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Panel on Administration of Justice and Legal Services

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 26 June 2017**

Legal education and training 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 legal education and training 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 and Juris Doctor programmes 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 and the Common Professional Examination of England and Wales through HKU SPACE, 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 of Hong Kong ("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 Common Entrance Examination ("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.

8. On 6 January 2016, the Law Society announced that its Council had decided that, starting from 2021, a person might only enter into a trainee solicitor contract if that person had 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.

Comprehensive review on legal education and training in Hong Kong

9. 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

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>

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 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.

10. According to SCLET³, 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 was 31 July 2016 and 30 September 2016 respectively.

Past discussions at the Panel and the Council

11. The Panel discussed the issues relating to legal education and training in Hong Kong at its meetings held on 16 December 2013, 27 April 2015 and 25 April 2016. The Hong Kong Bar Association ("the Bar Association"), the Law Society, the Administration and deputations also attended the meetings to give views on the subject. Main deliberations on the subjects are set out in the ensuing paragraphs.

The implementation of a CEE

Reasons for implementing a CEE

12. Noting from the three local law schools in Hong Kong that their PCLL programmes had all along been operating smoothly, questions were raised on the reasons for the Law Society to propose a CEE for admission as solicitors in Hong Kong during the meeting held on 16 December 2013.

13. 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

³ The progress of the Review was set out in the submission from SCLET which was issued to members on 21 April 2015 via LC Paper No. CB(4)825/14-15(03).

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.

The views against the implementation of a CEE

14. 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 running for years and the law schools were not aware of any major criticism on the quality of the programmes. While welcoming suggestions for improvement to the existing programmes, the three law schools considered that it was undesirable to contemplate any major changes in the interim which might pre-empt the review to be conducted by SCLET.

15. The Bar Association also expressed great reservation about the Law Society's proposal to introduce a CEE for law graduates to qualify as solicitors in Hong Kong. In response to the Bar Association's concern as to the implications of the proposed CEE on the barrister branch of the profession, the Law Society advised that the proposed CEE would not affect their entry to the barrister branch of the profession as it was not proposed to abolish PCLL qualification.

Implementation of a CEE as an alternative route to qualify as lawyers in Hong Kong

16. During the meeting held on 16 December 2013 and 27 April 2015, 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 good second class honour 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.

17. During the meeting held on 27 April 2015, law schools of HKU and CityU considered that 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 by the SCLET.

18. 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. In this connection, the concern over the inadequacies of the present PCLL system in Hong Kong was raised. 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.

19. 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.

Proposed model of "Commonly Recognized Assessment"

20. During the meeting held on 25 April 2016, the Law Society briefed members on the progress of the Law Society's discussion with the three law schools regarding the implementation of the CEE. Notably, the Law Society was proposing a CEE in the format of a centralized assessment, so that PCLL students of the three universities did not have to take two sets of examinations.

21. Both the Administration and the Bar Association as well as the law students and alumni hoped that the Law Society, when considering the issue of CEE, would wait for the outcome of the comprehensive review being conducted by SCLET, which should become available later in 2016, before finalizing the implementation details of the CEE.

22. The Law Society advised that it would consult the three universities as well as the Bar Association after it had come up with the details on implementing the CEE. In the course of considering all matters relating to the CEE, the Law Society would consider the model of "Commonly Recognized Assessments" proposed by the three universities and the findings and recommendations of the consultants commissioned by SCLET to conduct a comprehensive review on legal education and training in Hong Kong. The Law Society was confident that it could reach a consensus with the three universities on how to implement the CEE in the format of a centralized assessment.

23. Responding to a member's enquiry about the impact of the CEE for qualifying entries into the solicitors' profession on the barrister stream of the PCLL programme, the Bar Association advised that the utmost concern as to the implementation of the CEE was that if the examination papers of all core PCLL subjects that were required to be taken by all PCLL students were set and marked by the Law Society, prima facie, it would be very unsatisfactory for students intending to become barristers to sit for examinations which were set and marked by the Law Society.

Review of the PCLL programmes

24. During the meeting held on 25 April 2015, a member asked whether, and if so, what measures would be taken by the three law schools to improve the PCLL system to address 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.

25. 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.

26. 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.

27. Faculty of Law of CUHK considered the suggestions in paragraph 26 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.

28. During the meeting held on 25 April 2016, a member pointed out due to limited PCLL places, many law graduates who were awarded Upper Second Class Honours degrees failed to gain admission into the PCLL programmes run by HKU, CUHK and CityU. To enable more law graduates with good academic results to become solicitors, the member asked the Law Society whether it would also consider administering an open qualifying examination for admitting a certain number of law graduates to enter into the solicitors' profession.

29. The Law Society advised that it had studied different routes to admission as solicitors, including a CEE in the form of an open qualifying examination. Balancing the interests of all relevant stakeholders, the Law Society considered that the present proposed format of the CEE was the best option for the time being to ensure professional standards and provide fair access to those PCLL students who had the ability to qualify as a solicitor.

30. As the Law Society had decided not to implement CEE as an alternative route for law graduates to enter into the solicitors' profession, the three law schools were urged to 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 at reputable law firms and had good recommendations from their employers.

31. Faculty of Law of HKU advised that the Faculty had launched a pilot scheme to interview borderline PCLL applicants and admit them after taking into account, amongst other things, their interview performance and legal working experience. The Faculty was closely monitoring the progress of these students admitted to the PCLL programme with a view to further enhancing and expanding the pilot scheme where appropriate.

32. Faculty of Law of CUHK advised that the Faculty had a task force looking at providing an alternative route for admission into its PCLL programme. For those PCLL applicants who did not succeed on the basis of academic performance, alternative arrangements, including interviews to evaluate their suitability for admission to the PCLL programme, were being considered. Apart from changing the admission strategies, the Faculty also planned to increase its PCLL places from 150 to 200 for the next intake, i.e. 2016-17.

33. The School of Law of CityU advised that the School had all along been taking into account all relevant factors in its consideration of PCLL applications. Following the meeting with the Panel in 2015, the School of Law had reviewed and revised the admission policy for its PCLL programme by setting aside a few places for those applicants who had failed in their first-time application to the PCLL programme by taking into account, in particular, their working experience. The School of Law was monitoring the progress of these students' situation to see

whether, and if so, how the admission policy to the PCLL programme should be further revised.

34. At the LegCo meeting on 23 Oct 2013, a member raised a question as to the respective numbers of LLB and JD graduates from local and overseas universities applying for and being admitted or not admitted to the PCLL programmes run by the three universities and their success rates. The Administration advised that the total number of admitted PCLL students as a percentage to the total number of PCLL applications received by the three universities had been quite stable over the past three academic years, i.e. from 2010/11 to 2012/13 ranging from 41% to 46% in respect of students with local qualifications and 42% to 43% in respect of students with non-local qualifications. Given that law graduates could lodge multiple applications for PCLL admission, the actual "success rate" of applicants should be even higher.

Latest position

35. The Panel will discuss the issue of legal education and training in Hong Kong, in particular the lack of PCLL places offered by the three local law schools at the meeting on 26 June 2017. The Bar Association, the Law Society of Hong Kong, the Administration and deputations from relevant bodies have been invited to give views on the subject.

Relevant papers

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

Council Business Division 4
Legislative Council Secretariat
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Background brief on Legal education and training in Hong Kong

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>
	25 April 2016 (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>