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LC Paper No. CB(2)2818/07-08
(These minutes have been seen by the Administration)

Panel on Administration of Justice and Legal Services

Minutes of meeting
held on Monday, 26 May 2008, at 4:30 pm
in Conference Room A of the Legislative Council Building

Members present	:	Hon Margaret NG (Chairman) Hon Martin LEE Chu-ming, SC, JP (Deputy Chairman) Hon James TO Kun-sun Hon Jasper TSANG Yok-sing, GBS, JP Hon Miriam LAU Kin-yee, GBS, JP Hon Emily LAU Wai-hing, JP Hon CHOY So-yuk, JP Hon Audrey EU Yuet-mee, SC, JP Hon LI Kwok-ying, MH, JP
Public Officers attending	:	Items IV and V The Administration Mr William CHAN Deputy Director of Legal Aid Mrs Annie Williams Assistant Director of Legal Aid Miss Christine CHOW Kam-yuk Principal Assistant Secretary for Home Affairs Miss Leonie LEE Assistant Secretary for Home Affairs Item VI Judiciary Administration Miss Emma LAU Yin-wah Judiciary Administrator

Mr Clement LI Wan-suen
Assistant Judiciary Administrator (Corporate Services)

Item VII

The Administration

Administration Wing, Chief Secretary for Administration's Office

Miss Jennifer MAK
Director of Administration

Miss Shirley YUEN
Deputy Director of Administration

Mr K C YAU
Assistant Director of Administration

Attendance by invitation : Item IV

Hong Kong Bar Association

Mr P Y LO

Item V

Hong Kong Bar Association

Mr P Y LO

The Law Society of Hong Kong

Mr Dennis C K HO
Member of the Legal Aid Committee

Mr Patrick M Burke
Member of the Working Party on Recovery Agents

Ms Christine W S CHU
Assistant Director of Practitioners Affairs

Item VI

Hong Kong Bar Association

Mr P Y LO

Item VII

Hong Kong Bar Association

Mr Rimsky YUEN

Mr P Y LO

Clerk in attendance	:	Mrs Percy MA Chief Council Secretary (2)3
Staff in attendance	:	Mr Arthur CHEUNG Senior Assistant Legal Adviser 2 Mr Watson CHAN Head, Research and Library Services Division Mr CHAU Pak-kwan Research Officer 5 Mrs Eleanor CHOW Senior Council Secretary (2)4 Mrs Fonny TSANG Legislative Assistant (2)3

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I. Confirmation of minutes of meeting
(LC Paper No. CB(2)2007/07-08 - Minutes of meeting on 19 March 2008)

The minutes of the meeting held on 19 March 2008 were confirmed.

II. Information papers issued since last meeting

2. Members noted that the following papers had been issued since the last meeting -

(a) Progress report dated 23 April 2008 on the review of the Professional Indemnity Scheme (PIS) provided by the PIS Review Working Party of the Law Society of Hong Kong (LC Paper No. CB(2)1722/07-08(01));

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(b) Letter dated 28 April 2008 to Secretary for Justice on "Pre-trial interviewing of witnesses by prosecutors" (LC Paper No. CB(2)1762/07-08(01));

(c) Letters dated 28 April 2008 from Secretary for Justice on "Pre-trial interviewing of witnesses by prosecutors" (LC Paper No. CB(2)1762/07-08(02));

(d) Letter dated 25 April 2008 from the Law Society of Hong Kong concerning transcript fees (LC Paper No. CB(2)1769/07-08(01)); and

(e) Judiciary Administration's paper on "Allowances for jurors and witnesses" (LC Paper No. CB(2)2049/07-08(01)).

3. On item 2(a) above, the Chairman said that the Law Society had provided a second report on the work progress of the PIS Working Party. At the meeting on 26 February 2007, the Panel was advised that the reinsurance contract of the PIS had been renewed with effect from 1 October 2006 for a period of three years, with an option to terminate after two years. The Law Society had advised that it would consider whether to exercise the option to terminate the existing reinsurance and the feasibility of entering into a cancel and rewrite programme. The Law Society would make a decision by 1 July 2008. The Chairman said that if the Law Society decided to change the insurance arrangement under its PIS, legislative amendment to the relevant rules would be required. The Panel would keep in view the development to see whether any follow-up action was required by the Panel.

III. Items for discussion at the next meeting

(LC Paper No. CB(2)2011/07-08(01) - List of outstanding items for discussion

LC Paper No. CB(2)2011/07-08(02) - List of items tentatively scheduled for discussion at Panel meetings in 2007-2008 session

LC Paper No. CB(2)2011/07-08(03) - List of follow-up actions)

Agenda for the next meeting

4. Members agreed that the following items would be discussed at the next meeting on 23 June 2008 -

(a) Pilot Scheme on Mediation of Legally-aided Matrimonial Cases;

(b) Development of mediation services; and

(c) Pre-trial witness interviews by prosecutors (PTWI).

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5. On PTWI, the Chairman said that in addition to the papers provided in paragraph 2(b) and (c) above, the Administration should be requested to provide further information as follows -

(a) explain why the implementation of PTWI would not pervert the course of justice;

(b) explain why the two additional questions included in the Prosecutors' Case Report Form would help the Administration to assess the need to introduce the PTWI scheme in Hong Kong; and

(c) provide information on the conviction rate of criminal cases at various levels of courts.

The Chairman added that the two legal professional bodies should be invited to give views on the proposed PTWI scheme.

Applicability of HKSAR laws to offices set up by the Central People's Government in the HKSAR

6. The Chairman said that she had written to the Secretary for Justice conveying the discontent and concerns of the Panel about the progress of the above item. The Administration's response was still awaited.

Special meeting on 29 May 2008

7. The Chairman reminded members that a special meeting would be held on 29 May 2008 to discuss "Demand for and supply of legal and related services".

IV. Interim Research Report on "Legal aid systems in selected places" prepared by the Research and Library Services Division of the Legislative Council Secretariat

(IN18/07-08 - Interim Report on "The legal aid systems in selected places" prepared by the Research and Library Services Division of the Legislative Council Secretariat)

8. Making reference to Tables 1 to 4 of the Interim Report on "The legal aid systems in selected places" (the Interim Report), Head of the Research and Library Services Division of the LegCo Secretariat (RLSD) (H/RL) highlighted to members the findings in respect of the governance and finance of the legal aid systems in England and Wales of the United Kingdom (UK), the province of Ontario of Canada and the State of New South Wales of Australia (NSW), as well as their major development/reform in recent years. He said that the full report would be completed by October 2008.

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9. Ms Miriam LAU suggested that the final report should include information on the eligibility criteria for legal aid applicants, and the scope of services provided under civil and criminal legal aid in the selected places. Mr Martin LEE said that the legal professional bodies had supported the establishment of an independent legal aid authority in Hong Kong but the Administration had been dragging its feet. He suggested that the final report should include information on the regulatory framework in the selected places.

10. Mr P Y LO of the Hong Kong Bar Association (the Bar Association) said that the legal aid authority in NSW was unique in that it was a statutory body representing the Crown. He suggested that the RLSD, apart from looking into the structure of the respective legal aid authorities, should also study whether their modes of operation were independent.

11. The Chairman said that the Interim Report revealed that the selected places had carried out comprehensive reviews on their legal aid systems in recent years. For instance, lawyers who participated in legal aid cases in the UK were paid at an hourly rate. She suggested that the final report should include the fees for legal aid lawyers and provide more information on the major changes that had been introduced to the legal aid systems following the reviews conducted by the respective places.

12. D/RL said that the RLSD would take into account members' views when preparing the final report. In fact, some of the issues raised by members were covered in the Proposed Research Outline which was endorsed by the Panel at the meeting in February 2008. Due to time constraint, the RLSD was only able to present its interim findings at this meeting.

V. Five-yearly review of the criteria for assessing the financial eligibility of legal aid applicants

(LC Paper No. CB(2)2010/07-08(01) - Background Brief on "Five-yearly review of the criteria for assessing the financial eligibility of legal aid applicants" prepared by the Legislative Council Secretariat

LC Paper No. CB(2)2011/07-08(04) - Administration's paper on "Five-yearly review of the criteria for assessing the financial eligibility of legal aid applicants"

LC Paper No. CB(2)2090/07-08(01) - Law Society's letter on "Five-yearly review of the criteria for assessing the financial eligibility of legal aid applicants")

13. Principal Assistant Secretary for Home Affairs (PASHA) introduced the paper which reported progress of the Five-yearly Review of the Criteria for Assessing the Financial Eligibility of Legal Aid Applicants (the Review).

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14. Mr PY LO said that the views of the Bar Association were as follows -

(a) the personal deductible allowance in calculating disposable income of a legal aid applicant was currently pegged to the 35-percentile household expenditure. As there were queries as to whether the percentile had been reasonable, it would be useful if the Administration could provide the allowance in monetary terms to facilitate consideration by the parties concerned;

(b) the Bar Association supported the view that in assessing financial eligibility of elderly applicants, their age, health and earning power should be taken into account. The Bar Association held the view that apart from savings, the property and rental income arising therefrom should be disregarded in computing an elderly person's disposable capital and disposable income respectively;

(c) the Director of Legal Aid (DLA) currently had the discretion to waive the financial eligibility limits in the context of criminal legal aid if a case was meritorious and involved a breach of the Hong Kong Bills of Rights Ordinance (Cap. 383) or an inconsistency with the International Covenant on Civil and Political Rights. The Administration should consider expanding the discretionary power of DLA to cover civil legal aid cases and cases involving a breach of the fundamental rights of residents as stipulated in Chapter III of the Basic Law;

(d) the Bar Association questioned the appropriateness of relying solely on the movement of CPI(C) in reviewing the yearly financial eligibility limits for legal aid applicants. The movement of CPI(A) or (B) should also be considered; and

(e) the Bar Association had reservation about changing the review cycle of the financial eligibility limits. It was important for reviews to be conducted timely to reflect changes in litigation costs and to ensure that 70% of households which currently were financially eligible for the Ordinary Legal Aid Scheme (OLAS) and the Supplementary Legal Aid Scheme (SLAS) would not be adversely affected as a result of any delay in adjusting the limits.

15. Mr Dennis C K HO, a member of the Legal Aid Committee of the Law Society of Hong Kong, gave the following views -

(a) whether the concerns raised in the 2003 Five-yearly Review would be addressed in the Review;

(b) the Administration should clarify how the recommendation of the Law Reform Commission's Report on "Conditional Fees" (issued in July 2007) that the scope of the SLAS should be expanded would be dealt with in the Review;

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(c) there were proposals that the scope of legal aid services and its coverage in the community should be expanded. A professor in the City University of Hong Kong had suggested that 80% of the households should be eligible for legal aid schemes and had expressed concern about the absence of a cap on the legal aid fund and its impact on public fund;

(d) the funding for criminal legal aid fees was insufficient; and

(e) the legal aid authority should be an independent body and the Government should indicate when this would be introduced.

Details of the Law Society's views were set out in its letter dated 26 May 2008 (tabled at the meeting and issued to members vide LC Paper No. CB(2)2090/07-08(01) on 28 May 2008).

16. Mr Patrick M Burke, a member of the Working Party on Recovery Agents of the Law Society, expressed concern that the problem of recovery agents had been discussed for many years and the Administration did not seem to have taken any effective action. The Law Society considered that expanding the scope of SLAS and extending legal aid to cover mediation would help tackle the problem.

17. Ms Miriam LAU supported the recommendation of the Law Reform Commission that SLAS should be expanded on a gradual and incremental basis. She expressed concern that some people, especially those from the middle class, were neither eligible for legal aid nor had the means to afford the legal costs. As a result, many of them resorted to recovery agents to assist them in recovering damages in personal injury cases. Ms LAU pointed out that the prevalence of recovery agents indicated that they were meeting an unsatisfied demand for legal services and raised the question whether the existing financial eligibility limits under the legal aid schemes had been realistic. She requested that the Administration, when computing the disposal capital, should consider disregarding the only asset which was the main source of income for a legal aid applicant. For instance, in assessing the financial eligibility of a legal aid applicant who was a taxi driver, his taxi which was his only asset and means of livelihood should be disregarded.

18. In response to the two legal professional bodies and members, PASHA made the following points -

(a) the 35-percentile household expenditure for calculating personal deductible allowance excluded rental payment. The 35-percentile expressed in monetary terms varied according to the size of households. For instance, the percentile was equivalent to about $3,700 and $6,800 for a legal aid applicant with no dependent and one dependent respectively;

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(b) the suggestions to take into account the age and health of legal aid applicants, to disregard property and associated rental income of the elderly, to waive the means test for applicants with severe disability, and to disregard asset which was the only means of livelihood of the applicant in assessing the financial eligibility should not jeopardize the cardinal principles of the legal aid system and their implications would be carefully considered by the Administration;

(c) similar to (b), the Administration would carefully consider the impact of expanding the discretionary power of DLA to cover civil legal aid cases and cases involving a breach of the fundamental rights of residents as stipulated in Chapter III of the Basic Law;

(d) the movement in CPI(C), rather than that of CPI(A) or (B), was used to conduct an annual review of the financial eligibility limits was because CPI(C) reflected the pattern of high household expenditure which covered approximately the top 10% of total households. It should be an appropriate indicator for the changes in litigation costs which were generally regarded as high level expenditure item. CPI(C) also had its component the highest percentage of expenditure on "miscellaneous services". In this context, the change in the cost for legal services, as one of the miscellaneous services, would be appropriately represented by CPI(C), as compared with the other two consumer price indices;

(e) since 1997, the Administration had deployed substantial resources and time for data collection in order to carry out several reviews on the overall approach for assessing the financial eligibility of legal aid applicants over a fixed period of time. It was about time to review the scope for streamlining the number and frequency of reviews based on the experience gained;

(f) it was the established practice of the Administration to make reference to the issues raised in previous reviews when conducting the current five-yearly review;

(g) the establishment of an independent legal aid authority was currently studied by the Legal Aid Services Council (LASC). The LASC expected to complete the study around the end of 2008 and the Administration would revert to the Panel after receiving the LASC's recommendations and considering the outcome of the LASC's study;

(h) the Department of Justice (DoJ) had provided a paper for the Panel at its meeting on 19 March 2008 reporting on its work to tackle problems caused by recovery agents. The DoJ would follow up the issue separately; and

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(i) any proposals to extend the scope of the SLAS must not jeopardise the financial viability of the scheme. In one recent unsuccessful claim supported by the SLAS Fund, the litigation costs borne by the Fund was estimated to be as high as $18 million.

19. Mr Martin LEE expressed support for the establishment of an independent legal aid authority. Given the success of SLAS, he questioned why the Administration had not expanded its scope. As the Administration had used a case involving a liability of $18 million to justify why it had reservation to expand the scope of SLAS, Mr Martin LEE, Ms Emily LAU and the Chairman enquired about the details of the case.

20. Deputy Director of Legal Aid (DDLA) said that it was a personal injury claim tried in the Court of First Instance for about a month. A Senior Counsel and a Junior Counsel were assigned to advise and to represent the aided person in the subsequent trial. Notwithstanding this, the case was lost. The claimant had decided against lodging an appeal. In response to Ms Emily LAU, DDLA said that the SLAS Fund had $102 million on balance as at 2007.

21. Members expressed dissatisfaction that the Administration had not disclosed more details about the case. They would like to know whether the case was lost because of inadequate monitoring on the part of the LAD, as this would make a difference on the result of the trial. They opined that the Administration should not discount the possibility of expanding the scope of SLAS because of one unsuccessful case. They requested the Administration to provide more information about the case.

22. PASHA responded that the Administration intended to point out that no matter how meritorious a case was, there was still a possibility of losing the case in court. The proposal of expanding the scope of the SLAS hence required thorough consideration. Given that some of the information about the case was confidential, she would seek advice from the DoJ before considering whether to provide further details of the case.

23. The Chairman said that the Administration had remarked that it had difficulty in collecting information on private litigation costs from the two legal professional bodies when conducting a biennial review of the financial eligibility limits. However, when it came to determining the salary adjustment for Government counsel, the Administration had no difficulty in collecting the relevant information. She enquired whether the two legal professional bodies had difficulty in collecting information on litigation costs.

24. Mr PY LO said that the Bar Association did not have a data bank on fees charged by its members as they were not obligated to provide such information. Even if they did, it was uncertain whether the data provided was representative of the actual fees and costs charged by other members. On the other hand, the Judiciary should have such information as it conducted taxation of legal costs payable usually by a losing party in a case to the winning party.

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25. The Chairman said that given that the two legal professional bodies had no right to order their members to disclose information on litigation costs, they were not in a position to respond to the requests made by the Administration. She urged the Administration to collect such information from the Judiciary and the LAD for the purpose of reviewing whether the financial eligibility limits should be adjusted due to a change in private litigation costs.

VI. Creation of posts to strengthen the establishment of judges and judicial officers and the directorate structure of the Judiciary Administration
(LC Paper No. CB(2)2009/07-08(01) - Judiciary Administration's paper on "Proposed creation of new rank and posts in the Judiciary and strengthening of the directorate structure of the Judiciary Administration")

26. Judiciary Administrator (JA) introduced the paper which set out the proposed creation of new rank and posts in the Judiciary and strengthening of the directorate structure of the Judiciary Administration.

27. The Chairman requested the JA to reconsider the wording of paragraphs 3 and 27 of the Judiciary Administration's paper when preparing a paper for the Establishment Subcommittee. The Chairman also expressed concern about the manpower situation of the High Court -

(a) Court of Appeal - due to the insufficient number of Justices of Appeal in recent years, only about 42% of the cases from 2004 to 2007 were heard by divisions constituted solely by Justices of Appeal in the Court of Appeal. In order to maintain reasonable waiting times for cases heard in the Court of Appeal, 58% of the cases from 2004 to 2007 were heard by divisions containing one and/or two Judges of the Court of First Instance (CFI). As Judges of the CFI were not substantive Justices of Appeal, there were evident disadvantages for them to hear appeal cases; and

(b) CFI - the deployment of Judges of the CFI as additional judges of the Court of Appeal had led to a corresponding reduction in judicial manpower in the CFI. The waiting times for criminal and civil fixture cases at the CFI had greatly exceeded the respective target waiting times of 120 days and 180 days in the past few years. In addition, Judges of the CFI were also engaged in non-judicial work under various statutory functions (namely the Electoral Affairs Commission, the Securities and Futures Appeal Tribunal and the Clearing and Settlement Systems Appeal Tribunal). As a result, against an establishment of 27 Judges of the CFI, about 23.2 posts were actually deployed for judicial work.

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28. Mr Martin LEE expressed concern whether the arrangement for Judges of the CFI to sit as additional judges of the Court of Appeal would result in more appeals being lodged with the Court of Final Appeal when such appeals were dismissed by the Court of Appeal, given their lesser experience in handling appeals.

29. Ms Audrey EU expressed concern that many courtrooms in the High Court were left idle after 3:30 pm. She asked whether this phenomenon was common in Hong Kong and other jurisdictions. She said that if the public had an impression that judges had a small caseload, it would be difficult to justify any increase in manpower resources for the Judiciary. She observed that the caseload of bilingual judges in the Court of Appeal were heavier than that of monolingual judges, and the duration of some trials were lengthened because they were heard by judges not specialised in the relevant area of law. She asked whether the Judiciary Administration would introduce measures to improve the effectiveness of the listing system so that court time and the time and expertise of judges could be utilised in an optimum manner.

30. Miss CHOY So-yuk queried the justifications for creation of additional judicial posts as the number of cases at all levels of courts had not been increased and the court waiting times had not been lengthened in the past five years. She said that the Administration should review the existing listing arrangement and to introduce administrative measures to enhance its efficiency before making proposals for the creation of judicial posts. Miss CHOY also expressed concern about the mechanism to monitor the conduct of judges.

31. JA responded that administrative measures such as deployment of Deputy Judges and Temporary Deputy Registrar had been employed to meet the operational needs of the courts, which was considered unsatisfactory in the long term. There was a need to strengthen the establishment of the various levels of courts to keep waiting times within target without having to rely too heavily on temporary judicial resources. JA advised members that the workload of a judge was heavy as he had other tasks to perform apart from sitting in court. Judges had to read a lot of documents to prepare for trials and to prepare judgement after a trial. For hearings scheduled in the afternoon, they usually ran from 2:00 pm to 4:30 pm but some might be adjourned early.

32. JA further explained that the listing arrangement was operated by a team of listing officers in the Judiciary Administration under the direction of Judges who would take account of all relevant factors, such as the work schedules and expertise of the judges, the estimated duration of trials, timetables of the legal practitioners, etc., to ensure optimum use of the available court time. While the listing officers were responsible for all the groundwork for listing matters, they would make regular progress report to the Listing Judges and would seek directions from the Chief Judge of the High Court as and when necessary.

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33. Mr James TO said that he supported the Judiciary Administration's proposal as the workload for judges and judicial officers had increased in recent years for a number of reasons. One reason was the increase in the number of unrepresented litigants. As a result, hearings were conducted in a less efficient manner as judges were often required to spend more time to explain legal proceedings to unrepresented litigants to ensure the equality of arms. To facilitate members' consideration, Mr TO suggested that the Judiciary Administration should quantify the workload of judges by providing information on the time spent on various tasks involved such as writing judgments.

34. Ms Emily LAU said that she wished to support the Judiciary Administration's proposal but it should provide more information to facilitate members' consideration. Ms LAU requested the Judiciary Administration to provide information on the following -

(a) increase of caseload at various levels of courts in the past few years;

(b) number of cases heard by substantive judges and deputy judges respectively;

(c) the impact of deployment of deputy judges on court waiting times;

(d) the net increase in staff cost (taking into account the proposed creation/upgrading/deletion of posts and the appointment of temporary judges and staff); and

(e) existing and proposed organisation charts of JA showing the staff establishment of each division.

35. The Chairman requested JA to further justify the upgrading of the post of Assistant Judicial Administrator (Corporate Services) (AJA(CS)) and explain the demarcation of duties between JA and AJA(CS) referred to in paragraph 37 of the Judiciary Administration's paper.

36. The Chairman said that the Panel could not conclude deliberation at this meeting, pending further information from the Judiciary Administration. As the Judiciary Administration would seek the endorsement of the Establishment Subcommittee on 19 June 2008 and the approval of the Finance Committee on 4 July 2008, the Chairman suggested and members agreed that the item should be further discussed at the special Panel meeting on 29 May 2008. The Chairman requested the Judiciary Administration to provide a paper before the special meeting to respond to the various issues raised by members.

(*Post-meeting note*: The Judiciary Administration's response was issued to members vide LC Paper No. CB(2)2110/07-08(01) on 29 May 2008.)

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VII. System for determination of judicial remuneration

(CSO/ADM CR 6/3221/02 - LegCo Brief on "System for the Determination of Judicial Remuneration and Interim Arrangement for the 2008-09 Judicial Service Pay Adjustment Exercise"

LC Paper No. CB(2)2011/07-08(05) - Background Brief on "System for determination of judicial remuneration" prepared by the Legislative Council Secretariat

LC Paper No. CB(2)2010/07-08(02) - The Judiciary's statement on the Administration's decision on the new system for the determination of judicial remuneration)

Briefing by the Administration

37. Director of Administration (D of Adm) said that in April 2003, the Chief Justice submitted to the Chief Executive (CE) the Judiciary's proposal for the determination of judicial remuneration which was based on a consultancy report by Sir Anthony Mason. In January 2004, the CE appointed the Standing Committee on Judicial Salaries and Conditions of Service (the Judicial Committee) to make recommendations to him on the appropriate institutional structure, mechanism and methodology for the determination of judicial remuneration and in particular, to make recommendations on whether the Judiciary's proposal based on the Mason Report should be accepted. D of Adm said that the Administration had accepted all the major recommendations of the Judicial Committee, including the following -

(a) it was not essential to prohibit absolutely by legislation reductions in judicial salary;

(b) the Administration should in due course introduce legislation to provide for a standing appropriation to meet the payment of judicial salary;

(c) judicial remuneration should continue to be fixed by the Executive after considering recommendations by an independent advisory body whose role should be confined to judicial remuneration, and the existing Judicial Committee should be expanded to perform the functions of the intended independent body; and

(d) the intended body should adopt a balanced approach and consider a basket of factors in advising on judicial remuneration. It should adopt a procedure which was transparent and its recommendations to the Executive should be made public.

Details of the major recommendations of the Judicial Committee in respect of the institutional framework and mechanism for the determination of judicial remuneration accepted by the Administration were set out in paragraphs 1 and 2 of the LegCo Brief.

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38. D of Adm further said that as set out in paragraph 3 of the LegCo Brief, pending the establishment of a new system for the determination of judicial remuneration, interim arrangements should be adopted for the 2008-2009 Judicial Service Pay Adjustment Exercise. Under the interim arrangements, a pay rise should be offered for judges and judicial officers (JJOs) to bring their pay to the same level as their civil service counterparts in dollar terms, if the 2008-2009 pay adjustment rate for the upper band and directorate civil servants resulted in civil service pay higher than that of the JJOs at comparable level(s). The Administration had also decided that in considering the adjustments offered to the Judiciary this year (and in the future), the pay reductions applied to the civil service in 2002-2003, 2003-2004 and 2004-2005 should be permanently set aside. D of Adm said that the Administration was committed to upholding the principle of judicial independence, and that the acceptance of all the major recommendations demonstrated this commitment.

Views of the Bar Association

39. Mr Rimsky YUEN, Chairman of the Bar Association, gave the following views -

(a) the Bar Association welcomed the establishment of an independent advisory body and the introduction of legislation to provide for a standing appropriation to meet the payment of judicial salary. However, the independent advisory body should be statutory; and

(b) there should be a statutory prohibition against reduction in judicial salary in order to safeguard judicial independence, as such a prohibition was commonly adopted by many jurisdictions.

Legislation prohibiting reduction in judicial remuneration

40. Ms Emily LAU said that the Administration had taken a long time to reach the decision to accept all the major recommendations of the Judicial Committee. Given that the Chief Justice had expressed disappointment that the Judiciary's proposal that there should be a statutory prohibition against reduction in judicial salaries had not been accepted, she enquired whether the issue was very controversial.

41. The Chairman said that the Panel's concerns were set out in paragraph 7 of the Background Brief. The Panel had requested the Administration to consider, among others, the suggestion that judicial remuneration should be protected by statute in line with other jurisdictions in which judicial independence was given constitutional importance, as recommended in the Mason Report. The Administration, however, had subscribed to the view of Professor Albert CHEN Hung-yee that statutory prohibition against reduction in judicial salary was not necessary for Hong Kong (paragraph 8.45 of Annex E to the LegCo Brief). The argument put forth by Professor CHEN was that "the salaries of judges have been determined by contract rather than by legislation, and can apparently only be reduced by legislation in the absence of a consensual variation of the contract. As long as this present position is maintained and the understanding continues to exist that the Government acting

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administratively has no power to reduce the salaries of incumbent judges, legislation along the lines of the UK model would not be necessary." The Chairman sought the views of the Bar Association and members on the argument.

42. Mr Rimsky YUEN said that he recognised that there was a difference in opinion. The Bar Association held the view that judicial remuneration should be protected by statute.

43. The Chairman said that she was not convinced by Professor CHEN's argument. As revealed in the Mason Report, legislative prohibition was absolute in all the jurisdictions reviewed in the Report except Canada. She was disappointed at the stance taken by the Administration as it disregarded the overseas practice and attached insufficient importance to judicial independence. She pointed out that there had been queries whether civil service pay reduction should be applicable to judges. If reduction in judicial remuneration was not prohibited by legislation, the Judiciary would be under pressure to follow suit whenever there was pay reduction in the civil service. As pointed out in the Mason Report, statutory prohibition was a common safeguard in many jurisdictions for judicial independence. Given that the principle of judicial independence was so fundamental, any risk of its jeopardy arising from reduction in judicial remuneration should be avoided. Mr Martin LEE supported the views of the Chairman.

44. D of Adm responded that there was consensus that judicial independence should be protected. As to whether legislative prohibition of reduction in judicial remuneration was essential to safeguard judicial independence, D of Adm said that this was a complex and controversial issue. The Administration had carefully examined the recommendations of the Judicial Committee. The Administration accepted the Judicial Committee's view that it was not essential to absolutely prohibit reductions in judicial salary by legislation at this point in time. At present, reduction in judicial salary could not be implemented without legislation, and likewise for civil service salary. Besides, the Administration had accepted all the major recommendations of the Judicial Committee, which would go a long way to confirm the principle of judicial independence. Taking into account the above factors, the Administration considered the proposed arrangement appropriate. D of Adm further said that although prohibition against reduction of judicial pay was adopted in many common law jurisdictions, there were indeed a number of international judicial instruments which recognised that a reduction as an integral part of public economic measures applicable to all persons paid from the public purse constituted an exception to the general rule and was permissible.

45. Ms Emily LAU noted that the remuneration for District Judges was lower than that of Deputy Directors of Bureau. She requested the Administration to provide a table comparing the remuneration packages of political appointees with those of JJOs at different ranks.

(*Post-meeting note*: The Administration's response was issued to members vide LC Paper No. CB(2)2559/07-08 on 9 July 2008.)

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Independent advisory body

46. Ms Emily LAU enquired when the Administration would introduce legislation to establish the independent advisory body.

47. D of Adm said that while the Administration agreed that the membership and functions of the body should be expanded, it did not see the need to establish the body by statute at this stage. The Administration believed that it should allow the expanded Judicial Committee to operate for some time before a further decision could be taken.

Performance and conduct of judges

48. Miss CHOY so-yuk said that while she supported judicial independence, she could not understand why the remuneration for JJOs could only be increased but not reduced. She queried whether the performance of JJOs should be taken into account in determining any increase or reduction of judicial remuneration, and expressed concern whether a check-and-balance system was in place to monitor the performance and conduct of judges.

49. D of Adm responded that the level of remuneration for judges and their performance/conduct were two different issues. The remuneration should be set at a reasonable level that would attract suitable persons for the job. D of Adm said that the Judiciary had a mechanism to deal with complaints about the performance and conduct of judges. If necessary, the Administration could seek assistance from the Judiciary in providing relevant information about the mechanism.

50. There being no other business, the meeting ended at 6:55 pm.

Council Business Division 2
Legislative Council Secretariat
25 September 2008