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## 法律援助的獨立性 Independence of Legal Aid

### 行政當局對本局 建議的立場

行政當局在2014年6月24日立法會司法及法律事務委員會的會議上，向委員會成員簡介了其對跟進本局有關法律援助獨立性建議的立場。

經審慎評估本局的建議、持分者的意見，以及有關長遠督導法律援助範疇的政策考慮因素，行政當局決定：a) 原則上接受本局提出的建議，即制定法援政策及管理法律援助署（「法援署」）的責任應歸屬政務司司長辦公室，以及法援署署長應直接向政務司司長匯報工作，並視乎政務司司長辦公室於現屆政府的各項工作承諾及民政事務局（「民政局」）目前進行的多項檢討的進度，研究落實建議的時間表；b) 在維持《法律援助服務局條例》（《法援局條例》）（第489章）賦予本局監察職能的現有法律框架及法援署現有撥款安排的前提下，跟進本局有關法援署管治及運作透明度的建議。

就本局提出的其他建議，行政當局的決定如下：

### The Administration's position in taking forward the Council's recommendations

At the meeting of the Panel of Administration of Justice and Legal Services of Legislative Council held on 24 June 2014, the Administration briefed Panel members on its position in taking forward the Council's recommendations on the independence of legal aid.

After careful assessment of the Council's recommendations, views from stakeholders, as well as policy considerations on the continuity in overseeing the legal aid portfolio, the Administration decided: a) to accept in principle the Council's recommendation that the responsibilities for formulating legal aid policy and "housekeeping" the Legal Aid Department (LAD) should be vested in the Chief Secretary for Administration's Office (CSO) and the Director of Legal Aid (DLA) should report directly to the Chief Secretary for Administration (CS), with the implementation timetable be reviewed in the light of various commitments of CSO in this term of Government and the progress of various on-going reviews which the Home Affairs Bureau (HAB) is undertaking; and b) to follow-up on the Council's recommendations regarding LAD's governance and operational transparency while maintaining the existing legal framework governing the Council's oversight role under the LASC Ordinance (Cap. 489) and legal aid funding support for LAD.

As regards LASC's other recommendations, the Administration's decision is as follows –

## 法援署署長及副署長的工作表現評核與提名

行政當局不贊成顧問提出有關本局應參與任命及評核法援署署長及副署長工作表現的建議，當局認為有關建議從根本上偏離現行公務員制度。現行公務員制度的基本原則是透過公開、公平及具競爭性的程序，任命最適合有關工作的人選。在任命晉升職級人員方面，現時已設有行之有效而透明的機制處理晉升遴選工作，當中包括召開及組成晉升遴選委員會、制訂晉升遴選準則、公開晉升遴選程序等，而有關機制適用於整個公務員體系。此外，由本局提名署長及副署長人選亦未必符合現行法例的規定。然而，當局認為在評核署長及副署長的工作表現時，可納入本局主席的意見。

## 法援局對法定代表律師辦事處的監督角色

法定代表律師是根據《法定代表律師條例》委任的公職人員，在訴訟中代表由於年齡或精神原因在法律上無行為能力的人士。法定代表律師辦事處設有獨立的辦事處，並有專屬職員，職能與提供法援並無關係。由於本局的職能限於監督法援署提供的法援服務，行政當局認為並無充分理據把本局的角色延伸至法援服務以外，把法定代表律師辦事處納入本局監督範圍。

## Performance evaluations and nominations of DLA and DDLAs

The Administration did not agree to the consultant's recommendation on the Council's involvement in the appointment and performance appraisal of DLA and the Deputy Directors of Legal Aid (DDLAs), which would represent a fundamental deviation from the prevailing civil service mechanism that has been devised to uphold the fundamental principle of appointing the most suitable person for the job through an open, fair and competitive process. For appointment to an office at a promotion rank, there is a well-established and transparent mechanism for conducting a promotion exercise, including convening of promotion boards and their composition, formulation of selection criteria for promotion, openness of the promotion exercise, etc. Such a mechanism is applicable service-wide. The Administration also considered it not legally in order for the Council to nominate candidates for the posts of DLA and DDLAs under the existing legislation. That said, the Administration found there should be scope for the views of the Chairman of LASC be reflected in performance evaluations of DLA and DDLAs.

## LASC's oversight role to cover Official Solicitor's Office

The Official Solicitor is appointed under the Official Solicitor Ordinance and is a public officer who represents the interest of persons under disability of age or mental capacity in proceedings. The Official Solicitor's Office (OSO) is housed under a separate office with its own dedicated staff performing functions that do not relate to the provision of legal aid. As the Council's function is confined to overseeing the legal aid services provided by LAD, the Administration did not see any strong justifications for

## 法援局監督法援署根據第9條要求外委律師提供意見的權力

根據《法律援助條例》（《法援條例》）（第91章）第9(d)條，法援署署長可把法援申請轉介予名列適當名冊的大律師或律師調查有關事實，並就該等事實提供報告或意見，或就該項法援申請所引起的任何法律問題提供意見。因應法援署按《法援條例》第9條尋求意見時會偏好選用律師名冊中傾向贊同法援署署長決定的律師的觀感問題，行政當局會繼續與本局及法援署研究，能否在符合《法援局條例》第4(3)條所訂明本局不得就個別案件的處理作出指示的規定下，加強本局監督法援署根據《法援條例》第9(d)條外委律師的角色。

## 法援局監管法援署拒批民事及刑事法援申請的權力

由於本局的主要法定職責為監督法援署管理其所提供的法援服務，行政當局將與本局研究能否在法援署整體處理個案方面強化本局的監督角色。

expanding the role of the Council beyond legal aid to cover OSO.

## LASC's power to oversee LAD's case assignment for obtaining Section 9 opinions

Under Section 9(d) of the Legal Aid Ordinance (Cap. 91) (LAO), DLA may refer an application to a counsel or solicitor, whose name is on the appropriate panel, to investigate the facts and make a report thereon or to give any opinion thereon or on any question of law arising out of the application. To address the perception problem that LAD has a "preferred panel" of lawyers which provides "Section 9" opinions that favor DLA's interpretation of the legal merit of the case, the Administration would work with the Council and LAD to see if there is any room to enhance the Council's oversight on LAD's case assignments under Section 9(d) of LAO without interfering with the handling of individual cases as prescribed under Section 4(3) of the LASC Ordinance.

## LASC's power to oversee LAD's decisions on refusals of civil and criminal legal aid applications

As the Council's primary statutory responsibility is to oversee the administration of legal aid services provided by LAD, the Administration will work with the Council to see if there is any room to enhance its role in overseeing LAD's overall handling of cases.



民政局在本局2015年1月27日的會議上，向本局成員簡介行政長官在2015年《施政報告》有關法律援助及法律諮詢服務的政策措施。當中，民政局重申行政當局會在維持《法律援助服務局條例》（第489章）賦予本局監察職能的現有法律框架及法援署現有撥款安排的前提下，跟進本局有關法援署管治及運作透明度的建議。民政局同時提到行政當局知悉本局已成立專責小組檢視法律援助資訊的傳遞，從而就提高法援署的運作透明度提出建議。民政局表示行政當局將繼續支持本局的工作。

## 提高法援署的運作透明度

如去年年報所載，本局已成立一個由本局主席帶領，並由三名本局成員和來自不同專業範疇的專家組成的專責小組，以研究改善法律援助資訊的傳遞，從而提高法援署的運作透明度。

過去一年，專責小組分別於2014年6月16日、8月15日、10月10日及12月22日召開了共4次會議。詳細工作進度將在下一章中闡釋。

At the Council meeting held on 27 January 2015, HAB briefed Council members on details of the policy commitments in respect of legal aid and legal advice services in the Chief Executive's 2015 Policy Address. Among other things, HAB recapped that the Administration had undertaken to follow-up on the Council's major recommendations on the independence of legal aid regarding LAD's governance and operational transparency while maintaining the existing legal framework governing the Council's oversight role under the LASC Ordinance (Cap. 489) and legal aid funding support for LAD. HAB also said that the Administration noted the Council's setting up of a task force to review the dissemination of legal aid information with a view to making recommendations on the enhancement of LAD's operational transparency. HAB assured that the Administration would continue to support the Council's work.

## Enhancing the operational transparency of LAD

As reported in the last annual report, a task force chaired by the Council chairman and supported by 3 other Council members as well as experts of different professions was set up to review the dissemination of legal aid information with a view to enhancing the operational transparency of LAD.

During the year, the task force met on a total of 4 occasions i.e. 16 June, 15 August, 10 October, 22 December 2014. Details of the progress of the work done by the task force are given in the next chapter.