action Group

Mr Benny YEUNG

Ms Hilary CORDELL

Ms May TAM

Ms Therese CHOW

Mr Sundara KRISHNAN

Ms Lousana YAU

Mr Louis TO

Mr Larry KO

Item VI

The Law Society of Hong Kong

Mr Joseph C W LI
Member of the Working Party on Limited Liability
Partnership

Mr Patrick MOSS
Secretary General

Ms Angela LI
Assistant Director
Regulation and Guidance

Hong Kong Institute of Certified Public Accountants

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

Mr Ken McKELVIE
Chairman of the Professional Risk Management Committee

Ms Winnie C W CHEUNG
Chief Executive & Registrar

Mrs Patricia McBRIDE
Director, Standard Setting

Clerk in attendance : Mrs Percy MA
Chief Council Secretary (2)3

Staff in attendance : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Miss Lolita SHEK
Senior Council Secretary (2)7

Mrs Fony TSANG
Legislative Assistant (2)3

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I. Confirmation of minutes of meeting

(LC Paper No. CB(2)1486/05-06 – Minutes of the special meeting on 12 December 2005

LC Paper No. CB(2)1491/05-06 – Minutes of the meeting on 23 January 2006)

The minutes of the meetings held on 12 December 2005 and 23 January 2006 were confirmed.

II. Information papers issued since last meeting

(LC Paper Nos. CB(2)1245/05-06(01) and (02) – Papers provided by Civil Service Bureau and the Independent Commission Against Corruption on the decision not to prosecute Mr Michael WONG Kin-chow

LC Paper Nos. CB(2)1278/05-06(01) to (03) – Written submission from the Hong Kong Catholic Commission for Labour Affairs concerning the operation of the Labour Tribunal

LC Paper No. CB(2)1380/05-06(01) – Judgment of the High Court (HCMP 2878/2004)

LC Paper No. CB(2)1471/05-06(01) – Letter dated 17 March 2006 from the Administration on 2005 annual review of financial limits of legal aid applicants)

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)1490/05-06(01) – List of outstanding items for discussion

LC Paper No. CB(2)1490/05-06(02) – List of follow-up actions)

3. Members agreed that the following items on the outstanding list should be discussed at the next meeting on 24 April 2006 –

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- (a) Establishment of a third law school;
- (b) Work of the Law Drafting Division of the Department of Justice; and
- (c) Review of legislative provisions containing the drafting formula "to the satisfaction" of an enforcement agency.

IV. Budgetary arrangement and resources for the Judiciary

(LC Paper No. CB(2)1489/05-06(01) – Background brief prepared by the LegCo Secretariat on "Budgetary arrangement and resources for the Judiciary"

LC Paper No. CB(2)1489/05-06(02) – Letter dated 20 March 2006 from the Judiciary Administration on "Budgetary arrangement and resources for the Judiciary"

LC Paper No. CB(2)1489/05-06(03) – Letter dated 20 March 2006 from the Financial Services and the Treasury Bureau)

4. The Judiciary Administrator (JA) briefed members on the Judiciary's position on the revised arrangement for the preparation of the Judiciary's draft Estimates for 2006-07 and the resource implications for the Judiciary arising from the Administration's legislative framework concerning interception of communications and covert surveillance as set out in her letter dated 20 March 2006. Under the revised budgetary arrangement, the Judiciary had submitted to the Administration its resource requirements for 2006-07 in August 2005 prior to the Administration drawing up the operating expenditure envelope for the Judiciary.

5. JA said that the draft Estimates for 2006-07 for the Judiciary would provide adequate resources for the implementation of measures to shorten the waiting times at different levels of court. As she had informed Members at the special meeting of the Finance Committee (FC) to examine the Estimates of Expenditure for 2006-07 on 16 March 2006, the Judiciary had started to recruit additional Deputy Judges and judicial officers since the second half of 2005. Recruitment for Magistrates had started in November 2005 and that for Judges for the District Courts and Court of First Instance (CFI) would be conducted in the coming financial year.

6. JA added that the Judiciary considered that the revised budgetary arrangement was working satisfactorily, and looked forward to the Administration's continued adoption of this arrangement for the preparation of the Judiciary's budget in future.

7. As regards the resource implications of the Interception of Communications and Covert Surveillance Bill, JA informed members that the Judiciary's position on adequate resources required had been set out in its paper for the meeting of the Panel on Security on 21 February 2006 (LC Paper No. CB(2)1189/05-06(01)). The Judiciary would continue to discuss with the Administration on this matter.

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8. Deputy Secretary for Financial Services and the Treasury (Treasury) (DS(Tsy)) reported on the implementation of the revised budgetary arrangement for the Judiciary in the context of the preparation for the 2006-07 draft Estimates. She said that the Administration would be pleased to extend the revised arrangement as a standing practice for the coming Estimates.

Revised budgetary arrangement

9. The Chairman sought clarification on the position of the Administration and the Judiciary on the Panel's earlier suggestion that the Judiciary should have autonomy to determine its budget on the basis of some objective yardsticks or predetermined formulae. Ms Emily LAU said that the Administration and the Judiciary Administration should further discuss the Panel's suggestion and adopt the suggested arrangement which was crucial to maintaining the Judiciary's independence in the administration of justice. Ms LAU added that under such arrangement, the Judicial Administration would be required to justify the resource requirements in its budget.

10. DS(Tsy) assured members that the Administration was open to the suggestion. She explained that under the revised budgetary arrangement, the Judiciary was allowed to prepare its resource requirements independently. The Administration would then consider the merits of the Judiciary's bids and overall government affordability.

11. JA said that the Judiciary was keeping an open mind on any suggested measures within the parameters of the Basic Law, which would enhance judicial independence and ensure that the Judiciary was provided with adequate resources to administer justice without delay. The Judiciary would be willing to provide justification for the resource requirements included in its draft Estimates. However, as the revised budgetary arrangement had just been in place and had worked satisfactorily, the Judiciary would continue to monitor the situation closely before considering whether any further measures were necessary.

Adm and 12. The Chairman said that the Administration and the Judiciary Administration should consider whether there was further scope to improve the budgetary arrangement for the Judiciary and revert to the Panel in due course. The Panel would follow up on the matter next year.
Judiciary
Adm

Resource implications for the Judiciary arising from the Administration's legislative framework concerning interception of communications and covert surveillance

13. The Chairman said that Members had expressed concern about the financial implications of the legislative framework concerning interception of communications and covert surveillance proposed in the Interception of Communications and Surveillance Bill. However, details of the financial implications of the Bill had not been provided by the Administration. The Chairman sought clarification on whether the policy bureau concerned should provide such details when a bill was introduced into the Legislative Council (LegCo).

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14. DS(Tsy) explained that it was a normal practice for the policy bureau concerned to indicate the financial implications of a new legislative proposal, except for proposals which involved controversial issues or required to be implemented urgently. This was because substantial amendments, which might have significant financial implications, might be made to such proposals as a result of the discussions of the Bills Committees concerned.

15. As regards the financial implications of the Interception of Communications and Surveillance Bill, DS(Tsy) assured members that the Administration had undertaken to provide the Judiciary with the necessary resources for implementing the proposed legislative regime, if the Bill was passed and enacted. Internal discussion among the bureaux concerned would be held on whether the additional requirements should be met from existing resources or by seeking additional resources.

16. Ms Audrey EU noted the estimated additional resources required by the Judiciary in paragraph 17 of the background brief prepared by the LegCo Secretariat for the implementation of the legislative proposals. Ms EU sought clarification on the following –

- (a) whether the estimated additional resources had accurately reflected the requirement of the Judiciary;
- (b) how long it would take to recruit additional judges, taking account of the difficulty in recruiting new judges, and the need to comply with the recruitment procedure;
- (c) whether sufficient new judges could be recruited before the Bill was passed so as to ensure that its implementation would not adversely affect the administration of justice;
- (d) whether Deputy Judges would be appointed to relieve the strains on the manpower of the Judiciary before new substantive Judges were in post, and whether the staff costs involved had been included in Judiciary's estimated resource requirements; and
- (e) whether CFI Judges would be deployed to handle the work involved in judicial authorisation in the legislative proposals, so that their daily work in CFI would have to be undertaken by Deputy Judges.

17. Ms Emily LAU also enquired about the time required for recruiting additional judges, and whether the Judiciary had planned to recruit all the additional judges required before implementation of the Bill.

18. JA responded that the estimated resource requirement had been calculated on the basis of the Administration's proposed legislative framework in the Interception of Communications and Surveillance Bill. The Judiciary had planned to commence the

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recruitment for CFI Judges within a short time. It was hoped that the timetable for recruitment of CFI Judges, as well as the provision of additional supporting staff and related resources to the Judiciary could dovetail with the that for the implementation of the legislative scheme. The Judiciary would continue to discuss with the Administration on the matter.

19. DS(Tsy) supplemented that the support of the Establishment Subcommittee had to be sought for the creation of CFI posts before the funding proposal was submitted to FC for approval. Seeking funding approval for the posts could therefore proceed in parallel with the recruitment exercise for additional judges.

20. As regards the appointment of judges to the Panel of Judges responsible for the authorisation of all interception of communications and the more intrusive covert surveillance operations, JA said that according to the proposal in the Bill, the Judges would be appointed by the Chief Executive on the recommendation of the Chief Justice (CJ). JA added that pending the appointment of additional substantive Judges, the Judiciary might consider assigning Deputy Judges to perform some of the daily duties in the CFI as an interim measure.

21. The Chairman expressed concern that the quality of the essential judicial services in the administration of justice would be affected by the proposed deployment of CFI Judges to the Panel for judicial authorisation under the legislative proposal, while leaving the essential judicial work to Deputy Judges. She commented that the Judiciary would put the cart before the horse in making such an arrangement.

22. JA responded that the Judiciary had stated in its paper to the Panel on Security that additional CFI posts would be required for the implementation of the Bill. It had also explained why Deputy Judges could not be appointed to undertake the full range of duties of CFI Judges in the paper.

23. Mr James TO pointed out that if the Bill was enacted and the proposed legislative framework was implemented, applications for judicial authorisation for interception of communications and more intrusive covert surveillance operations had to be processed on an urgent basis. Given the existing stringent conditions of the staff resources in the Judiciary, other essential judicial work would inevitably be affected. Mr TO expressed concern that the waiting time at the court would eventually be increased.

24. Mr TO was of the view that the Judiciary should stand firm on the position that the Bill should not be implemented until the Judiciary had been provided with the required resources including additional judges. The Administration would be bound to satisfy the Judiciary's requirements. Ms Emily LAU concurred with Mr TO.

25. Ms Miriam LAU said that the Bills Committee on Interception of Communications and Surveillance Bill had discussed the matter raised. The Bills Committee expected that the scrutiny of the Bill would complete and the Second Reading debate on the Bill be resumed before the end of the current legislative session,

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since the proposed legislative framework had to be put in place when the temporary validity of the Law Enforcement (Covert Surveillance Procedures) Order ordered by the Court expired in August 2006. The Bills Committee was concerned that judicial services should not be affected by the implementation of the Bill.

26. Ms Miriam LAU urged the Judiciary Administration to work out a plan for the provision of judicial manpower relating to the implementation of the proposed legislative framework together with the Administration, and explain it to Members clearly. She added that Members would support the provision of additional resources for the Judiciary.

27. Ms Emily LAU noted the explanation put forth by the Judiciary Administration in paragraph 7 of its paper to the Panel on Security that judges should be assigned to take up duties concerning judicial authorisation on a full-time basis. She also noted from paragraph 10 of the paper that there were substantial areas of duties which could not be performed by Deputy Judges. Noting that the CFI was already very substantially under-staffed, Ms LAU expressed concern that deployment of CFI Judges to the Panel of Judges for judicial authorisation would create additional pressure on the already stringent judicial staff resources. If the Bill was to be implemented before additional judges could be recruited, the operation of the Judiciary might be paralysed. She stressed that such situation would not be acceptable to Members. The Judiciary should not allow judiciary services to be adversely affected by the implementation of the Bill. She requested JA to relate members' concerns to CJ.

28. Ms Emily LAU added that proposals for creation of additional CFI posts had to be submitted to the Establishment Subcommittee and then FC for consideration by end of April 2006 if the posts were to be created in the current session. Therefore, the Judiciary Administration should work out a plan with the Administration as soon as possible.

29. JA assured members that the Judiciary Administration would continue to discuss with the Administration on the provision of adequate resources for the Judiciary for the implementation of the Bill. The Judiciary considered that it was important that while the new judicial authorisation system should be implemented properly and smoothly, disruptions should not be caused to its daily work in the administration of justice.

Judiciary
Adm

Adm

30. At members' request, JA undertook to provide a written response on the estimated number of additional CFI and Deputy Judges required, the timetable on the recruitment and appointment of these judges and the plan for deployment of Judges and Deputy Judges in the event that the Bill had to be implemented before additional judges could be recruited. DS(Tsy) also undertook to co-ordinate a written response on the work plan and time schedule for the provision of additional resources for the Judiciary for the implementation of the legislative framework proposed in the Bill.

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31. The Chairman suggested that this item be placed on the agenda for the Panel meeting on 22 May 2006 tentatively, pending the written responses from the Administration and the Judiciary Administration. Members agreed.

(Post-meeting note: A special joint meeting of the Panel on Administration of Justice and Legal Services and Panel on Security has been scheduled for 22 May 2006 to discuss the financial proposal on the implementation of the Administration's legislative framework concerning interception of communications and covert surveillance.)

V. Qualifying Insurers Scheme of the Law Society of Hong Kong

(LC Paper Nos. CB(2)1204/05-06(01) to (03) – Correspondence between the Law Society of Hong Kong and the Department of Justice (DOJ) on the proposed Qualified Insurers Scheme (QIS)

LC Paper No. CB(2)1559/05-06(01) – Progress report from the Law Society of Hong Kong)

32. The Chairman referred members to the progress report on the implementation of the QIS provided by the Law Society of Hong Kong which was tabled at the meeting.

(Post-meeting note: The progress report from the Law Society was issued to members vide LC Paper No. CB(2)1559/05-06(01) after the meeting.)

33. Deputy Solicitor General (DSG) informed members that DOJ supported in principle the implementation of the QIS, subject to the three conditions set out in its letter dated 16 February 2006 to the Law Society so as to ensure that the interests of the consumers would be safeguarded.

34. Mr Peter LO, President of the Law Society, highlighted the salient points in the progress report provided by the Law Society as follows –

- (a) the Law Society had determined to maintain the protection to the public in drafting the terms and conditions of the QIS;
- (b) under the QIS, the same amount of indemnity in respect of the same type of civil liability incurred in connection with legal practice would be provided to a solicitors' firm as in the existing Professional Indemnity Scheme (PIS). QIS would provide indemnity against liability to the extent of HK\$10 million per claim, inclusive of defence costs;
- (c) the main difference between PIS and QIS was that under QIS, indemnity would be provided by one or more Qualifying Insurers selected by the firm, and not by a fund established under the Solicitors (Professional Indemnity) Rules (Cap. 159 sub.leg. M) (Indemnity Rules) to which the

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principals in practice contributed. Under the QIS, if a Qualifying Insurer was unable to pay a claim because of insolvency, the firm which the policy was originally intended to cover would have to personally pay the claim;

- (d) the relevant draft agreements, such as the Qualifying Insurers agreement, had not yet been finalised and therefore had not been provided to members of the Law Society. The draft Solicitors (Professional Indemnity) (Qualifying Insurance) Rules (QIS Rules) had already been uploaded onto the website of the Law Society in 2005 but were still being amended;
- (e) the Law Society conducted two fora in March 2006 to explain the proposed QIS to its members and to hear their views. The “domestic” issues to be resolved by members of the Law Society were set out in the President’s Message for the April 2006 issue of Hong Kong Lawyer in Annex B to the progress report;
- (f) to safeguard the interests of the public, there was a requirement for run-off cover for a period of six years after cessation of practice of a firm under the QIS. Members of the Law Society were concerned about the high cost for run-off cover which was estimated to range from 250% to 400% of the last premium paid;
- (g) if a firm ceased practice before the implementation of the QIS, it would not have a QIS policy. There would not be run-off cover except to the extent that claims notified to the PIS before the implementation of the QIS would be covered by the PIS. Claims or circumstances that were not notified to the PIS before the implementation of the QIS would not be covered by either of the Schemes;
- (h) a firm which did not have insurance coverage would not be permitted to practise. Under the QIS, firms which were unable to obtain coverage from Qualifying Insurers would be covered by the Assigned Risk Pool (ARP), but at premiums which were punitive and deterrent. An indication based on the experience in the United Kingdom (UK) was 27.5% of gross fee income of a firm. No firm was entitled to remain in the ARP for more than 24 months in a five-year period. If a firm was unable to obtain Qualifying Insurance outside the ARP after the 24 month period, it must cease to practise;
- (i) members of the Law Society had expressed concern about the high premiums and the punitive and deterrent effect of the ARP. However, the system did not produce a catastrophic effect in the UK as indicated from the report issued by the English Law Society in Annex A to the progress report. There were only 36 firms in the ARP in the UK in 2004-05, which was only a small proportion of the total solicitors’ firms in the country; and

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- (j) the Law Society would present a complete package of the QIS to its members at the Extraordinary General Meeting (EGM) on 27 April 2006 at which a decision would be taken on the QIS. The technical problems would therefore have to be resolved by early April 2006.

35. Mr Benny YEUNG, in his capacity as a member of QIS Working Party of the Law Society, thanked DOJ, in particular staff in the Law Drafting Division, for its assistance in resolving the technical and policy issues concerning the QIS, and in the preparation for the implementation of the Scheme.

Discussion

36. Mr Larry KO of the Professional Indemnity Scheme Action Group said that the Law Society should have worked harder on the preparation of the implementation of the QIS in 2005 instead of leaving a lot of issues to be resolved at the last moment. He was dissatisfied that the draft QIS Rules, which were copied from the UK Rules, had not yet been finalised a month before the EGM at which members were asked to take a decision on the QIS. Members had not been provided with other draft agreements such as the QIS agreements and ARP agreement, which were very important documents based on which members could assess whether the QIS could serve their interests. Mr KO requested that all the necessary documents and information relating to the QIS should be provided to members of the Law Society at least one week before the EGM on 27 April 2006. The Law Society should also ensure that the outstanding policy issues should be resolved before the meeting.

37. Ms Emily LAU supported Mr Larry KO's request for provision of documents to members of the Law Society before the EGM. Ms LAU added that she was not confident that the QIS could be implemented in October 2006 as scheduled, as important documents were still not yet finalised for the consideration of the members of the Law Society. She enquired about the consequences in the event that the QIS was voted down at the EGM.

38. Mr Peter LO explained that while the concept of the QIS had been discussed for a long time, the contents of the QIS had become clearer only recently after various technical issues had been resolved. Mr LO assured members that a full set of the QIS documents would be issued to members of the Law Society with the notice of meeting 14 days before the EGM. Meanwhile, the Law Society would continue to meet with its members and answer their queries on the Scheme.

39. Mr LO further said that although many members of the Law Society had supported the proposed QIS initially, he was not certain about their response now because of the uncertainties over the premium and the risk associated with the ARP. Mr LO stressed that the way forward would be decided by members at the EGM. If members voted down the QIS, the existing PIS would continue to operate.

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40. The Chairman asked whether the existing PIS could be improved, if it had to continue to operate if the proposed QIS was voted down at the EGM.

41. Mr Peter LO responded that the consultant hired by the Law Society to conduct a review on the insurance arrangements of the Solicitors Indemnity Scheme in 2003 had recommended a Master Policy Scheme and the QIS as an alternative to the existing PIS. Members had opted for the QIS at the EGM in November 2004. If members voted down the QIS at the EGM on 27 April 2006, the Law Society would continue to explore other options for members' consideration. However, the study might take time to complete as professional indemnity was a very complicated issue.

42. Ms Hilary CORDELL of the Professional Indemnity Scheme Action Group pointed out that although members of the Law Society had indicated their dissatisfaction with the existing PIS several years ago, the situation had not been improved since then. The Law Society had failed to collect from the market information on the alternative insurance schemes available and compared the different schemes as requested by its members. Although members had voted for the QIS at the EGM two years ago, the QIS presented to members at the recent fora still contained a series of problems. Ms CORDELL said that she was dissatisfied with how the reform in professional indemnity scheme had been dealt with by the Law Society.

43. Echoing Ms CORDELL's views, Mr Larry KO added that the consultancy study commissioned by the Law Society in 2003, while costing a lot of money, had provided little assistance to members in identifying an alternative indemnity scheme. Members had not been given any choices but were asked to either accept the QIS or adhere to the existing PIS. Mr KO said that he was dissatisfied with the way the Law Society had treated its members.

44. Ms Miriam LAU declared that she was a practising solicitor. Ms LAU stressed that although solicitors were dissatisfied with the existing PIS under which they had to pay high premiums for others, they would not just accept any alternative indemnity scheme without question. The legal profession had expressed concern about the high premium for the ARP under the proposed QIS. Referring to the situation in the UK described in Annex A to the Law Society's progress report tabled at the meeting, Ms LAU pointed out that each firm in the ARP in the UK in 2004-05 was required to pay around £ 12,000 only, which was much lower than 27.5% of its gross income. Given the present market situation, solicitors' firms in Hong Kong could hardly afford a premium as high as 27.5% of their gross income.

45. Ms LAU added that members of the Law Society were not willing to continue with the existing PIS. They wished to adopt a scheme which could better serve their interests. The Law Society should provide information on different options for members' reference.

46. Mr Peter LO explained that under the existing PIS, the premium was calculated according to a formula. However, under the proposed QIS, the premium was

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determined by forces of the free market. Mr LO further explained that the firms that had to be covered by the ARP would be very extreme cases, they were usually firms in trouble and would likely have to cease practice. For firms which were covered by Qualifying Insurers, it was estimated that the premium would not differ greatly from that under PIS. Mr LO informed members that according to experience in UK, premium had decreased in general. According to the trial QIS scheme conducted by Law Society, premium for some participating firms had increased while that for others had decreased. However, the exact amount of the premium would not be known until a policy was accepted by a Qualifying Insurer.

47. Ms Miriam LAU pointed out that it was unfair to members of the Law Society if they were asked to accept the QIS without the opportunity to consider all the relevant details. She urged the Law Society to present the whole picture of the QIS to its members as soon as possible. The estimated premium amount should be provided to them even if the exact premium amount was not yet available. It should also inform its members that the ARP and run-off cover were the best conditions it could obtain for them. Mr Peter LO undertook to provide members of the Law Society all the relevant information on the QIS.

Law
Society

48. DSG stressed that while noting the concerns of the profession about the proposed QIS, DOJ considered that the interests of consumers should be safeguarded under the Scheme. Referring to the coverage for claims provided for firms which ceased practice in paragraph 34(g) above, DSG said that DOJ was concerned that the interests of the consumers would not be protected as claims not notified to the PIS before the implementation of the QIS would not be covered by both Schemes after the QIS had been implemented.

49. Mr Peter LO responded that the existing Indemnity Rules could be amended so that indemnity for unnotified claims would be provided for after the implementation of the QIS. However, members of the Law Society would be required to pay an extra cost for such indemnity.

Law Society 50. The Chairman requested the Law Society to calculate the estimated costs and provide the details to its members for consideration. Mr Peter LO agreed.

51. DSG said that in order to protect the interests of consumers, coverage for claims should be provided for firms which ceased practice, irrespective of the high premiums for run-off cover. DOJ would discuss with the Law Society further on the issue.

Law Society 52. The Chairman requested the Law Society to provide a paper on the decision of its members on the QIS after the EGM on 27 April 2006 to facilitate the Panel's consideration on how the matter should be followed up. Mr Peter LO undertook to provide the paper.

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VI. Limited liability for professional practices

(LC Paper No. CB(2)1490/05-06(03) – Background brief prepared by the LegCo Secretariat on "Limited liability for professional practices"

LC Paper No. CB(2)1371/05-06(01) – Papers provided by the Administration on "Limitation of Liability"

LC Paper No. CB(2)1490/05-06(04) – Submission from the Hong Kong Institute of Certified Public Accountants on "Limited liability for professional practices"

LC Paper No. CB(2)1559/05-06(02) – Letter dated 24 March 2006 from the Law Society of Hong Kong)

53. Members noted from the Administration's paper that the Administration had decided that no further studies would be carried out into proposals on limitation of liability to pay compensation, during the remainder of the Chief Executive (CE)'s term of office.

54. Mr Joseph LI of the Law Society of Hong Kong informed members that the Law Society was disappointed at the Administration's decision. The Administration had not provided any explanation for rejecting the proposals for reform. Mr LI further said that the Law Society had spent a lot of efforts in conducting the study on limited liability partnership (LLP). The Administration should explain why LLP should not be implemented. He also agreed with the Panel that the Administration should consider proposals on LLPs separately from those on other forms of limitation of liability.

(Post-meeting note: The submission dated 24 March 2006 from the Law Society to DOJ was tabled at the meeting and issued to members after the meeting.)

55. Ms Winnie CHEUNG of the Hong Kong Institute of Certified Public Accountants (HKICPA) said that the HKICPA was deeply disappointed at the Administration's decision on the issue of professional liability reform. She highlighted the salient points in HKICPA's submission as follows –

- (a) the HKICPA disagreed that its proposal would have the effect of shifting liability from professional service providers to the consumers as stated in the Administration's paper. The proposed reform in limitation of liability was in the public interest and would not affect consumers' rights;
- (b) the existing liability system was unfair and inequitable to the professionals in the accounting sector, as they had to cover damages caused by the errors of others. There had also been an increased level of risk arising from assurance work, and more was being asked of the

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profession without any compensating support. The balance of protection of consumers' interests and those of the professions had swung too far against the accounting profession in recent years;

- (c) as a global financial centre, Hong Kong was short of support for its professions as compared with its international counterparts. Most common law and sophisticated jurisdictions had or was introducing liability reforms. Hong Kong should provide its professionals with the legal protection and appropriate legal liability framework available in other similar jurisdictions;
- (d) professional liability reform was required urgently, and LLPs should be introduced in Hong Kong as soon as possible; and
- (e) the HKICPA suggested that the Administration should consider setting up a multi-disciplinary working party to take the matter forward and make recommendations.

Discussion

56. The Chairman asked whether the Administration had considered the proposals on LLPs separately from the issue of proportionate liability as requested by the Panel at its meeting on 23 May 2005.

57. Deputy Solicitor General (Constitutional) (DSG(C)) replied that the Administration had considered all the proposals for the limitation of liability to pay compensation put forward by organisations representing various sectors including the legal, accounting and medical professions, and reached the decision set out in its paper.

58. Ms TAM Heung-man sought clarification on why the Administration had refused to introduce LLPs or study LLP first, given that the Law Society had already drafted a bill on LLP for the Administration's consideration, and the Consumer Council had indicated that it did not object to the adoption of LLP provided that there would be sufficient safeguards for consumers. Other sophisticated jurisdictions had adopted LLP.

59. DSG(C) explained that the proposals the Administration had received from various professions recommended not only the introduction of LLPs but also proportionate liability and caps on the amount of compensation to be awarded. Each of these proposals cut cross other sectors and affected other professions. It was not possible for the Administration to decide on one proposal without considering the others. DSG(C) clarified that a major concern of the Administration was the provision of safeguards for consumers' interests. These proposals had to be studied in detail and consumers of the various sectors should be consulted before any of the proposals could be introduced. Ms Miriam LAU however pointed out that the Administration had already indicated in its paper that no further studies would be carried out into the proposals during the remainder of CE's term of office.

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60. Ms TAM Heung-man sought clarification on whether consultation was made by the Administration before reaching the present decision. DSG(C) clarified that the Administration had considered all the proposals received on limitation of liability before making the decision. All the policy bureaux and departments responsible for the professions concerned had been consulted.

61. In response to the request from Ms TAM Heung-man, Ms Winnie CHEUNG cited the court case involving the Enron Corp. and Arthur Andersen to explain why professional liability reform should be introduced. Ms CHEUNG explained that if these companies had not been under the LLP regime, all their innocent partners in the world would have been affected by the court case and suffered great losses. She urged the Administration to introduce LLP in Hong Kong urgently.

62. Ms CHEUNG further clarified that the HKICPA was not seeking a drastic reform of the liability system. The HKICPA proposal covered issues of economic loss only. She urged the Administration to consider carrying out studies on the matter and involve the professions concerned in the studies so that they could contribute to the reform of the liability system.

63. Ms Miriam LAU was of the view that while the Administration had insisted on full protection of the interests of consumers, it had not paid heed to the lack of sufficient protection to the professionals concerned as service providers. Ms LAU stressed that the professionals had not proposed to shun their liability altogether but had only requested for a more equitable liability system under which they would not be required to bear the costs of wrong doing by other wrong doers. She could not see the reason why Hong Kong had to be so harsh on its professionals whereas other similar jurisdictions had all provided adequate protection to their professionals by adopting LLPs or similar schemes. She considered that the Administration had the responsibility to render the necessary assistance to the professionals in Hong Kong in this respect.

64. As regards the safeguarding of consumers' interests, Ms LAU opined that there would be sufficient protection to the consumers as long as the system was fair and transparent, so that consumers could make informed choices.

65. DSG(C) explained that there was a long held common law principle that victims of civil wrong were entitled to the award of the full amount of compensation by the court. The full cost of wrong doing should be borne by the wrong doer. The proposals in relation to capping of liability and proportionate liability would depart from such principle and all the proposals to introduce limitation of liability to pay compensation would shift liability from the professional service providers to the consumers. The professional sectors had already been given recognition and a degree of protection under the law. Introducing changes to the liability system would upset the existing balance with the need to protect and safeguard the consumers' interests. The Administration had therefore concluded that no further studies would be carried out into the proposals during the remainder of the CE's term of office.

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66. In response to the Chairman, Principal Assistant Secretary (Financial Services) clarified that the subject of limitation of liability was a legal policy issue which was under the purview of DOJ. The conclusion not to conduct further study of proposals to limit liability was a collective decision of the Administration.

67. Ms Miriam LAU pointed out that the Administration's decision would adversely affect the development of Hong Kong as an international financial centre. In the absence of LLP, the professionals in Hong Kong might become increasingly deterred from undertaking tasks with high risks, and hence would not be able to compete on a level playing field with their counterparts in other major financial centres which had adopted LLP.

68. Mr Joseph LI said that the Law Society had only requested for the Administration to take a small step, and not a giant leap, towards reform in the legal framework for conducting business in Hong Kong by introducing LLP. He assured members that the protection for consumers' interests would not be reduced with the implementation of LLP in the legal profession, as the amount of indemnity was stipulated in the Indemnity Rules. Both the existing PIS and the proposed QIS provided indemnity against liability to the extent of HK10 million per claim, inclusive of defence costs. Mr LI reiterated that LLP should be adopted in Hong Kong so as to enhance Hong Kong's competitiveness as an international financial centre.

69. The Chairman said that she was very disappointed that the Administration had disregarded the detailed studies on limitation of liability conducted by the various professions, and refused to carry out further studies on their proposals without furnishing any explanations for its decision. Members present at the meeting expressed similar disappointment.

70. Ms Miriam LAU suggested that the Panel should urge the Administration to reconsider the proposals from the professions concerned and revert to the Panel on the matter. She further suggested that as professional liability reform had significant implications on Hong Kong's competitiveness as a leading international financial centre in the Asia-Pacific region, the views expressed by the Panel should be referred to the Financial Secretary for consideration. Members agreed.

(Post-meeting note : The letter dated 31 March 2006 conveying the views of the Panel to the Financial Secretary was issued to members vide LC Paper No. CB(2)1645/05-06(01).)

71. The Law Society and the HKICPA thanked members for their assistance with the matter.

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VII. Any other business

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

Council Business Division 2
Legislative Council Secretariat
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