立法會
Legislative Council

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Report of the Panel on Administration of Justice and Legal Services for submission to the Legislative Council

PURPOSE

This report gives an account of the major work of the Panel on Administration of Justice and Legal Services ("the Panel") during the 2012-2013 Legislative Council ("LegCo") session. It will be tabled at the Council meeting of 10 July 2013 in accordance with Rule 77(14) of the Rules of Procedure of the Council.

THE PANEL

2. The Panel was formed by a resolution passed by the Council on 8 July 1998 and as amended on 20 December 2000, 9 October 2002, 11 July 2007 and 2 July 2008 for the purpose of monitoring and examining policy matters relating to the administration of justice and legal services. The terms of reference of the Panel are in **Appendix I.**

3. The Panel comprises 33 members, with Dr Hon Priscilla LEUNG Mei-fun and Hon Dennis KWOK elected as Chairman and Deputy Chairman respectively. The membership of the Panel is in **Appendix II**.

MAJOR WORK

Issues relating to the legal, arbitration and mediation services

Promotion of Hong Kong as a regional legal and arbitration services hub

4. The Panel was briefed on the policy of the Administration to promote Hong Kong as a legal and arbitration services hub in the Asia Pacific region and the measures taken by Department of Justice ("DoJ") to implement the policy. Key initiatives in pursuing this policy objective included -

(a) improving the regulatory framework for the provision of legal services in Hong Kong;

(b) making Hong Kong an arbitration-friendly jurisdiction -

(i) enhancing the statutory framework for arbitration in Hong Kong; and

(ii) facilitating the establishment and growth of world class arbitration and law related organizations in Hong Kong; and

(c) promoting Hong Kong's legal and arbitration services in the Mainland and in other countries.

5. Members noted that to enhance the statutory framework for arbitration in Hong Kong, the Arbitration Ordinance (Cap. 609) was enacted in 2010 and came into effect in June 2011. To date, Hong Kong arbitral awards were already enforceable in over 140 jurisdictions under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards done at New York on 10 June 1958.

6. Some members considered that additional measures should be taken to promote Hong Kong's legal and arbitration services in the Mainland and in other countries. The Administration advised that Mainland enterprises were allowed to conduct arbitration in places outside the Mainland if the disputes involved "foreign" elements. In this regard, the DoJ had raised with the Mainland authorities the issue of implementation of pilot measures in Qianhai and Nansha to allow Mainland enterprises to choose to conduct arbitration in Hong Kong even though the disputes did not involve any "foreign" element. In addition, the DoJ had, through mutual consultation with the Supreme People's Court, made arrangement in July 2006 for the recognition and enforcement of judgments in civil and commercial matters pursuant to choice of court agreements made between the parties concerned.

7. Following the signing of the Framework Agreement on Hong Kong/Guangdong Co-operation in April 2010 ("Framework Agreement"), the Panel had been following up on the implementation of measures concerning cooperation on legal matters under the Framework Agreement, including new opportunities to promote Hong Kong legal services arising from the Qianhai Development Plan.

8. On the issue of allowing law firms of the Mainland and Hong Kong to establish associations in Qianhai, members noted that the Mainland authorities were studying and in the process of drawing up detailed proposals on the

implementation of association in the form of partnership. It was the Administration's understanding that the proposed mode of association between Hong Kong and Mainland law firms would cover both solicitors and barristers, and that the two legal professional bodies were making preparations to facilitate their members to take part in the pilot measures. Moreover, the Administration had raised with the relevant ministries on allowing enterprises operating in Qianhai to choose Hong Kong laws as the applicable law for their business contracts, and to encourage them to choose arbitration as a means of resolving commercial disputes.

9. To meet the demand for legal and arbitration services in Qianhai, members noted that the DoJ had been discussing with the relevant Mainland authorities/bodies on organizing training for lawyers from Hong Kong and the Mainland to learn from each other and share their work experiences. The Law Society of Hong Kong ("the Law Society") believed that the demand for legal talents brought about by the development of Qianhai could be met by pooling together legal talents from foreign law firms. By engaging expertise from foreign law firms, Hong Kong law firms could learn from the experience of their counterparts in dealing with those specialized areas of asset management and financing. This in turn would be beneficial to the promotion of the standards of the international legal services in Hong Kong.

Development and provision of mediation services

10. The Panel continued to follow up with the Administration on the development and provision of mediation services in Hong Kong. A total of 38 deputations attended the meeting to give views on the provision of mediation services in Hong Kong.

11. The Mediation Ordinance (Cap. 620) has been effective since 1 January 2013. Being a non-statutory, industry-led accreditation body for mediators, the Hong Kong Mediation Accreditation Association Limited ("HKMAAL") came into operation in April 2013. Under the current arrangement, the HKMAAL is funded by its four founder members. The four founder members of the HKMAAL include the Hong Kong Bar Association ("the Bar Association"), the Law Society, the Hong Kong International Arbitration Centre and the Hong Kong Mediation Centre.

12. Some members were concerned that given the membership of the Council of the HKMAAL, the HKMAAL would set up a new accreditation system which attached great importance to the academic/professional qualification requirement of mediators, and as a result, many practicing mediators who did not possess the required qualifications would not be able to continue with their practice and the service charges for the use of mediation would be raised. The Administration advised that the existing legislation did

not require mediators to be accredited by the HKMAAL prior to their practice. It was the Administration's understanding that the HKMAAL would adopt an inclusive approach in devising the accreditation system and that future accreditation of mediators would not be limited to the legal profession.

13. Concern was also raised as to whether the practice of those community mediators who provided their services on a pro bono basis would be affected after the HKMAAL's accreditation system came into operation. A member considered that the Administration should conduct a survey to collect information on the number of mediators in Hong Kong, their background, their training in mediation and whether they engaged in providing mediation services on a full-time or part-time basis etc. The Administration advised that the HKMAAL had set up Committee, Working Party and Working Group with cross-sector membership to assist the HKMAAL in respect of mediator accreditation and assessment as well as the membership of the HKMAAL.

14. Members noted that a new Steering Committee on Mediation ("Steering Committee") chaired by the Secretary for Justice ("SJ") and with cross-sector membership had been set up in November 2012 to further promote and facilitate wider use of mediation in Hong Kong. The Steering Committee expected to receive the progress report of the HKMAAL in June 2013.

Issues relating to the Judiciary

Judicial service pay adjustment

15. The Panel received a briefing from the Administration on the proposed judicial pay increase of 5.66% for 2012-2013 recommended by the Standing Committee on Judicial Salaries and Conditions of Service ("the Judicial Committee").

16. A member pointed out that the salary of the Chief Justice ("CJ") of the Court of Final Appeal ("CFA"), i.e. $251,950, was much lower than that of the Secretaries of Departments, i.e. $350,000, despite the fact that CJ ranked higher than Secretaries of Departments in the Precedence List of the Hong Kong Special Administrative Region. Question was raised as to whether the Judicial Committee had looked into such salary gap.

17. The Administration advised that it was inappropriate to make direct comparison between the pay of judges and judicial officers ("JJOs") with that of officials appointed under the Political Appointment System in that the former was entitled to a wide range of benefits and allowances, such as housing and retirement benefits and education allowances, in addition to salary,

which was not the case for the latter. Moreover, JJOs enjoyed security of tenure until they reached retirement age, which was not the case for political appointees. In recognition of the independence and uniqueness of the Judiciary, JJOs were remunerated according to an independent salary scale. Further, judicial salaries were subject to regular reviews that were distinct from that carried out in respect of the civil service, with the Judicial Committee rendering advice to the Chief Executive ("CE") on matters concerning judicial remuneration.

18. The Panel had no objection to the proposed pay adjustment. However, members requested the Administration to provide supplementary information concerning remuneration arrangements for JJOs and senior government officials in overseas jurisdictions, statistics on extension of service of judges, etc. in its submission to seek funding support from the Finance Committee ("FC").

Judicial manpower situation

19. The Panel continued to monitor the judicial manpower situation following its discussion on the subject during the last legislative session. Members and the two legal professional bodies in general expressed concern about the judicial manpower shortage which in turn had given rise to longer court waiting times at various levels of court.

20. The Administration advised that according to the Judiciary, the current level of establishment could be regarded as generally sufficient to cater for its operational needs. As a result of the successful completion of recruitment exercises for various levels of courts launched in June 2011, the substantive judicial manpower position had been enhanced. To maintain an independent and effective judicial system, the Judiciary had kept under constant review of its judicial establishment and manpower situation having regard to operational needs. The next round of comprehensive review of the judicial manpower situation would be conducted by the Judiciary, upon the completion of the current round of recruitment exercises in 2012-2013.

21. As regards long court waiting times, the Administration explained that the reason why the waiting times for cases in the High Court ("HC") had exceeded its targets in most of the cases was due to more complex and lengthy cases as well as the refixing of cases. It was also due to the temporary constraints in the deployment of judicial manpower in the HC as a result of the retirement of judges and elevation of judges to higher positions. As far as the Court of Appeal of the HC was concerned, all judicial posts had been substantively filled since 13 December 2011. However, there remained some backlog of cases which accumulated before that, and CJ was giving top priority to deploying judicial resources for hearing criminal cases. As regards

the Court of First Instance ("CFI") of the HC, the lengthening of waiting time for cases in 2011 was not due to insufficient number of judicial posts but to the temporary shortfall of substantive judicial manpower. To address the situation in the interim, the Judiciary had been making every effort to engage deputy judges who were considered suitable for appointment as Deputy HC Judges from both within and outside the Judiciary to help reduce the waiting times.

22. The Administration advised that the problem should be viewed in totality. Whilst the waiting times for certain courts, such as the CFI of the HC insofar as the Civil Running List and the Criminal Running List were concerned, had exceeded their waiting time targets, the court waiting time targets for the CFA and the Family Court etc. were met.

23. The Panel would continue to follow up on judicial manpower situation in the next legislative session.

Judicial independence

Issues arising from the remarks made by Ms Elsie LEUNG Oi-sie at a public forum on 6 October 2012

24. It was widely reported by the media that Ms Elsie LEUNG Oi-sie, Deputy Director of the Committee for the Basic Law of the Hong Kong Special Administrative Region ("HKSAR") of the Standing Committee of the National People's Congress ("NPCSC") of the People's Republic of China, made the following remarks in her speech given to a local educational institution at a seminar on 6 October 2012 -

> "In the Ng Ka Ling judgment of the CFA in 1999, the legal profession in Hong Kong, including judges, had a poor understanding of and misunderstood the relationship between the HKSAR and the Central Authorities. If the judges had the correct and necessary understanding, mistakes would not have been made.
>
> In relation to the problem of "doubly non-permanent resident pregnant Mainland women" giving birth in Hong Kong, the preferred solution is for the CE of the HKSAR to report to the State Council for the purpose of seeking an interpretation of the Basic Law by the NPCSC."

25. In view of the wide public concern about Ms LEUNG's remarks on judicial independence and the rule of law given Ms LEUNG's status and position, 15 Panel members jointly made a request that the Panel should invite Ms LEUNG, SJ as well as representatives of the two legal professional bodies

to a meeting of the Panel to discuss issues arising from Ms LEUNG's remarks. Ms LEUNG declined the Panel's invitation to attend the meeting which was held on 27 November 2012.

26. Some members were of the view that given Ms Elsie LEUNG's position as the Deputy Director of the Committee for the Basic Law of the HKSAR, her remarks made at the seminar on 6 October 2012 might seriously undermine the rule of law and the independence of the Hong Kong judiciary.

27. Some other members did not subscribe to such a view as Ms LEUNG's remarks were made at an educational seminar. There was no evidence that Ms LEUNG's remarks would influence how judges adjudicated cases, given that the Committee for the Basic Law of the HKSAR was a working committee under the NPCSC whose functions were restricted to Articles 17, 18, 158 and 159 of the Basic Law and was advisory in nature. Moreover, in a pluralistic and free society like Hong Kong, it was inevitable that many different views were expressed by members of the public. They noted that freedom of speech of Ms Elise LEUNG should be respected and protected.

28. The Bar Association was of the view that any act which interfered, or which might be perceived as interfering, with the independence of the Judiciary in Hong Kong must be viewed with great circumspection. Whilst respecting the freedom of speech of Ms Elsie LEUNG, the Bar Association considered that freedom of expression came with responsibility, and members of the public looked at the position and status of the person who uttered those statements, because they tended to carry the weight of the office of the person expressing those views.

29. The Law Society was of the view that considering the wide public concern over the effects of interpretations of the Basic Law by the NPCSC on the independence of the Judiciary and the rule of law which were recognized as core values of Hong Kong, the Government should act cautiously when considering whether to seek any future interpretation of any provisions of the Basic Law. On the question of "non-permanent resident pregnant Mainland women" giving birth in Hong Kong, the Law Society considered that a referral to the NPCSC to interpret Article 24(2)(1) of the Basic Law would undermine the authority and standing of the CFA and likely damage the rule of law in Hong Kong.

30. Ms Elsie LEUNG had stated in her letter to the Panel Chairman that as "One Country, Two Systems" was a new concept, it was not surprising that there were frequent arguments as to what it meant. Ms LEUNG did not agree that her remarks were directed towards putting pressure on any judge or in respect of any proceedings before the court, thereby amounting to an interference of judicial independence.

31. SJ declined to comment on remarks made by any individuals regarding the rule of law and judicial independence in Hong Kong. He however assured members that he and his colleagues at the DoJ would continue to uphold rule of law and independent judiciary. By way of illustration, none of the 551 legislation enacted by the HKSAR since reunification has been returned by the NPCSC. SJ also pointed out that the common law was not static, which was one of its greatest strengths. The Civil Justice Reform launched by the Judiciary in 2009, which had brought significant improvements to the legal system of Hong Kong, was a good testament.

Procedure for seeking an interpretation of the Basic Law

32. Following the conclusion of the *Vallejos Evangeline Banao & Another v The Commissioner of Registration & Another* (FACV Nos. 19 & 20 of 2012) ("the Vallejos case") by the CFA on 25 March 2013, the Panel held a discussion with the Administration on the request made by the Government to the CFA for seeking an interpretation of the Basic Law from the NPCSC as a means to resolve the right of abode issue of foreign domestic helpers in the Vallejos case.

33. In response to some members' concern about the Government's request to the CFA for a reference to the NPCSC to interpret the Basic Law in the Vallejos case, SJ advised that the reference was merely an invitation for a judicial reference under Article 158(3) of the Basic Law which stipulated that the decision of whether to make a reference to the NPCSC was vested solely in the CFA. Accordingly, any request or decision for making reference under Article 158(3) of the Basic Law did not, would not and should not be viewed as an affront to the rule of law.

34. To tackle the issues arising from children born in Hong Kong to Mainland women and whose fathers were not Hong Kong permanent residents, members noted that the DoJ was actively exploring other legal options. Question was raised as to whether one of these legal options would include the Government seeking an interpretation of the Basic Law from the NPCSC. SJ advised that in recognition of the wide public concern over the Government seeking an interpretation of the Basic Law from the NPCSC, the Administration would explore the feasibility of resolving the right of abode issue of children born in Hong Kong to Mainland women and whose fathers were not Hong Kong permanent residents within the Hong Kong legal system. He stressed that seeking an interpretation of the Basic Law from the NPCSC would always be considered as the very last resort.

35. Whilst the Panel noted that the number of Mainland pregnant women gate-crashing the Accident & Emergency Departments of public hospitals and private hospitals without prior booking had dropped substantially through various administrative measures, including the implementation of the "zero

quota" policy on 1 January 2013, it urged the Administration to come up with measures which could eradicate cases of Mainland pregnant women coming to Hong Kong to give birth and whose husbands were not Hong Kong permanent residents.

Reports published by the Law Reform Commission

Law Reform Commission's Consultation Paper on Rape and Other Non-consensual Sexual Offences

36. The Panel was consulted on the Law Reform Commission ("LRC")'s Consultation Paper on Rape and Other Non-consensual Sexual Offences ("the Consultation Paper") published in September 2012.

37. Members noted that the Consultation Paper was the first of a series of four consultation papers intended to cover the overall review of sexual offences in the Crimes Ordinance (Cap. 200). The existing sexual offences had been criticized for being gender specific, based on the sexual orientation of the parties, and might not adequately reflect the range of non-consensual conduct which should be subject to criminal sanction.

38. Members shared the views of the two legal professional bodies that clarity and precision in the drafting of the definition and scope of every sexual offence in the new legislation was essential, in order to achieve the desired effect.

39. Concern was raised that the proposed reform of the law governing sexual offences was overly severe, as more criminal acts would be classified as rape. For instance, with the creation of a new offence of sexual assault which shifted the focus from "indecency" to "sexual", a person who deceived another person to have sexual intercourse for healing that person's sickness would be charged for rape which carried a life sentence.

40. The LRC explained that the proposed law reform would not change the common law approach on the determination of rape. By way of illustration, a doctor who used medical examination to have a sexual intercourse with a patient would be charged with rape. On the other hand, if a person, by false pretence, engaged another person to have a sexual intercourse to improve that person's health would be charged for the offence of procurement of an unlawful sexual act by false pretence under section 120 of the Crimes Ordinance.

41. On the proposal of including "under-the-skirt photography" under the scope of sexual assault, some members had reservation as people who carried

out "under-the-skirt photography" for fun were usually youngster and might not be aware of the serious legal consequences, whilst other members considered that such act should be criminally sanctioned as it was a serious violation of a person's sexual autonomy.

42. To better protect women's sexual autonomy, the LRC was urged to re-consider creating a separate offence to cover sexual intercourse obtained by economic threat or pressure.

43. In view of complexity of the issues involved in the Consultation Paper, the LRC agreed to the Panel's request to extend the consultation period for the Consultation Paper from 31 December 2012 to 28 February 2013.

44. A special meeting was convened by the Panel to receive the views of women and other interest groups on the Consultation Paper. A total of 22 deputations/individuals attended the special meeting. Major views expressed included the objection to making a distinction between rape and other forms of sexual penetrative acts as the harm inflicted on the victims was the same; the lack of protection for persons who were homosexual; the need to adopt evidential presumptions on the determination of consent; and the inadequate handling of sexual offences by the Police, the Judiciary and the DoJ to ensure that the victims of sexual offence cases had the necessary privacy and protection during the court proceedings.

LRC's Consultation Paper on Adverse Possession

45. The Panel was also briefed by the LRC of its Consultation Paper on Adverse Possession published in December 2012. Adverse possession is the process by which a person can acquire title to someone else's land by continuously occupying it in a way inconsistent with the right of its owner. If the person in adverse possession (also referred to as a "squatter") continues to occupy the land, and the owner does not exercise his right to recover it by the end of a prescribed period, the owner's remedy as well as his title to the land are extinguished and the squatter becomes the new owner.

46. Question was raised as to whether the law of adverse possession should be retained, as land in Hong Kong was scarce and valuable. The LRC explained that the main justification for adverse possession was to protect squatters who had long uninterrupted possession of a land from stale claims and to encourage owners not sleep on their rights. This was because with the passage of time, it would become more and more difficult to investigate the circumstances in which a possession commenced and continued. Therefore, the policy was that a fixed period should be prescribed for the sake of certainty.

47. Some members opposed to one of the main LRC's recommendations whereby the squatter's application for registration after 10 years' uninterrupted adverse possession would fail, should the registered owner raise objection, unless the squatter could prove the following -

(a) it would be unconscionable because of an equity by estoppel for the registered owner to seek to dispossess the squatter and the circumstances are such that the squatter ought to be registered as the proprietor; or

(b) the applicant was for some other reason entitled to be registered as the proprietor of the estate; or

(c) the squatter had been in adverse possession of land adjacent to his own under the mistaken but reasonable belief that he was the owner of it.

These members opined that the proposed arrangement would confer greater protection to owners against the squatters who were generally people of meagre means. Moreover, it was at variance with the principles of common law to protect squatters who had long uninterrupted possession of a land from stale claims and to encourage owners not sleep on their rights.

48. The LRC advised that the proposed arrangement was meant to deal with the registered land title system, which gave guarantee of titles, when the Land Titles Ordinance (Cap. 585) became effective. If the system of registered titles was to be effective, those who registered their titles should be able to rely upon the fact of registration to protect their ownership except where there were compelling reasons to the contrary. The proposed arrangement was identical to that implemented in the United Kingdom ("UK").

Implementation of the recommendations made by the LRC

49. To avoid undue delay in the implementation of the LRC's recommendations made by the Administration, the House Committee endorsed the Panel's recommendation on introducing the following monitoring mechanism at its meeting on 2 March 2012 -

(a) SJ would submit to the Panel for discussion an annual report on the progress of implementation; and

(b) the Panel would copy the annual report to the relevant Panels to facilitate their follow-up with the relevant bureaux and departments ("B/Ds").

50. The first annual report on the progress of implementation of the recommendations made by the LRC since 1982 was submitted to the Panel in June 2013. Members noted that of the 61 LRC's reports, the Administration had implemented all of the recommendations made by 33 reports and some of the recommendations made by five reports through administrative or legislative means. Of the remaining 23 LRC's reports, the Administration was actively pursuing the recommendations made by 17 reports, rejected the recommendations made by three reports, did not see the need of changing the existing law as recommended by one report and inclined not to pursue the recommendations made by two reports.

51. Members considered that one of the main reasons for the LRC to sometimes take a long time to publish its reports was due to the fact that all LRC members were not full-time staff. In the light of this, members urged the Administration to change the setup of the LRC from a part-time to a full-time one by appointing a full-time Commissioner and a team of full-time legal professionals as practised in overseas jurisdictions such as the UK. SJ advised that the LRC had held discussion to consider the suggestion raised by members. As the work of the LRC involved a wide range of complex legal issues and in view of the financial implication of the suggestion, more time was needed to decide on the way forward. SJ however assured members that ensuring the efficient and effective working of the LRC was one of the top priorities of his office.

52. The Administration was also urged to allow members of the public, including LegCo Members, to refer topics for study by the LRC. At present, such referrals could only be made by the CJ and the SJ. SJ pointed out that the LRC was not the only channel to review laws. Members of the public, including LegCo Members, could always approach the relevant B/Ds to submit their suggestions to reform the laws.

53. Members noted that the LRC had recently established two sub-committees to consider the topics of archives law and access to information. To expedite the work of these two sub-committees, the Administration had assigned officials from the relevant B/Ds and the CE had appointed members of the concerned groups to sit on these sub-committees.

54. At the request of the Panel, SJ agreed to group the LRC reports by topics and provide more information on why the Administration decided to reject the recommendations made by certain LRC reports in its next annual report.

Access to justice

Establishment of an independent legal aid authority

55. There have been long standing calls from some Members and the two legal professional bodies for the setting up of an independent legal aid body to administer legal aid in place of the Legal Aid Department ("LAD"). Under section 4(5)(b) of the Legal Aid Services Council Ordinance (Cap. 489), the Legal Aid Services Council ("LASC") is tasked to advise CE on the feasibility and desirability of the establishment of an independent legal aid authority. The LASC first commissioned a consultant to conduct a study into the issue of establishing an independent legal aid authority in October 1997. The study was completed in April 1998 and the LASC submitted its recommendations, including the establishment of an independent legal aid authority, to CE in September 1998. The recommendation of establishing an independent legal aid authority was not accepted by the Government. In late 2011, the LASC commissioned a consultant to conduct a fresh study on the matter.

56. At the meeting on 25 June 2013, the Panel received a briefing from the LASC on why it agreed with the consultant conducting the review in 2011 that there was no immediate need to establish an independent legal aid authority. Whilst it did not consider that there was an immediate need to establish an independent legal aid authority, the LASC considered that its functions to oversee the delivery of quality legal aid services should be enhanced to strengthen the governance and operational transparency of the LAD with a view to enabling public confidence in the rule of law in Hong Kong. Notwithstanding the aforesaid conclusions, the LASC would re-visit the independence issue from time to time.

57. Some members and the two legal professional bodies reiterated their position on the importance of establishing an independent legal aid authority to ensure that the provision of legal aid services was free from any perception of conflict of interest and undue influence from the Government. They expressed dissatisfaction that the LASC relied heavily on the consultancy report and adopted its recommendations without its own independent reasoning. The LASC was urged to provide reasons why its recommendation on the independence issue was different from that made in 1998.

58. Some other members did not see the need for establishing an independent legal aid authority. According to the findings of the consultancy report, no substantiated example of the Government's interference on legal aid administration had been identified. On the contrary, there were ample examples of legal aid being granted to cases against the Hong Kong Government which involved huge amount of resources per case, such as the case on Ng Kar Ling whereby more than $40 million were spent on legal aid.

Moreover, the majority of stakeholder groups participated in the survey conducted by the consultant were generally more concerned about the quality of the legal aid services rather than the independence issue. These members considered that the problem of lack of perceived independence could be better addressed by introducing improvement measures without having to fundamentally change the LAD's institutional structure.

59. The Administration particularly drew the attention of members to consider that the existing legal aid scheme had an uncapped budget per case and hence the provision of legal aid should remain with a government department for financial accountability, whereas an independent legal aid authority must have a capped budget. The Bar Association however held the view that the "uncapped budget" was a myth in that the Administration had never sought supplementary provision from the FC and had maintained a stable trend in expenditure. The Administration was requested to provide information to substantiate that budget for the provision of legal aid services was uncapped and to meet with the Bar Association to address their concern on the matter.

60. In view of the rising numbers of unrepresented litigants in civil and criminal proceedings at all levels of courts, the Administration was urged to expedite its review of further expanding the scope of the Ordinary Legal Aid Scheme and the Supplementary Legal Aid Scheme. The Panel would continue to follow up with the Administration on its comprehensive review of the two legal aid schemes in the next legislative session.

Establishing an independent mechanism to review the decisions of The Ombudsman

61. The Panel was briefed on the existing review mechanism within The Ombudsman and the Administration's views on why it did not see the need to duplicate another independent layer of authority to review the decisions of The Ombudsman.

62. Members noted that a complainant not satisfied with The Ombudsman's decision might, apart from requesting a review from The Ombudsman ("Request for Review"), seek a judicial review form the court. Whether a Request for Review would be processed was determined on whether there were grounds for review of the case. Such grounds might include new evidence, arguments or perspectives. Irrespective of whether a Request for Review was supported with new evidence/arguments/perspectives, all Requests for Review would be carefully examined by The Ombudsman. Any decision to decline such a request must be made by The Ombudsman personally. There was no time limit on which a Request for Review might be raised. Members further noted that requests for review of the ombudsman's decisions

were generally handled internally by various overseas ombudsman offices, including those in the UK, Australia, New Zealand and Sweden.

63. Whilst members were generally of the view that there was no need to establish another independent body to review the decisions of The Ombudsman, question was raised about the appropriateness of The Ombudsman assigning the original case officer to process a Request for Review initially.

64. The Administration explained that the reason why the original case officer was normally assigned to process a Request for Review initially was for reason of effectiveness, as he was more familiar with the details of the case. Possibility of bias was minimized by the requirement that the case officer should focus his analysis on the new grounds raised by the complaint in support of his Request for Review. However, a fresh case officer would be assigned to process a Request for Review initially (i) if the original case officer was under a staff complaint lodged by the complainant; or (ii) no longer in the original Investigation Team; or (iii) unsuitable to handle the case for any reasons. According to The Ombudsman, the complainants generally did not object to have their Requests for Review processed by the original case officer initially, as the complainants considered that their Requests could be processed in a more efficient manner.

65. On members' question as to whether there was any mechanism to handle complaints against The Ombudsman, the Administration advised that the matter might be referred to the Administration Wing of the Chief Secretary for Administration's Office or the Office of the CE for follow up.

Other issues

66. During the session, the Panel also discussed the issues of the role of the Hong Kong legal profession in the development of Qianhai Bay Economic Zone and handling of sexual offence cases. The Panel was also consulted on the following legislative, financial and staffing proposals before their introduction into LegCo or submission to the Establishment Subcommittee, Public Works Subcommittee and FC -

(a) Arbitration (Amendment) Bill 2013 which sought to, amongst others, implement the Arrangement Concerning Reciprocal Recognition and Enforcement of Arbitral Awards between the Hong Kong Special Administrative Region and the Macao Special Administrative Region;

(b) proposed creation of a supernumerary post of Deputy Principal Government Counsel in the Prosecutions Division of the DoJ from

18 December 2012 to 30 September 2017 to handle the substantial corruption case ESCC 2530/2012 (*HKSAR v HUI Rafael Junior and four others*);

(c) proposed creation of a supernumerary post of Deputy Principal Government Counsel in the Civil Division of the DoJ from 1 April 2013 to 31 March 2015 to take forward the work required in the promotion and development of mediation in Hong Kong;

(d) proposal to relocate the Court of Final Appeal to the site of the former LegCo Building at 8 Jackson Road;

(e) proposal to relocate the DoJ to the former Central Government Offices (Main and East Wings);

(f) proposal to provide the necessary information technology infrastructure and the Digital Audio Recording and Transcription Services system in the new West Kowloon Law Courts Building; and

(g) proposal to implement projects under the Information Technology Strategy Plan of the Judiciary.

PANEL MEETINGS

67. From October 2012 to June 2013, the Panel held a total of 12 meetings. The Panel has scheduled another meeting in July 2013.

Council Business Division 4
Legislative Council Secretariat
9 July 2013

Appendix I

Legislative Council

Panel on Administration of Justice and Legal Services

Terms of Reference

1. To monitor and examine, consistent with maintaining the independence of the Judiciary and the rule of law, policy matters relating to the administration of justice and legal services, including the effectiveness of their implementation by relevant officials and departments.

2. To provide a forum for the exchange and dissemination of views on the above policy matters.

3. To receive briefings and to formulate views on any major legislative or financial proposals in respect of the above policy areas prior to their formal introduction to the Council or Finance Committee.

4. To monitor and examine, to the extent it considers necessary, the above policy matters referred to it by a member of the Panel or by the House Committee.

5. To make reports to the Council or to the House Committee as required by the Rules of Procedure.

Appendix II

Panel on Administration of Justice and Legal Services

Membership list for 2012-2013 session

Chairman	Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Deputy Chairman	Hon Dennis KWOK
Members	Hon Albert HO Chun-yan Hon LEE Cheuk-yan Hon James TO Kun-sun Hon CHAN Kam-lam, SBS, JP Hon Emily LAU Wai-hing, JP Hon TAM Yiu-chung, GBS, JP Hon Abraham SHEK Lai-him, GBS, JP Hon Ronny TONG Ka-wah, SC Hon Cyd HO Sau-lan Hon Starry LEE Wai-king, JP Hon CHAN Kin-por, BBS, JP Hon Paul TSE Wai-chun, JP Hon Alan LEONG Kah-kit, SC Hon LEUNG Kwok-hung Hon WONG Yuk-man Hon Claudia MO *(up to 30 January 2013)* Hon Michael TIEN Puk-sun, BBS, JP Hon NG Leung-sing, SBS, JP Hon Steven HO Chun-yin Hon YIU Si-wing Hon MA Fung-kwok, SBS, JP Hon Charles Peter MOK Dr Hon Kenneth CHAN Ka-lok Hon Kenneth LEUNG Hon Alice MAK Mei-kuen, JP Dr Hon KWOK Ka-ki Dr Hon Elizabeth QUAT, JP Hon Martin LIAO Cheung-kong, JP Hon TANG Ka-piu Dr Hon CHIANG Lai-wan, JP

	Hon CHUNG Kwok-pan Hon Tony TSE Wai-chuen (Total : 33 members)
Clerk	Mary SO
Legal Adviser	Timothy TSO