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 2013-2014 Legislative Council ("LegCo") session. It will be tabled at the Council meeting of 9 July 2014 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 27 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

Legal services related to the Administration

Proposed Contracts (Rights of Third Parties) Bill

4. The Panel was briefed on the proposed legislation to implement the recommendations of the Law Reform Commission ("LRC") in its report on "Privity of Contract" published in September 2005. Members did not raise objection to the proposal. The Panel noted the view expressed by the Hong Kong Bar Association ("the Bar Association") that consideration should be

given to excluding contractual obligations contained in Deeds of Mutual Covenants from the scope of application of the proposed legislative scheme, and the comments of the Law Society of Hong Kong ("the Law Society") on the drafting aspects of the proposed legislation. The Panel urged the Administration to consider carefully the views collected during its public consultation conducted in October 2012, including those from the two legal professional bodies. A member requested the Administration to exercise vigilance in drafting the interpretation of the term "third party", so as to avoid misunderstanding on who had a right to enforce the terms of a contract. On the implementation arrangements, a member asked the Administration to ensure that the public would be well informed of the new statutory scheme and allow sufficient time for various stakeholders to make due preparations for the changes.

Abolition of the common law offence of champerty

5. The Panel was briefed by the Department of Justice ("DoJ") on the recent developments of the common law offences of maintenance and champerty in Hong Kong. Specifically, the Administration considered that the common law offences of maintenance and champerty should be preserved for the time being, in view of the following -

(a) the Court of Appeal held in the case of *HKSAR v Mui Kwok Keung* [2014] 1 HKLRD 116 that the public policy against champertous agreements between lawyers and their clients had not changed, and the offences of maintenance and champerty were of particular application and significance in relation to legal practitioners; and

(b) abolition of the common law offences of maintenance and champerty would involve broader legal and policy concerns, including those of recovery agents and litigation funding companies.

6. Whilst the Bar Association broadly agreed with the DoJ's position on preserving the common law offences of maintenance and champerty for the time being, the Law Society informed that it would commence a study to re-examine the feasibility of implementing conditional fee arrangements in Hong Kong whereby lawyers would charge no fee if the cases were unsuccessful and would charge their usual fees plus a percentage "uplift" on the usual fees in the event of success.

7. Members were generally of the views that the common law offences of maintenance and champerty were outdated, and should be reviewed to better suit the present day circumstances. Members noted that maintenance and

champerty as crimes and torts were abolished in the United Kingdom ("UK") and Australia since 1967, and conditional fee arrangements had been allowed in these two places for certain types of cases since 1995. In the report prepared by the LRC on Conditional Fees released in July 2007, it was acknowledged that conditional fees could enhance access to justice to a significant proportion of the community who were neither eligible for legal aid nor had the means to fund litigation themselves. There was no cause for concern that solicitors and barristers would abuse the court's process under the conditional fee arrangements, as the same professional codes should continue to be applied to them by the Law Society and the Bar Association respectively.

8. The DoJ responded that although maintenance and champerty were prohibited in Hong Kong, the courts had created exceptions where conduct which would otherwise constitute maintenance or champerty had been excluded from the sphere of criminal liability. One category was "common interest" category whereby persons with a legitimate interest in the outcome of the litigation were justified in supporting the litigation, such as father and son and husband and wife. Another category was cases involving "access to justice" considerations. Furthermore, not all common law jurisdictions had abolished the common law offences of maintenance and champerty. Singapore still preserved such offences. Nevertheless, the DoJ would keep monitoring the development of the offences closely and listen to the views of the stakeholders and the public.

9. The Panel urged the DoJ to adopt a liberal approach in addressing the issue and come up with ways to enhance access to justice for the middle-income group, such as exploring the feasibility of greater use of litigation funding in Hong Kong. As mentioned in the judgment of the Court of Final Appeal's case of *Winnie Lo v HKSAR* [2012] 15 HKCFAE 16, Riberio PJ raised for consideration the question whether and to what extent criminal liability for maintenance should be retained in Hong Kong.

Compensation for wrongful conviction

10. It is the Administration's policy to pay compensation to persons who have suffered miscarriages of justice, including persons who have been wrongfully imprisoned. The rationale of the policy is that it is just that such persons should be compensated for the resulting losses, such as the loss of liberty and loss of earnings. There are two compensation schemes, one under statutory provisions and the other under administrative arrangements.

11. The Panel received a briefing from the DoJ on the current practice of the Government in awarding *ex gratia* payments in certain exceptional cases, where the claimant had spent time in custody following a wrongful conviction or

charge. Specifically, the DoJ did not see any sufficient reason to change the current arrangement of having applications for *ex gratia* payments under the administrative scheme assessed by the Solicitor General of the Legal Policy Division of the DoJ.

12. The Bar Association broadly agreed with the DoJ's position on maintaining the existing practice in awarding *ex gratia* payments, having regard to the small number of applications for the payment of *ex gratia* compensation and the fact that the Solicitor General would seek the advice of outside counsel if there was perceived/potential conflict of interest on the part of the Secretary for Justice and relevant government departments. On the other hand, the Law Society considered that there was a need for the DoJ to review the existing practice in awarding *ex gratia* payments for wrongly convicted persons, such as giving consideration to establishing a body similar to the Criminal Injuries Compensation Board in the UK for awarding *ex gratia* payments to victims of miscarriage of justice. The Law Society pointed out despite the fact that the DoJ would seek the advice of outside counsel in certain circumstances, concern about conflict of interest still remained as prosecution against the persons who later became applicants for *ex gratia* payments was carried out by the DoJ. Such concern could be supported by the fact that of the nine applications for *ex gratia* payments in the past five years, seven of them were rejected on the ground that they did not fall within the guidelines such as "compensation may be refused where there is serious doubt about the claimant's innocence".

13. Some members expressed the views that the existing administrative guidelines for determining whether a compensation should be paid were too abstract and left too much room for the Solicitor General to interpret the guidelines as he deemed fit, and the process of determining the amount payable was too cumbersome in that the Secretary for Financial Services and the Treasury had to take into account the views of the DoJ and any other affected department or bureau in determining the amount payable, not to mention about the lack of criteria for the Secretary for Financial Services and the Treasury to determine compensation which included non-pecuniary losses such as loss of liberty or damage to character and reputation.

14. The DoJ pointed out that *ex gratia* compensation under the administrative scheme was meant to cater for very exceptional cases. The mere fact that a conviction against the claimant had been quashed by an upper court did not necessarily mean that the claimant was innocent, as the conviction could be quashed on a technical ground. As compensation payable to claimants was funded by public money, it was incumbent upon the Administration to spend the public money in a prudent manner. The DoJ further pointed out that unlike Hong Kong, the English and Wales government abolished their discretionary compensation scheme on *ex gratia* payments for

wrongful conviction in 2006 after they had set up their statutory compensation scheme under section 133 of the Criminal Justice Act 1988 ("the 1988 Act"). The English statutory scheme under section 133 of the 1988 Act was similar to the statutory compensation scheme that Hong Kong put in place under Article 11(5) of the Hong Kong Bill of Rights Ordinance (Cap. 383) in 1991.

15. Members generally supported the setting up of an independent body similar to the Criminal Injuries Compensation Board in the UK for awarding *ex gratia* payments to victims of miscarriage of justice. Members also urged that the term "*ex gratia*" should be replaced by "*non-statutory*" to better reflect the nature of the compensation under the administrative scheme.

Reform of the current system to determine whether an offence is to be tried by judge and jury or by judge alone

16. The Administration briefed members on the relevant background and the latest developments regarding the subject matter. As ruled by the courts, neither the Basic Law ("BL") nor the Hong Kong Bill of Rights Ordinance (Cap. 383) conferred on a defendant the right to choose a trial by jury. The new Prosecution Code ("PC") published in September 2013 would assist the prosecutor to select suitable venue for trial that would enable the case to be dealt with most appropriately and also allow an adequate sentence to be imposed to address the criminality involved in the conduct.

17. The Bar Association considered that jury trial was a very important common law right which was in its view the guardian of liberty and which guaranteed the sound administration of justice. It had provided views to the Administration on the inadequacies in the new PC which should set out a clear meaning of trial by jury and its importance in the common law system, so that junior prosecutors and the public could see the importance of trial jury as of right. The Bar Association considered it necessary to revisit the subject.

18. The Administration pointed out that according to the new PC, "the prosecution should have regard to whether or not issues arise for determination that require the application of community standards and/or values", and this would address the Bar Association's concern regarding the matter of dishonesty. Moreover, the public or social status of the defendant should not be a factor in its own right for deciding the venue for trial. Nevertheless, according to the relevant judgments, a defendant did not have an absolute right to trial by jury.

19. Some members considered that with the increased use of Chinese as an official language in courts after 1997, the enhanced education level of the general public and the increase in the number of jurors from some 20 000 in 1997 to more than 600 000 in 2014, the extension of jury trials to District Court

("DC") could be explored. They noted the Administration's view that notwithstanding the different nature of the cases handled by DC and the Court of First Instance ("CFI"), the small difference in conviction rates for the two levels of courts was a fact reflecting the performance of the criminal justice system and that any change to the prevailing trial by jury system would warrant detailed and in-depth study. The Administration agreed to provide information on the resource and operational implications of introducing jury trials into DC.

20. Members agreed to further discuss the issue when the parties concerned had prepared detailed submissions on the subject.

Implementation of the recommendations made by the LRC

21. The Panel received the second report on the progress of the Administration's implementation of the recommendations made by the LRC. Members noted that while 39 (62.9%) of 62 LRC reports had been fully or partially implemented, 18 (29%) reports were being considered or implemented.

22. Some members expressed concern that the Administration had spent a long time in considering the LRC recommendations on various reports which would become out of date due to the lapse of time. They were worried that the delay in implementing the recommendations would hinder the local legislation system from keeping up with the global trend as well as its overall development. The Administration explained that since 2013, the progress on implementation was a standing item for discussion at each meeting of the LRC. It had also kept in regular contact with the relevant Government bureaux/departments ("B/Ds") to obtain the updates on progress of implementation. However, in the light of the policy and practical implications of the issues involved, the Administration encountered various difficulties in implementing some of the recommendations, such as some recommendations received divergent from stakeholders. To alleviate the difference, the responsible B/Ds had been keeping continuous dialogues with them on the LRC recommendations.

23. A member expressed concern about the independence and impartiality of the LRC and the topics of study by it might be subject to Government's interference. The Administration advised that in addition to the formal referral mechanism, LegCo Members, academics and the public could also propose any topics for the LRC's consideration for law reform. In this connection, members raised the following topics for the Secretary for Justice's consideration: the damages for bereavement under the Fatal Accident Ordinance (Cap. 22), tackling disputes over property management through arbitration, and the jury system.

24. Members expressed concern about LRC's recommendation of repealing the entire Schedule 3 to the Criminal Procedure Ordinance (Cap. 221) as this might send a wrong message to the community that the excepted offences listed in Schedule 3, such as manslaughter and rape, were not that serious at all as no immediate sentencing might be imposed on the convicted person. The Secretary for Justice explained that on some occasions, an excepted offence might be committed in a way not as serious as its name suggested and might not warrant imprisonment. The recommendation of repealing the list of excepted offences would allow the court to have full discretion to impose appropriate and adequate sentence, immediate or suspended included, having regard to the gravity of the offence and the circumstances of the convicted person. The Administration planned to brief the Panel and receive public views particularly the women's groups on the recommendation at a later meeting before deciding the way forward.

25. At the same meeting, members noted that the Judiciary Administration ("JA") had provided its written response to the Panel's proposed provision of screen to victims of sexual offence cases during court proceedings, advising that the matter was under consideration within the Judiciary.

Legal aid services

26. Under section 4(5)(b) of the Legal Aid Services Council Ordinance (Cap.489), the Legal Aid Services Council ("LASC") is tasked to advise the Chief Executive on the feasibility and desirability of establishing an independent legal aid authority ("ILAA"). LASC first commissioned a consultancy study on the subject in October 1997 and recommended the establishment of ILAA to avoid any perception of conflict of interest and undue influence from the Government. The recommendation was not accepted by the Government.

27. LASC commissioned another consultancy study on the establishment of ILAA in late 2011, and briefed the Panel on its recommendations in June 2013. The Administration briefed the Panel regarding its position towards LASC's recommendations in June 2014.

28. While supporting the transferral of Legal Aid Department ("LAD") to the Chief Secretary for Administration's Office, some members reiterated the need for the setting up of ILAA. They shared the concern of the Bar Association that the expenditure of LAD was capped by a departmental budget, which might undermine the accountability and independence of LAD. A member urged the Administration to devise an independent and transparent mechanism in appointing the Director and Deputy Directors of Legal Aid to ensure their impartiality when discharging their duties, and that their decisions were not subject to the interference of the Government.

29. Some other members, however, did not support the establishment of ILAA. They noted that when the costs of legal aid exceeded the approved provisions within a financial year, LAD could obtain supplementary provision from Home Affairs Bureau ("HAB"). Unlike the present arrangements, ILAA, being an independent entity, must have a capped budget, would have to seek supplementary provision from the LegCo in situation of insufficient funding. They were worried that the operational and financial sustainability of ILAA, if established, might be affected by the efficiency of LegCo in scrutinizing financial proposals. A member expressed concern that the setting up of ILAA would give rise to champerty cases and possible abuses of legal aid for judicial review cases.

30. In addressing members' concern regarding the budget for LAD, the Administration advised that the existing legal aid scheme had an uncapped budget for each case and the provision of legal aid was not subject to financial constraints. HAB drew members' attention that in recent years, several overseas jurisdictions had reverted their ILAAs back to government agencies due to poor governance and financial management. The existing institutional arrangement of LAD was considered appropriate for ensuring good governance, budgetary discipline and financial sustainability for legal aid services. There were also sufficient safeguards in statute and in practice to ensure the operational independence of LAD.

31. In response to members' request for expanding the scope and types of cases covered by the Supplementary Legal Aid Scheme so that more people could become eligible to legal aid, the Administration advised that LASC was reviewing the matter and would revert to the Panel on the progress of the review in due course.

Issues relating to the Judiciary

Judicial service pay adjustment

32. The Panel received a briefing from the Administration on the proposed pay increase of 3.15% for Judges and Judicial Officers ("JJOs") for 2013-2014 recommended by the Standing Committee on Judicial Salaries and Conditions of Service ("the Judicial Committee"). The Panel had no objection to the proposed pay adjustment.

33. Some members expressed concern about the shortage of manpower in the Judiciary. A member queried whether the Judiciary would be able to attract new blood to join the bench given the relatively low remuneration of JJOs as compared to the remuneration of private legal practitioners. The

Administration responded that the Judicial Committee noted that the Judiciary had kept under constant review its judicial establishment and manpower situation having regard to operational needs. According to the Judiciary, it had not encountered any undue recruitment and retention problem in recent years. While there might be short-term constraints in deployment of judicial manpower as a result of the elevation of judges to higher positions at various levels of courts, there had been a substantial increase in strength of JJOs in recent years.

34. Some members expressed concern about the heavy workload of judges and the lack of staff and other support for JJOs. A member pointed out that judges were not provided with sufficient support in preparing judgments, especially judgments in the Chinese language, and some judges had to make use of their leisure time to prepare judgments. In response, the Administration stressed that whilst the Administration was not in a position to comment on the actual running of the courts, the Administration had provided adequate resources to the Judiciary to facilitate judges to discharge their duties.

Mechanism for handling complaints against judicial conduct

35. The Panel continued to follow up with the JA on the mechanism for handling complaints against judicial conduct. Four deputations also attended the meeting to give views on the subject.

36. According to the JA, under the existing mechanism for handling complaints against judicial conduct, all complaints received are referred to the Chief Justice ("CJ") and/or the relevant Court Leaders as appropriate, having regard to the level of judges being complained against. The Court Leader would send a written reply to the complainant after investigation. In accordance with the principle of judicial independence, complaints against judicial decisions cannot and will not be entertained. Anyone who feels aggrieved by a judge's decision can only appeal (where this is applicable) through the existing legal provisions.

37. Having regard to the views and concerns raised by members on the need to enhance the transparency and independence of the mechanism for handling complaints against judicial conduct at the meeting held on 23 July 2013 during the last legislative session, the JA informed the Panel that the CJ had set up an internal Working Group, involving Court Leaders, to review the mechanism to see what improvements could be made. The review was expected to take about one year and a review report would be produced by the end of 2014.

38. Members noted that if a complaint against judicial conduct was found to be substantiated, the matter would be referred to the CJ for consideration whether a tribunal should be appointed under Article 89 of the BL or the Judicial

Officers (Tenure of Office) Ordinance (Cap. 433). Under BL89, a Judge at DC level and above might only be removed for inability to discharge his or her duties, or for misbehaviour, by the Chief Executive ("CE") on the recommendation of a tribunal of at least three local judges appointed by CJ. In accordance with section 6 of Cap. 433, the tribunal appointed by the CJ should consist of two judges of the High Court, one of whom the CJ should appoint as Chairman of the tribunal, and a public officer.

39. The Law Faculty of the Chinese University of Hong Kong considered that there was nothing wrong in principle to involve lay members in the process of reviewing judicial conduct, having regard to the facts that such an arrangement was practised in some overseas jurisdictions and that JJOs of Hong Kong were appointed by the CE on the recommendations of the Judicial Officers Recommendation Commission which comprised members who were not connected in any way with the practice of law. If persons from non-legal sectors were to be engaged in the investigations into complaints against judicial conduct, it was important to ensure that these lay members were able to exercise their duties in an independent manner.

40. The Bar Association did not consider it appropriate to have lay participation in the handling of complaints against judicial conduct. If judges were entrusted by the community with the exercise of independent judicial power, there was no good reason to believe that the same judges would not dispense justice in handling complaints against the judicial conduct of other JJOs.

41. A member disagreed with the view taken by the CJ that any investigating mechanism for handling complaints against judicial conduct should comprise judges and judges only, so as to be consistent with the framework as enshrined in BL89 under which a tribunal for investigation into the alleged misbehaviour of a judge comprised judges and judges only for the following reasons. First, BL89 only provided for the invocation of a tribunal which could make recommendation on the removal of a judge for misbehaviour after investigation, and was silent on the establishment of any investigating mechanism against judicial conduct. Second, BL89 only specified that the tribunal should consist of not fewer than three local judges, and did not preclude the involvement of other persons, such as retired judges from Hong Kong and other common law jurisdictions and persons from non-legal sectors. Another member pointed out that it was the common practice of professional and/or statutory bodies to involve persons not connected in any way with their professions in the complaint handling proceedings against their members.

42. As not all misbehaviour of judges warranted removal from office under BL89, suggestion was made on providing different levels of sanctions against

judges who were found to have misbehaved after investigating complaints against them.

43. The JA responded that the question of how the existing mechanism for handling complaints against judicial conduct could be improved, including whether an independent body should be established by the Judiciary to receive and investigate complaints or to monitor and review the handling of such complaints and whether different levels of sanctions, short of removal from office, should be provided against judges who were found to have misbehaved after investigating complaints against them, would be matters under consideration by the Working Group chaired by the CJ.

44. The Judiciary has provided information (LC Paper No. CB(4)840/13-14(01) issued on 18 June 2014) that it had obtained and collated so far in response to the list of concerns raised by Panel members at each of the meetings on 23 July 2013 and 25 February 2014 (LC Paper No. CB(4)822/13-14(02)). The Panel would follow up with the JA on the mechanism for handling against judicial conduct after the completion of the review on the mechanism by the end of 2014.

Review on Family Procedure Rules

45. The CJ's Working Party on Family Procedure Rules ("FPR") briefed the Panel on the key proposals put forward in its Interim Report and Consultative Paper ("the Consultation Paper"), which sought to formulate a single set of procedural rules for the family jurisdiction applicable both to the Family Court and the High Court, i.e. the New Code. The Working Party did not propose changes to the substantive law on family and matrimonial matters. Both the Law Society and the Bar Association welcomed the review.

46. As the proposals, if implemented, would have impacts on mediation of family disputes and legal representation for the parties concerned, some members were worried that family service centres would be receiving large number of enquiries concerning matrimonial and related issues. They considered it necessary to increase the manpower and financial resources to strengthen other supporting services for the Family Court before any apparent improvement could be made to the efficient disposal of family and matrimonial disputes. JA recognized that the welfare sector was one of the important stakeholders in the implementation of the proposed changes to FPR, and briefing sessions had been/would be conducted accordingly.

47. Members noted that the aim of the FPR review was to introduce Child Dispute Resolution ("CDR") and Financial Dispute Resolution ("FDR") procedures as subsidiary legislation, and that judges conducting FDR/CDR

hearings would ensure that there was an exchange of views between the parties in disputes irrespective whether they were represented or not, and litigants were treated fairly in the process. Noting that a cooling-off period was in essence present for the parties before separation, some members urged the Working Party on FPR to consider bringing in third-party assistance during the cooling-off period.

48. Members expressed concern that the Administration had not taken follow-up action for many of the recommendations in the LRC's Report on Child Custody and Access issued in 2005 ("the 2005 Report"). The JA advised that it had incorporated in the Consultation Paper certain recommendations in the 2005 Report which were related to changes in FPR, and it understood that the Labour and Welfare Bureau was following up those recommendations involving changes in substantive family law, engaging stakeholders and working out the legislative proposals in conjunction with the DoJ. The Consultation Paper proposed to incorporate the procedure under the existing CDR scheme into the New Code and to extend the CDR procedure to the High Court, which helped prepare for the relevant changes in the substantive law as recommended by the 2005 Report. However, members raised concern that in the absence of the policy direction for introducing amendments to the substantive law, the proposed FPR to be implemented might have limitations rendering it impracticable. The JA advised that if the New Code, which would most likely be related to court procedural matters, was implemented before changes were made to matrimonial and custody-related ordinances, it was prepared to introduce consequential amendments to FPR upon legislative changes. Nevertheless, the Panel passed a motion urging the Administration to immediately follow up the 2005 Report.

49. The Working Party on FPR would refine its recommendations after considering the comments received during consultation which would end on 16 June 2014, and prepare its Final Report for the CJ's consideration, tentatively by the first quarter of 2015.

Proposed creation of judicial posts and a non-civil service position in the Judiciary

50. The Panel was briefed on the proposed creation of seven permanent judicial posts, a non-civil service position and two permanent civil service posts at directorate level in the Judiciary. Members did not raise objection to the proposal.

51. Some members were worried that the strategy of deploying of Judges of CFI as additional judges to hear cases in the Court of Appeal, which had taken up 51% of the appeals dealt with by the Court of Appeal, might have affected

the quality of judgment and CFI resources. They urged the Judiciary to review further the overall judicial manpower and the means to deal with trials and interlocutory matters in the CFI which were getting increasingly long and complicated.

52. The Panel noted members' concern about the judges having limited time for writing judgments and some judgments were completed a long time, say, some six months after the hearings. In this connection, a member requested the Judiciary to consider providing "protected time" for judges to write judgments.

53. Some members requested the Judiciary to expedite the application of the information technology in the Judiciary's operation, including the adoption of e-filing and the usage of computers or tablet computers for judges reading softcopy documents instead of printing out hardcopies. They also called on the JA to conduct the relevant recruitment exercises in a more systematic and transparent manner so that more talents may be recruited to join the Judiciary.

Visit to the Judiciary on 3 December 2013

54. Seven members and two non-Panel members took part in the visit to the Judiciary on 3 December 2013. Members and Judiciary's representatives exchanged views on adjustment of scale rates, mechanism for handling complaints against judicial conduct, as of right appeal mechanism, and judicial manpower situation. Members were also briefed on the preparatory work relating to the setting up of the Competition Tribunal, the work of the Working Party on FPR, and the proposed legislative amendments to the District Court Equal Opportunities Rules.

Issues relating to the Law Society

The Law Society's proposal to introduce a common entrance examination in Hong Kong

55. The Panel had been briefed by the Law Society on its consultation on the feasibility of implementing a common entrance examination ("CEE") as a means of admitting individuals to practise as solicitors in Hong Kong. The Law Society explained that the consultation exercise aimed to collect the views of stakeholders and the public on the idea of introducing a CEE and it was not the intention of the Law Society to replace the existing Postgraduate Certificate in Laws ("PCLL") qualification with CEE.

56. Some members were concerned that PCLL had become a bottleneck for admission to the legal profession, and considered that it would be worthwhile to explore alternative routes for young people to join the legal profession. However, the Bar Association and the three law schools in Hong Kong were not convinced of the justifications to introduce a CEE. Since the PCLL qualification was currently a prerequisite for professional admission for both solicitors and barristers, the Bar Association was concerned about the implications of the proposed CEE on the barrister branch of the profession. According to the three law schools, the PCLL programmes had been run for years and there had not been any major criticism on the quality of the programmes. The law schools also stressed that all along, admission to the PCLL programmes was based on academic merits of the applicants and the admission requirements set by the profession. Given that the Standing Committee on Legal Education and Training ("the Standing Committee") would conduct a comprehensive review on legal education and training in Hong Kong shortly, members agreed in general that the Standing Committee would be an appropriate forum for stakeholders to study this matter.

57. The Panel would continue to keep in view the progress of the Law Society's consultation exercise and the Standing Committee's comprehensive review.

Draft Solicitor Corporation Rules and consequential amendments to Legal Practitioners Ordinance (Cap. 159)

58. When the Law Society briefed the Panel on draft Solicitor Corporation Rules ("the Rules"), members noted that CJ had granted his approval in principle for the Rules and asked the Law Society to consult the Panel on two issues, namely, whether solicitor corporations should notify clients of the identity of the overall supervising partners and be required to take out top-up professional indemnity insurance.

59. On the requirement for solicitor corporations to notify clients of the identity of the overall supervising partners, the Law Society highlighted that, with reference to the good practice of making known to the clients the responsible managing partner under limited liability partnership ("LLP"), the Law Society agreed to add the provision to the draft Rules for notifying clients of the identity of the overall supervising partners for solicitor corporations. The Administration welcomed the provision which sought to protect the clients.

60. Members noted that under the existing mandatory Professional Indemnity Scheme ("PIS"), indemnity cover provided by the Solicitors Indemnity Fund ("the Fund") was sufficient protection for the public and the fact that the UK sought to reduce the minimum professional indemnity cover,

the Law Society did not consider it necessary to implement the top-up professional indemnity insurance for solicitor corporations. Some members expressed concern that the competitiveness of solicitor firms might be more affected by high rentals rather than indemnity cost and called on the Government not to waive this statutory requirement to take out top-up professional indemnity insurance. Some other members expressed concern about the competitiveness of small solicitor firms which might not be able to afford the indemnity cost. The Law Society highlighted that the Fund had primary liability but had reinsured its obligations to provide a cushion effect against the risk taken. With the increasing number of practicing firms and solicitor, the amount of premium contributions had been going up and the cost of insurance per head would be reduced. In view of the urgency for implementing the Rules and further discussion on the top-up indemnity insurance might affect the implementation timetable and hence reduced the choices available to solicitors in setting up practices, the Administration agreed to introduce the Rules without insisting on the requirement of top-up indemnity insurance at this stage. The need to introduce the top-up indemnity insurance would be reviewed following the Rules' implementation.

61. Members enquired about the timetables of introducing legislative proposals to solicitor corporations and LLPs. The Administration advised that amendments relating to Order 81 of each of the Rules of the High Court (Cap. 4A) and the Rules of the District Court (Cap. 336H) could be tabled for LegCo's scrutiny in October 2014 for negative vetting. The Law Society hoped that the proposal relating to solicitor incorporations and the top-up indemnity insurance for LLPs could be introduced for LegCo's scrutiny by the end of 2014.

PANEL MEETINGS

62. From October 2013 to June 2014, the Panel held a total of nine meetings, and paid a visit to the Judiciary. The Panel has scheduled another meeting in July 2014 to discuss the development of mediation services in Hong Kong and the provision of accommodation support for law-related organizations.

Council Business Division 4
Legislative Council Secretariat
4 July 2014

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 the 2013-2014 session

Chairman	Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Deputy Chairman	Hon Dennis KWOK
Members	Hon Albert HO Chun-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 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 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 Alice MAK Mei-kuen, JP Dr Hon Elizabeth QUAT, JP Hon Martin LIAO Cheung-kong, SBS, JP Hon TANG Ka-piu, JP Dr Hon CHIANG Lai-wan, JP Hon CHUNG Kwok-pan Hon Tony TSE Wai-chuen, BBS (Total : 27 members)
Clerk	Ms Debbie YAU
Legal Adviser	Mr Timothy TSO