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Panel on Administration of Justice and Legal Services

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 25 April 2016**

**The Law Society of Hong Kong's proposal to introduce
a Common Entrance Examination in Hong Kong**

Purpose

This paper provides an account of the past discussions of the Panel on Administration of Justice and Legal Services ("the Panel") on the proposal of the Law Society of Hong Kong ("the Law Society") to introduce a Common Entrance Examination ("CEE") in Hong Kong.

Background

Admission as a solicitor in Hong Kong

2. There are currently two routes to become a solicitor in Hong Kong, i.e. via the trainee solicitor route and the overseas lawyer route.

Trainee solicitor route

3. Entrants to the solicitors' profession, via the trainee solicitor route, presently comprise the following:

- (a) Graduates of Bachelor of Laws ("LLB") degree of four years, double law degree of five years and Juris Doctor programmes of two years of the three law schools in Hong Kong, namely, The University of Hong Kong ("HKU"), The Chinese University of Hong Kong ("CUHK") and the City University of Hong Kong ("CityU"), who have successfully taken the Postgraduate Certificate in Laws ("PCLL") in the three law schools.

- (b) Graduates of a qualifying law degree from an overseas tertiary institution who have successfully passed the Conversion Examination and the PCLL in the three law schools in Hong Kong.
- (c) Graduates of law programmes through external study in Hong Kong, principally the LLB from the University of London, the Manchester Metropolitan University (of three to four years) and the Common Professional Examination of England and Wales through HKU SPACE (two years part-time), who have successfully passed the PCLL.
- (d) After passing the PCLL, the graduates must enter into a trainee solicitor contract with a solicitor qualified to employ trainee solicitors under section 20 of the Legal Practitioners Ordinance (Cap. 159) ("LPO") for a duration of two years. Upon completion of training, they may apply for admission as solicitors.

Overseas lawyer route

4. Entrants to the solicitors' profession, via the overseas lawyer route, presently comprise those who are holders of overseas law degrees and who have been admitted as lawyers and may have practised in an overseas jurisdiction and who gain admission through the Overseas Lawyers Qualification Examination ("OLQE") administered by the Law Society.

Admission as solicitors by barristers

5. Barristers could seek to transfer to the roll of solicitors in accordance with the requirements under sections 3 and 4 of LPO, rules 3, 4 and 5 of the Admission and Registration Rules (Cap. 159 sub. leg. B) and rules 7 and 20 of the Trainee Solicitors Rules ("TSRs") (Cap. 159 sub. leg. J).

6. A barrister seeking admission as a solicitor must establish that he/she:
- (a) is exempt from employment as trainee solicitor under rule 20 of the TSRs;
 - (b) has passed such examinations as may be determined by the Law Society;
 - (c) is a fit and proper person to be a solicitor; and
 - (d) (i) has resided in Hong Kong for at least three months immediately before his/her admission; or

- (ii) intends to reside in Hong Kong for at least three months immediately after his/her admission; or
- (iii) has been ordinarily resident in Hong Kong for at least seven years; or
- (iv) has been present in Hong Kong for at least 180 days of each of at least seven years.

The Law Society's proposal to introduce a CEE in Hong Kong

7. In recent years, views have been expressed by members of the legal profession that there is a lack of consistency in the PCLL examinations. Queries have also been raised as to why entrance to the profession is not administered by the profession itself since the Council of the Law Society has been given the statutory power to prescribe the admission requirements including the passing of examinations under the LPO. As a result, the Law Society has resolved to undertake a consultation with the stakeholders (ran from 1 December 2013 to 14 February 2014) on the feasibility of implementing a CEE as a means of admitting individuals to practice as solicitors in Hong Kong. According to the Law Society, it is not the intention of the Law Society to introduce the CEE to abolish or replace the PCLL, nor it is the intention of the Law Society to allow a non-graduate route into qualification as a solicitor in Hong Kong.

Comprehensive review on legal education and training in Hong Kong

8. On 18 December 2013, the Standing Committee on Legal Education and Training in Hong Kong ("SCLET")¹ resolved to conduct a comprehensive review on legal education and training in Hong Kong ("the Review") with a view to enhancing the system to meet the challenges of legal practice and the needs of Hong Kong. The consultants appointed by SCLET to conduct the Review published a consultation paper² in October 2015. Amongst others, views were invited on whether the CEE proposed by the Law Society might be considered as taking over the PCLL as an entrance threshold into the legal profession, or whether the CEE might be treated as an alternative or additional route to enter the legal profession. The deadline for submission of written responses to the consultation

¹ SCLET, chaired by the Honourable Mr Justice Patrick CHAN Siu-oi and comprises 17 members representing the Judiciary, the Department of Justice, the Education Bureau ("EDB"), the Law Society, the Bar Association, the three universities, the Federation for Self-financing Tertiary Education, as well as members of the public, has been established since 2004 pursuant to section 74A(1) of LPO. Amongst others, SCLET is empowered under section 74A(2)(a)(ii) of LPO to keep under review, evaluate and assess the academic requirements and standards for PCLL admission.

² The consultation paper is available at <http://www.sclet.gov.hk/eng/pdf/cone.pdf>

paper ended on 14 November 2015. Given the complexity of some of the topics contained in the consultation paper, the consultants accepted supplementary answers and additional evidence on the Review submitted by 20 January 2016.

9. According to the Administration, the estimated timeline for completion of the Review by the consultants and for delivery of the final report on the Review by the consultants to SCLET is 31 July 2016 and 30 September 2016 respectively.

Past discussions

10. The Panel discussed the Law Society's proposal of introducing a CEE for admission as solicitors at its meetings held on 16 December 2013 and 27 April 2015. Deputations, the Hong Kong Bar Association ("the Bar Association") and the Administration also attended these two meetings to give views on the subject. Main deliberations on the subject are set out in the ensuing paragraphs.

Reasons for implementing a CEE

11. Noting from the three local law schools in Hong Kong that their PCLL programmes had all along been operating smoothly, question was raised on the reasons for the Law Society to propose a CEE for admission as solicitors in Hong Kong.

12. The Law Society explained that currently, entrants to the solicitors' profession comprised different categories of law graduates who had been examined by different examinations and tested by different standards. Although the three law schools in Hong Kong ran their self-accredited PCLL programmes subject to the benchmarks issued by the Law Society and the Bar Association, the three law schools had the autonomy to admit students and conduct their own PCLL examinations. In view of the changes that had taken place in the last decade or so, for instance, increase in the number of providers of PCLL programmes, possession of more diversified qualifications by PCLL applicants, widening of scope of services provided by solicitors and growing presence of foreign lawyers in Hong Kong, the Law Society considered it increasingly important to ensure that solicitors possessed the necessary professional knowledge and skills, as well as to maintain consistency in the assessments and standards of entrants to the solicitors' profession. The proposal to introduce a CEE would enable students from different universities to compete fairly in a single examination. The Law Society stressed that it was not the intention of the proposed CEE to abolish or replace the existing PCLL programmes by, nor to create an additional hurdle for entry to the legal profession.

13. The three law schools of HKU, CUHK and CityU were not convinced that there were justifications to introduce a CEE which was a major change to the

existing system. Whilst it might be possible for candidates to take CEE through self-study, the practical and skills-based training in the PCLL programmes could unlikely be acquired through self-study. The PCLL programmes had been run for years and the law schools were not aware of any major criticism on the quality of the programmes. The three law schools would welcome suggestions for improvement to the existing programmes. As SCLET would conduct a comprehensive review on legal education and training in Hong Kong, the three law schools considered that it was undesirable to contemplate any major changes in the interim which might pre-empt the review. The proposal of introducing a CEE in Hong Kong as an alternative route to qualify as solicitors should be further discussed during and upon the completion of the review.

14. The Bar Association expressed great reservation about the Law Society's proposal to introduce a CEE for law graduates to qualify as solicitors in Hong Kong. The Bar Association considered that the Law Society's proposal was unclear as to whether the CEE would be taken before or after the trainee contract and whether the PCLL programmes currently provided by CityU, CUHK and HKU would still be compulsory for candidates who took the CEE. Given that 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.

15. Hong Kong Shue Yan University Alumni Association was however of the view that similar to other professions, a CEE should be introduced to provide as an alternative route for law graduates to qualify as lawyers in Hong Kong and no ceiling should be set on the number of times a law graduate could sit for the CEE until he/she passed the CEE. Although the law schools would now consider offering PCLL places to borderline applicants and applicants who had previously been unsuccessful through interviews, amongst others, many law graduates considered such arrangement lacked objectivity and transparency, not to mention that the number of PCLL places set aside for these types of applicants was small. The fact that the number of lawyers sitting for OLQE administered by the Law Society had increased from some 20 a year in the past to about 300 a year in recent years was a testament of the inadequacies of the present PCLL system in Hong Kong. Although students with means could go overseas to attain law degrees and become qualified lawyers there, it would take them some 10 years if they wished to return to Hong Kong to practise law.

16. Law Students' Society of the CityU Students' Union and the Business and Professionals Alliance for Hong Kong also considered that, apart from increasing PCLL places, consideration should also be given to exploring the feasibility of implementing a CEE as an alternative route for entering the legal profession.

17. Some members considered that the proposed CEE was worth pursuing, as it might provide an additional route for young people to pursue a career in the legal

profession in Hong Kong. These members pointed out that law graduates who failed to get admitted to PCLL programmes because they had not attained a high 2:2 in a qualifying law degree would unlikely succeed in any second attempt to apply for admission to PCLL programmes, not to mention that the number of PCLL spaces was limited.

18. Whilst appreciating the concern expressed by members on the merits of an alternate route to the legal profession, the Bar Association did not consider that the introduction of a CEE was the solution. The CEE could only test the theoretical knowledge of the candidates and could not replace the training of the PCLL which also covered some very practical aspects in preparation for the students to enter into the profession.

19. A member considered it necessary for the Law Society to consult the Bar Association on the feasibility of the proposed CEE. The member was of the view that the study programmes and examination for preparing law graduates to qualify for professional admission should not differ between the solicitor and barrister branches of the legal profession, as a solicitor might later decide to qualify as a barrister and vice versa. The Law Society advised that the proposed CEE would not affect the entry to the barrister branch of the profession as it was not proposed to abolish the PCLL qualification.

Review of the PCLL programmes

20. In view of the various concerns over the existing PCLL system, such as the lack of PCLL places and the different standards of PCLL graduates at the three law schools, a member asked whether, and if so, what measures would be taken by the three law schools to improve the PCLL system.

21. Faculty of Law of HKU advised that the quality of the students admitted into the PCLL programmes would be lowered should the PCLL places be significantly increased. In addition, the market for legal services might well be unable to absorb the additional PCLL graduates. Faculty of Law of CUHK also pointed out that there were constraints on the number of PCLL students which the law schools could admit, as the PCLL programme, being a hands-on and skill-based programme, was labour-intensive. To address the concern about the inconsistent criteria adopted by the three law schools, School of Law of CityU advised that consideration could be given to requiring PCLL applicants to pass a common test set by the three law schools.

22. As admitting into a PCLL programme was the only route for law graduates to become lawyers, question was raised as to whether the law schools would consider admitting those law graduates who had failed to gain admission into the

PCLL programme in the past but who had subsequently attained certain number of years of legal work experience, say, through working five years at a law firm; or alternatively requiring these law graduates to pass an open examination administered by the law schools.

23. Faculty of Law of CUHK considered the suggestions in paragraph 22 above could be considered in the context of the review to be conducted by SCLET. The Bar Association was in favour of widening the pool of students for admission to the PCLL such as asking the universities to consider admitting students to PCLL not merely on the basis of the scores of their degree examinations, but also to consider admitting those who had been working at law firms.

Latest development

24. On 6 January 2016, the Law Society announced that its Council has decided that, starting from 2021, a person may only enter into a trainee solicitor contract if that person has passed a CEE. The CEE will be set and marked by the Law Society. The Law Society will require certified completion of the PCLL course but will not require any examination to be set by PCLL providers. The Council is considering the logistics and will announce the details in due course.

Latest position

25. The Law Society will brief the Panel on the implementation of CEE at the meeting on 25 April 2016. Deputations, the Bar Association and the Administration have been invited to give views on the subject.

Relevant papers

26. A list of the relevant papers is in the **Appendix**.

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List of relevant papers

| Meeting | Date | References |
|---|--------------------------------|---|
| Panel on Administration of Justice and Legal Services | 16 December 2013 (Item III) | <u>Agenda</u> <u>Minutes</u> |
| | 27 April 2015 (Item III) | <u>Agenda</u> <u>Minutes</u> |
| Council meeting | 23 October 2013 | <u>Administration's reply to an oral question raised by Hon Abraham SHEK (Question 1)</u> |

Council Business Division 4
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