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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 2020-2021 Legislative Council ("LegCo") session. It will be tabled at the Council meeting of 20 October 2021 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 12 members, with Hon CHEUNG Kwok-kwan and Hon Martin LIAO Cheung-kong elected as Chairman and Deputy Chairman respectively. The membership of the Panel is in **Appendix II**.

Major work

4. The Panel continued to provide a forum for the exchange and dissemination of views on policy matters relating to the administration of justice and legal services.

Policy initiatives of the Department of Justice

Online dispute resolution and deal-making platform supported by the Administration

5. At the meeting held on 23 November 2020, the Administration briefed members on the proposal to provide one-off funding support of \$100 million for the development, enhancement and initial operation of an online dispute resolution ("ODR") and deal making platform ("the eBRAM Platform") by eBRAM International Online Dispute Resolution Centre Limited ("eBRAM Centre"). Representatives of the eBRAM Centre ("eBRAM representatives") also briefed members on the progress of its work, the strengths of the eBRAM Platform as well as the COVID-19 ODR Platform developed by eBRAM Centre under the COVID-19 ODR Scheme.

6. Whilst expressing support for the proposal in general, members were concerned about how the use of public money, the operation and procurement activities of eBRAM Centre would be monitored. In response, eBRAM representatives assured members that eBRAM Centre would exercise great prudence in using public funds and report to the Administration on a regular basis.

7. On members' enquiries about the sufficiency of eBRAM Centre's promotional efforts on the eBRAM Platform and the COVID-19 ODR Scheme, eBRAM representatives explained that it had been actively promoting the scheme and assured members that it would spare no effort in promoting the benefits of its services to the general public. The Administration also advised that it would work with eBRAM Centre to step up its promotional efforts in the local communities and neighbouring regions.

Advancing the rule of law

8. At its informal meeting for policy briefing by videoconferencing held on 4 January 2021, the Panel was briefed by the Administration on the 2020 policy initiatives of the Department of Justice ("DoJ"), including the 10-year initiative, Vision 2030 for Rule of Law ("Vision 2030"). Members enquired about the progress of the proposed setting up of a rule of law database in Hong Kong and what objective indicators would be included in the database. In response, the Administration advised that the contents of the database under contemplation included the number of legal aid cases and judicial review cases, as well as the channels available for lodging administrative appeals against the Administration's decisions.

9. Other concerns raised by members included the insufficient initiatives under Vision 2030 for the promotion of the Constitution, Basic Law and the Law

of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region, and the need to strengthen the Administration's initiatives in those areas. Some members were concerned about the progress of work undertaken by the Task Force on Vision 2030 and the composition of its membership.

10. At the meeting held on 1 March 2021, the Administration briefed members on the range of work and programmes to empower youths in advancing the rule of law and enriching young legal and dispute resolution practitioners for professional development. Members expressed support for the school programmes initiated by the Administration but enquired how the effectiveness of such programmes would be evaluated. Some members also urged that the Administration should engage legal professionals through collaboration with the two legal professional bodies to conduct training to the general public.

11. As regards members' enquiry on how the Administration could ensure the accuracy of the contents of the educational materials and resources, the Administration replied that educational materials and resources provided by other bodies working in collaboration with DoJ would be checked before publication, and would be subject to amendment where necessary, to ensure that the contents were accurate and positive. At the meeting, members also discussed about the roles of the Secretary for Justice and the DoJ in defending the rule of law of Hong Kong. Some members considered that DoJ should swiftly counter those false allegations made by some foreign governments and politicians and rebuke their malicious acts of interfering with Hong Kong's judicial process, and to protect the youths from being intoxicated.

Mediation initiatives of the Department of Justice

12. The Panel was briefed at its meeting held on 14 May 2021 on DoJ's initiatives to promote the use of mediation in Hong Kong and to develop Hong Kong as an international mediation centre. While members expressed support for DoJ's initiatives, the Administration was urged to step up its efforts to promote community mediation directly to the general public in Hong Kong as its focus had been on the promotion of mediation to the business sectors. Some members also urged the Administration to expedite the establishment of the Greater Bay Area ("GBA") Mediation Platform, further promote the West Kowloon Mediation Centre ("WKMC") and encourage more small claims cases to be settled by mediation at WKMC.

13. In response, the Administration advised that it had all along been striving to promote mediation in multiple disciplines across different sectors, including through the Steering Committee on Mediation chaired by the Secretary for Justice, examples included community mediation and sports dispute resolution.

There was also a "Mediate First" pledge ("MFP") event held on 28 May 2021 with aimed to promote mediation for resolving disputes in the private wealth and healthcare sectors.

14. In response to members' other enquiries raised at the meeting, the Administration had reported on the work of the publicly-funded eBRAM Centre in particular the COVID-19 ODR Scheme, progress of the MFP Star Logo Award Scheme launched in 2017, the progress of work of the Mediation Approval Group under consideration by DoJ, and the accreditation system for mediators.

Issues relating to the legal profession

Cessation of law firms' practices, protection of affected clients' interests and the role of the Administration

15. At the Panel meeting held on 27 January 2021, The Law Society of Hong Kong ("Law Society") was invited to brief members on intervention jurisdiction and powers of the Council of the Law Society under Part IIA and Schedule 2 of the Legal Practitioners' Ordinance (Cap. 159), and the actions taken by the Law Society in the intervention into the practice of Messrs Wong, Fung & Co ("the Firm") ("the intervention case"). The Administration also briefed members on the statutory framework provided in Part IIA of Cap. 159 under which the Law Society was empowered to intervene into law firms' practices in specified circumstances.

16. Members enquired whether it was possible to return clients' money to the affected clients of the Firm expeditiously and why, in most of the intervention cases in the past, the clients of the intervened firms could not recover their money in full. The Law Society responded that from the experience of previous interventions where misappropriation of client money was involved, it was usually difficult to identify which specific account(s) had been tampered with and the intervention agents had to go through all the files and client accounts before coming to the conclusion, especially if the files and accounts were disorganized. Furthermore, if there was a shortfall between the amount of clients' money in a firm's bank accounts and the amount of verified claims, the money of each client might not be fully recovered.

17. In response to members' demand that the Law Society and the Administration should provide genuine assistance to the Firm's clients, the Law Society stressed that it had responsibly fulfilled its regulatory role in accordance with the law and expectation of the public, and explained in detail the various measures and actions that had been taken to that end. The Law Society also attached great importance to protecting the interests of the affected clients and had rendered various kinds of assistance, such as calling for law firms to assist the

affected clients, working closely with all stakeholders in both the public and private sectors to minimize the impact of the intervention, and urging different sectors to assist the affected clients within their own jurisdictions.

18. In response to some members' comment that the existing intervention mechanism had failed to protect the interests of clients and public interests, the Law Society explained that the great majority of law firms were operating in full compliance with the Solicitors' Accounts Rules (Cap. 159F) and the law firms intervened only constituted a small portion. The Law Society also emphasized that it was fully aware of the serious consequences that an intervention would have and therefore always considered intervention as the last resort.

19. The Administration stated that the power of intervention of the Law Society was an important regulatory tool provided under Cap. 159 to protect clients and the public, and that different from the situation of a "receivership", intervention agents would have a duty to preserve the documents and to hold on trust relevant monies of the intervened firm. Given that any misappropriation of funds in an intervention case might have amounted to criminal acts, the Administration considered that intervention by the Law Society was an important step to cease a relevant firm's operation so that other members of the public would not unknowingly become clients of that firm.

20. A member considered that the intervention case was the worst of its kinds which tarnished the reputation of the Law Society and the legal profession as a whole. As such, he was of the view that there was an imminent need for the legal profession to rethink whether the current self-regulatory regime was robust enough in commanding respect from the public, and whether the present practice of solely relying on law firms in completing property transactions (especially the practice of putting all client money in the law firms) should continue.

21. Other related issues raised by members included how disputes arising from the intervention of law firms could be dealt with through mediation, whether the affected clients in intervention cases would be entitled to claims for losses to be paid out of the Hong Kong Solicitors Indemnity Fund, the impact on employees of the intervened law firms, whether and how the effectiveness and efficiency of the intervention process could be improved, etc.

22. In response to the various views raised by members, the Law Society said that while it was bound to follow the current law and practices in carrying out its duties, it was at the same time open to new suggestions and ideas for making continuous improvements, and it had already formed a working group to look at issues relating to intervention work and would continue to review the matter. The Administration also advised that it stood ready to discuss with the Law Society on any suggestions which could further enhance the statutory framework

for intervention into law firms' practices.

Recent developments for Hong Kong's legal and dispute resolution services in the Greater Bay Area, including the Greater Bay Area Legal Professional Examination and other initiatives

23. At its meeting held on 22 March 2021, the Panel was briefed by the Administration on the latest developments of the Hong Kong legal and dispute resolution services in the Greater Bay Area including the Greater Bay Area Legal Professional Examination ("GBA Examination"), the latest work on developing Hong Kong as the capacity building centre for GBA and the proposed measures to be taken forward in GBA.

24. Various questions and concerns were raised by members regarding the pilot measures for Hong Kong and Macao legal practitioners to obtain Mainland practice qualifications and to practise as lawyers in the nine Mainland municipalities in GBA, including the arrangements for the GBA Examination and support for those who had passed the examination. Members also expressed concerns about the stagnant growth in the number of partnership associations set up between Hong Kong and Mainland law firms, the lack of support and business opportunities for Hong Kong barristers in GBA, and the ambiguity as to whether the Direct Access Rule under the Code of Conduct of the Hong Kong Bar Association ("Bar Association") would be violated if barristers were engaged as legal consultants by the Mainland law firms.

25. Some members urged that the Administration should be proactive in dispersing information regarding the developments of GBA to legal practitioners, such as information about what opportunities for cooperating with the Mainland law firms available to Hong Kong barristers, and the number of cases handled by the courts in Hong Kong relating to the reciprocal recognition and enforcement of civil and commercial judgments between Hong Kong and the Mainland, which would enable the legal practitioners to appraise for themselves the business opportunities in GBA.

26. At the Panel meeting held on 31 August 2021, the Administration provided an in-depth account of the GBA Examination and its latest developments and exchanged views with members on other initiatives and work that might bring development opportunities in the GBA for the Hong Kong legal profession and enhancement of cooperation and exchange on legal matters between the Mainland and Hong Kong.

Consultation on enactment/amendment of legislation

27. The Panel continued to receive briefings by the Administration and provide views on legislative proposals in respect of policy matters relating to the administration of justice and legal services.

Legislative amendment proposal related to the Supplemental Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the Hong Kong Special Administrative Region

28. At the Panel meeting held on 27 January 2021, members were briefed by the Administration on the main points of the Supplemental Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the Hong Kong Special Administrative Region ("the Supplemental Arrangement") and the requisite legislative amendments to the Arbitration Ordinance (Cap. 609) to implement the Supplemental Arrangement.

29. In response to members' enquiry on the reason for removing a previous restriction which disallowed parties from making simultaneous applications to both courts in the Mainland and Hong Kong for enforcement of an arbitral award, the Administration advised that as simultaneous applications made to courts in multiple jurisdictions were a common practice internationally, the Supplemental Arrangement sought to remove the restriction for enforcement of arbitral awards in the Mainland and Hong Kong. To prevent double benefits, safeguards were put in place to ensure that the total amount recovered by the applicant would not exceed the amount determined in the arbitral award.

30. The Arbitration (Amendment) Bill 2021 on the requisite legislative amendments to implement the Supplemental Arrangement was introduced into LegCo on 24 February 2021, and was passed by the Council at its meeting on 17 March 2021.

Public consultation on the proposed application of the United Nations Convention on Contracts for the International Sale of Goods to the Hong Kong Special Administrative Region

31. At the Panel meeting held on 22 March 2021, members were briefed by the Administration on the outcome of the public consultation on the proposed application of the United Nations Convention on Contracts for the International Sale of Goods ("CISG") to Hong Kong Special Administrative Region ("HKSAR") conducted by the Administration and its plan of extending the application of CISG to HKSAR ("Proposed Application").

32. Some members agreed to the benefits of having a set of uniform and mutually-agreed rules for parties to the arbitration to proceed with. However, some members questioned whether the application of CISG to HKSAR would weaken the demand for Hong Kong legal services. In response, the Administration advised that after the application of CISG to HKSAR, the legal profession with sufficient familiarization with the CISG rules would still play an important role in matters relating to contracts for the international sale of goods.

33. In response to members' enquiries regarding whether there was any potential conflict between CISG and Hong Kong law, in particular the Sale of Goods Ordinance (Cap. 26), the Administration explained that compatibility did not pose a strong argument against the application of CISG to HKSAR.

34. Some members noted that the Hong Kong General Chamber of Commerce had expressed reservation on the Proposed Application with particular concerns about the proposed imposition of CISG rules as a default position and, as reported in the consultation paper, there were high exclusion rates of CISG rules in certain Contracting States. They cast doubt on the effectiveness of CISG in reducing transaction costs.

35. In response, the Administration pointed out that the prime difficulty with maintaining the status quo, i.e. maintaining the "opt-in" position, was that a Hong Kong business could not effectively create a contract which was governed by CISG and possibly also Hong Kong law, and CISG could not be used as originally designed. The Administration also considered that the automatic application of CISG to HKSAR would have the attraction that, when a party to a contract had difficulties in convincing the other to accept its preferred choice of law clause, Hong Kong businesses would have an additional choice of law option, i.e. the uniform and neutral CISG if it had been applied to Hong Kong, to put on the negotiation table.

36. Some members expressed disappointment with the Administration's plan to remove a clause of the draft Bill attached to the consultation paper which sought to implement the unilateral application-approach proposal of applying CISG rules also to the contracts for the Mainland-Hong Kong sales of goods. The Administration responded that while it fully recognized the importance of the matter, having regard to a view gathered during the public consultation, the Administration considered it prudent to go for the reciprocal applicability of CISG between both sides through discussions with the Mainland, which might take some time to conclude.

37. The Sale of Goods (United Nations Convention) Bill ("SoG(UN) Bill") was introduced into LegCo on 14 July 2021. A bills committee was formed to scrutinize the SoG(UN) Bill, which was passed by the Council at its meeting on 29 September 2021.

Proposed amendment to section 31A of the Legal Practitioners Ordinance (Cap. 159)

38. At its meeting held on 21 June 2021, the Panel was briefed by the Administration on the latest initiatives in promoting professional development for legal profession which included the proposed amendments to Cap. 159 to enable a person (not being a barrister) who holds office as a legal officer ("legal officer (non-barrister)") to be appointed as a Senior Counsel ("SC").

39. Representatives of the Bar Association invited to attend the meeting opined that the legislative proposal would result in an "artificial" or "secondary" category of SC which would diminish the international perception of the status of Hong Kong's SC, and to maintain the status quo would be in the best interest of the public. The Administration took strong exception to the view that the status of SC bestowed on legal officers (non-barrister) under the legislative proposal would be of a "secondary" category. It stressed that the legislative proposal would align with the merit-based selection principles and would not alter the existing selection mechanism and criteria of appointment of SC (including possessing sufficient ability and standing as considered by the Chief Justice of the Court of Final Appeal ("CJ")).

40. In response to members' enquiries, the Administration explained that the legislative proposal only sought to remove the artificial eligibility barrier which unfairly prevented legal officers (non-barrister) from being appointed as SC. It would also encourage legal officers who shouldered important public functions to pursue excellence in serving the public. Some members subscribed to this view and opined that, given the unique nature of the duty of legal officers and based on the merit-based selection principle, a legal officer (non-barrister) having over 10 years of advocacy experience with outstanding performance which satisfied the eligibility requirements should not be deprived of the opportunity for appointment as SC.

41. The Administration stressed that the legislative proposal would not affect any rights of legal practitioners in private practice including the opportunities for barristers to be appointed as SC, nor disturb the professional demarcation between the barristers' and solicitors' branches since a legal officer (non-barrister) who was appointed as SC shall no longer be entitled to retain the title of SC after they cease to be legal officers. Some members agreed to the arrangement that a legal officer

(non-barrister) appointed as SC should only be entitled to use the title of SC when holding office since, by doing so, it would strike a proper balance between the interests of upholding a self-regulatory legal profession and of retaining legal talents in the Government, which was in the public interest.

42. Some members considered that, after taking the first step to enable legal officers (non-barrister) to be eligible for consideration of SC appointment, it was worthwhile to consider extending it to solicitor advocates as they also advocated in court. In response to some members' query as to whether there might be potential conflict of interest if an application for appointment as SC was initiated by a legal officer (non-barrister) and the chairman of the Bar Council was consulted by CJ, the Administration advised when the chairman of the Bar Council and the president of the Law Society were consulted, it was trusted that they would provide fair and objective views to CJ by focusing on whether the eligibility requirements were satisfied rather than whether the potential appointee was a barrister or not.

43. The Legal Practitioners (Amendment) Bill 2021 ("LP(A) Bill 2021") was introduced into LegCo on 14 July 2021. A bills committee was formed to scrutinize the LP(A) Bill 2021, which was passed by the Council at its meeting on 25 August 2021.

Implementation of the recommendations made by the Law Reform Commission of Hong Kong

44. Following the reporting mechanism proposed by the Panel and endorsed by the House Committee in 2012, the Administration briefed the Panel at its meeting held on 21 June 2021 on the progress of implementation of the recommendations made by the Law Reform Commission of Hong Kong ("LRC") by the relevant government bureaux and departments ("B/Ds").

Recommendations rejected by the Administration or which the Administration had no plan to implement at this juncture

45. In light of some recent court cases where contempt of court was an issue, some members enquired whether the Administration would revisit the recommendations in the LRC Report on "Contempt of Court" which was rejected in 1994, in particular whether legislative proposal to provide for the civil and criminal liability for contempt of court (including the acts of journalists) would be introduced. In response, the Administration said that over many years since 1994, there had been courts' guidance from time to time on contempt of court cases. It would not rule out the possibility that LRC, where necessary, might consider looking into the relevant aspects of law.

46. Members agreed that adverse possession was a subject of general interest which should be followed up and many legal practitioners considered it an opportune time to review whether the legal concept of adverse possession should be retained. The Administration responded that the Development Bureau would take into account the relevant recommendation in the LRC Report on "Adverse Possession" released in 2014 when continuing to work with stakeholders on an acceptable proposal for taking forward the Land Titles Ordinance (Cap. 585).

Recommendations under consideration or in the process of being implemented

47. The Panel expressed concerns on the timetable for implementing recommendations in the LRC Reports on "Review of Substantive Sexual Offences", "Class actions", "The regulation of debt collection practices" and "Charities" and "Privacy". In particular, members were aware that many legal practitioners were longing for the early development of a class action regime. Some members also expressed concern about the emergence of some so-called charities (and online crowdfunding activities) which in fact were operating under concocted pretext.

48. In response, the Administration shared the view of some members that, on the legislative development of a class action regime in Hong Kong, balancing the interests of various stakeholders was crucial. While access to justice could be facilitated by the class action regime, it was equally important to consider its potential impacts so as not to hinder further development of the regime.

49. The Administration also explained that it had introduced a series of administrative measures in two phases with a view to optimizing the monitoring and supportive work relating to charitable fund-raising activities. Furthermore, while money laundering might be involved in certain online crowdfunding activities, they were not all illegal and some might serve justifiable causes. There had already been relevant provisions in existing laws applicable to online crowdfunding activities with crime elements.

Functions and work of the Law Reform Commission of Hong Kong

50. Some members pointed out that B/Ds were usually occupied by current problems at hand and lack of foresight in considering reform aspects of the laws under respective policy purview needed in the long run. As LRC and its legal experts were more visionary and forward looking than B/Ds in identifying law reform proposals which were of longer term benefits to the community, B/Ds should maintain constant interaction and mutual cooperation with LRC and its legal experts to keep the laws of Hong Kong up-to-date in tandem with the trend of socio-economic developments.

51. Some members were concerned about the little progress made in reforming the laws relating to big data and technological development, which had bearing on the protection of personal data privacy. The Administration explained that, while it would in general rest with the policy B/Ds to put forth legislative proposals, LRC might still consider for reform those aspects of the laws in these policy areas if in-depth legal research and/or cross-bureau coordination was considered necessary, e.g. a sub-committee to study and follow up on the topic of cybercrime had been formed under LRC.

Consultation papers issued by the Law Reform Commission of Hong Kong

Consultation paper on Sentencing and Related Matters in the Review of Sexual Offences

52. At the Panel meeting held on 23 November 2020, members were briefed by the Review of Sexual Offences Sub-committee of LRC ("SC on Review of Sexual Offences") on the consultation paper on Sentencing and Related Matters in the Review of Sexual Offences which was generally welcomed by members. Some members expressed concern that the maximum penalty of two years' imprisonment recommended in that consultation paper for the existing voyeurism and non-consensual upskirt-photography offences was insufficient to achieve sufficient deterrent effect, considering that the number of clandestine photo-taking cases remained on the high side over the years and the act was an intrusion of privacy which could cause great psychological harm to the victims.

53. In response, SC on Review of Sexual Offences explained that the new voyeurism and non-consensual upskirt-photography offences were modelled, to a large extent, on similar offences in the English Act which also provided for a maximum penalty of two years' imprisonment. On the other hand, the two years' imprisonment was the same as the maximum penalty for the existing offence of loitering under section 160(3) of the Crimes Ordinance (Cap. 200) in Hong Kong, which was considered as a comparable offence of similar seriousness. Furthermore, the act of non-consensual upskirt-photography had hitherto been prosecuted as committing the offence of "access to computer with criminal or dishonest intent" under section 161 of Cap. 200 and, whilst the maximum penalty for which was five years' imprisonment, the sentence given by the Magistrates' Courts was often around six months only.

54. At the meeting, SC on Review of Sexual Offences also explained on the difference between the new sexual exposure offence and the existing public order offence of exposure in their nature and severity which justified a higher maximum penalty for the former offence. Members also expressed concerns and discussed about the reoffending rates and the provision of treatment for sex offenders, the

recommendation on widening the coverage of the Sexual Conviction Record Check Scheme ("the SCRC Scheme"), access to the sexual conviction records under the SCRC Scheme.

Consultation paper on Outcome Related Fee Structures for Arbitration

55. At its meeting on 27 January 2021, the Panel was briefed by the Outcome Related Fee Structures for Arbitration Sub-committee of LRC ("SC on ORFSA") on the its recommendations in relation to the introduction of outcome related fee structures ("ORFSs") for arbitration in Hong Kong.

56. Citing the results from previous consultations conducted by LRC on Conditional Fees where considerable opposition views had been received, especially from the insurance industry, the Panel Chairman enquired whether the time was ripe for introducing ORFSs for arbitration in Hong Kong. In response, SC on ORFSA explained that the arguments against ORFSs were primarily related to litigation rather than arbitrations, and parties to arbitration were generally more commercially sophisticated parties such as large companies and quasi non-government organizations, which were not as vulnerable as the individuals in litigation cases who would be more subjected to the downside of ORFSs. Moreover, the SC on ORFSA understood that opposition from the insurance industry against ORFSs for arbitration had somewhat lessened since the previous consultations.

Concerns relating to the Judiciary

Enhancements to the mechanism for handling complaints against judicial conduct

57. At the Panel meeting held on 14 May 2021, the Judiciary Administration ("Jud Adm") briefed members on a series of proposed enhancement to the existing mechanism for handling complaints against judicial conduct ("the proposed mechanism"), which included the introduction of a two-tier mechanism comprising a Panel of Judges to investigate into complex cases and an Advisory Committee to oversee and advise on the handling of complaints against judicial conduct ("the Advisory Committee").

58. In general, members welcomed and supported the proposed mechanism and considered it a substantive positive step taken by the Judiciary to address public concerns regarding the existing mechanism for handling complaints against judicial conduct ("existing mechanism"). However, members noted that there was a significant increase in the complaints against judicial conduct in 2020, the criticisms about the existing mechanism due to the handling of these complaints including that the investigation process was carried out by judges and judicial officers ("JJOs") only, there might be varying standards applied and the

lack of transparency about the follow-up actions taken, etc.

59. In response, Jud Adm explained that the significant increase in complaints against judicial conduct disposed of in 2020 was mainly attributable to the surge in the number of identical or similar complaints against JJOs relating to a number of social event court cases. As CJ announced in his address at the Ceremonial Opening of Legal Year on 11 January 2021 that a review would be undertaken with a view to enhancing the transparency and the accountability of the existing mechanism, the enhanced mechanism with a two-tier structure was hence proposed.

60. In response to members' enquiries, Jud Adm had also explained in detail the procedures for classifying and processing a complaint through the two-tier system. In particular, Jud Adm advised that based on past experience, a complaint might be classified as frivolous or vexatious if it contained mere allegations which were not supported by any factual evidence, and the disposal of these non-pursuable complaints would be summarily reported to the Advisory Committee.

61. In response to members' concerns regarding the handling of complaints which were serious or complex under the proposed mechanism, and whether it had any relationship with Article 89 of the Basic Law ("BL"), Jud Adm explained that there was no direct relationship between BL89 and the proposed mechanism.

62. Jud Adm further clarified that if a complaint against the conduct of a JJO appeared to have any substance and identified certain serious misbehavior which warranted action under BL89 (concerning removal of judges) or the Judicial Officers (Tenure of Office) Ordinance (Cap. 433) (concerning disciplinary procedures involving judicial officers), or the same was identified through investigation by the Panel of Judges or the Court Leaders, the matter would immediately be brought up to the CJ for initiation of action under BL89 or Cap. 433 where appropriate. Any allegations of criminal offences would be dealt with by law enforcement agencies if the relevant complaints appeared to have any substance.

63. Members had also gone into detailed discussion regarding the Advisory Committee including its composition and appointment of members to it, and how the Advisory Committee could really enhance the accountability and transparency of the existing mechanism, whether its functions would be too limited so that it would be tantamount to a "toothless tiger", etc. Jud Adm had responded to members' views and concerns at the meeting.

Access to Justice

Legal assistance for non-refoulement claimants

64. At its informal meeting for policy briefing by videoconferencing held on 4 January 2021, members noted the sharp increase in the number of judicial review ("JR") cases in recent years and was concerned about that the applicants in quite a number of such cases had been granted legal aid. There was a concern, in particular, about the legal aid granted to JR cases arising from non-refoulement ("NR") claimants, which could consume much of the resources of the Administration and the Judiciary. In response, the Legal Aid Department ("LAD") had explained that the actual number of approved legal aid applications relating to JR only constituted a small proportion of the total number of legal aid applications received, and the number of leave granted on JR from non-refoulement claim-related applications was very small.

Revamping of the Case Management and Case Accounting System and Knowledge Support System in the Legal Aid Department

65. At its meeting held on 1 March 2021, the Panel was briefed on LAD's proposed revamp of the Case Management and Case Accounting System and its related Knowledge Support System of the Legal Aid Department ("LAD's systems") and the justifications for submission of the proposal ("the financial proposal") to the Finance Committee ("FC").

66. Whilst giving general support to the submission of the financial proposal to FC, members had raised various enquiries and concerns regarding the LAD's systems and other related issues. Pointing out that there had been an uneven distribution of legal aid assignments to counsel or solicitors on the Legal Aid Panel ("the legal aid lawyers") for various reasons, some members had enquired whether LAD's systems could provide information to see whether such a disproportionate distribution of legal assignments did exist. In response, the Administration explained on the procedures, considerations taken by LAD and the quota for assigning cases to the legal aid lawyers.

67. Some members enquired whether legal aid applicants already assigned with legal aid lawyers were allowed to be represented by counsel engaged through other financial support. In response, the Administration explained on the situations where an aided person might be represented by more than one counsel. However, any monetary donation received by the legal aid applicants, whether it was for the engagement of legal representatives or for other purposes, would be taken into account by LAD in assessing whether their financial eligibility limit for legal aid had been exceeded.

68. Other concerns raised by members included the number of legal aid applications to challenge government's decisions by way of JR, especially the legal aid granted to NR claimants seeking to challenge decisions over their claims by way of JR, and legal aid cases possibly involving champerty. In response, the Administration explained that JR-related legal aid applications in fact accounted only for a small percentage of legal aid applications, and the legal aid applications relating to JR cases raised by NR claimants were rare. The Administration also stressed that LAD would keep on assessing every legal aid application thoroughly to ensure the prudent use of legal aid resources and, if any conflict of interest was observed after the legal aid assignment was made, LAD would reassign the case to another legal aid lawyer.

Other issues

69. During the session, the Panel also discussed the items on "Legal education and training in Hong Kong" and "Professional development for legal profession – international organization secondment programmes", and was consulted on the following staffing and financial proposals:

- (a) proposed making permanent a directorate post in Jud Adm considered at the Panel meeting on 2 November 2020;
- (b) one-off funding support of \$100 million for the development, enhancement and initial operation of the eBRAM Platform by eBRAM Centre at the Panel meeting on 23 November 2020 (see paragraph 5-7 above);
- (c) proposed creation of one supernumerary post of Deputy Principal Government Counsel and one supernumerary post of Assistant Principal Government Counsel in the Rule of Law Unit of the Inclusive Dispute Avoidance and Resolution Office of the Department of Justice considered at the Panel meeting on 1 March 2021;
- (d) revamping of the Case Management and Case Accounting System and Knowledge Support System in LAD at the Panel meeting on 1 March 2021 (see paragraph 65-68 above); and
- (e) proposed upgrading of one permanent directorate post of Principal Government Counsel to Law Officer in LRC Secretariat of the Department of Justice at the Panel meeting on 21 June 2021.

70. During the session, the Panel also received information papers provided by Jud Adm on the "Proposed amendments to the Rules of the High Court and the Rules of the District Court to remove the "fraud exception rule"", "Legislative proposals for electronic fees under the Information Technology Strategy Plan" and "Proposed revisions to the rates of allowances for jurors and witnesses and fees payable to adjudicators". It also received information papers from the Administration on "Annual reviews of financial eligibility limits of legal aid applicants and Director of Legal Aid's first charge" and "Biennial review of criminal legal aid fees, prosecution fees and duty lawyer fees". All the information papers had been circulated to members for reference.

Meetings held and visit conducted

71. From October 2020 to September 2021, the Panel held a total of 12 meetings including one informal meeting for policy briefing by videoconferencing. The Panel has also held a policy briefing on 11 October 2021 to receive briefings by the Secretary for Justice and the Director of Administration on the Chief Executive's 2021 Policy Address in respect of the policy initiatives of the Department of Justice and those relevant to the Chief Secretary for Administration's Office.

72. The Panel conducted a visit to the West Kowloon Law Courts Building ("WKLCB") in August 2021 and exchanged views with CJ, the Chief Judge of the High Court and the Judiciary Administrator on issues of mutual concern relating to the Judiciary. Members visiting WKLCB were given a demonstration on how the application of technology including the use of remote hearing, e-bundles and digital evidence presentation and exhibits handling, might help enhance the efficiency of court operation, and received a briefing on the security and crowd management measures implemented in WKLCB.

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.

Panel on Administration of Justice and Legal Services

Membership list for the 2020-2021 session

Chairman	Hon CHEUNG Kwok-kwan, JP
Deputy Chairman	Hon Martin LIAO Cheung-kong, GBS, JP
Members	Hon Starry LEE Wai-king, SBS, JP Dr Hon Priscilla LEUNG Mei-fun, SBS, JP Hon Mrs Regina IP LAU Suk-yea, GBM, GBS, JP Hon Paul TSE Wai-chun, JP Hon Elizabeth QUAT, BBS, JP Hon CHUNG Kwok-pan Hon Jimmy NG Wing-ka, BBS, JP Dr Hon Junius HO Kwan-yiu, JP Hon Holden CHOW Ho-ding Hon YUNG Hoi-yan, JP

(Total : 12 members)

Clerk	Mr Lemuel WOO
Legal Adviser	Ms Clara TAM

* Changes in membership are shown in Annex.

Annex to Appendix II

Panel on Administration of Justice and Legal Services

Changes in membership

Member	Relevant date
Hon Tommy CHEUNG Yu-yan, GBS, JP	Up to 2 November 2020
Prof Hon Joseph LEE Kok-long, SBS, JP	Up to 10 November 2020
Hon Charles Peter MOK, JP	Up to 10 November 2020
Hon IP Kin-yuen	Up to 10 November 2020
Hon SHIU Ka-chun	Up to 11 November 2020
Hon HUI Chi-fung	Up to 11 November 2020
Hon Jeremy TAM Man-ho	Up to 11 November 2020
Hon Claudia MO	Up to 12 November 2020
Dr Hon Helena WONG Pik-wan	Up to 12 November 2020
Hon WU Chi-wai, MH	Up to 12 November 2020
Hon LAM Cheuk-ting	Up to 12 November 2020
Hon James TO Kun-sun	Up to 12 November 2020
Hon Andrew WAN Siu-kin	Up to 12 November 2020
Hon KWONG Chun-yu	Up to 12 November 2020
Dr Hon Fernando CHEUNG Chiu-hung	Up to 18 November 2020
Hon Alice MAK Mei-kuen, BBS, JP	Up to 19 November 2020
Hon Michael TIEN Puk-sun, BBS, JP	Up to 1 December 2020
Hon Tony TSE Wai-chuen, BBS, JP	Up to 1 December 2020
Hon CHAN Kin-por, GBS, JP	Up to 1 December 2020
Hon Abraham SHEK Lai-him, GBS, JP	Up to 2 December 2020
Hon LAU Kwok-fan, MH, JP	Up to 2 December 2020
Hon CHAN Han-pan, BBS, JP	Up to 6 December 2020
Hon WONG Ting-kwong, GBS, JP	Up to 8 December 2020
Hon Steven HO Chun-yin, BBS, JP	Up to 8 December 2020
Hon Jeffrey LAM Kin-fung, GBS, JP	Up to 14 December 2020
Hon Wilson OR Chong-shing, MH	Up to 5 January 2021
Hon Vincent CHENG Wing-shun, MH, JP	Up to 11 January 2021
Hon LEUNG Che-cheung, SBS, MH, JP	Up to 14 March 2021

For **changes in LegCo Membership**, please refer to the link below:

(<https://www.legco.gov.hk/general/english/members/yr16-20/notes.htm>)