

Report No. 58 of the Director of Audit — Chapter 1

DUTY LAWYER SERVICE

Summary

1. The Duty Lawyer Service (DLS) is a company limited by guarantee. It is fully subvented by the Government and is independently managed and administered jointly by the Hong Kong Bar Association (Bar Association) and the Law Society of Hong Kong (Law Society) through the Council of the DLS. It operates four legal assistance schemes to complement the legal aid services provided by the Legal Aid Department. They are the Duty Lawyer Scheme, the Free Legal Advice Scheme, the Tel-Law Scheme, and the Convention Against Torture (CAT) Scheme. The DLS is headed by an Administrator. It receives annual subventions from the Home Affairs Bureau (HAB) for operating the legal assistance schemes. In 2010-11, it had a total income of \$105.9 million and a total expenditure of \$101.5 million. The Audit Commission (Audit) has recently conducted a review of the DLS.

Corporate governance

2. *Tenure of Council members.* At present, the DLS Council consists of four barristers nominated by the Bar Association, four solicitors nominated by the Law Society, and three lay members nominated by Council members. The Memorandum and Articles of Association of the DLS does not specify the tenure of a Council member. As at December 2011, of the 11 Council members, four (36%) had served the Council for 10 to 18 years. There is merit for the DLS to put in place a system to facilitate a healthy turnover of Council membership and provide opportunity for more people to serve the DLS and the community. *Audit has recommended that the DLS should consider setting: (a) a fixed tenure for the appointment of Council members; and (b) a limit on the total length of service for Council members.*

3. *Attendance at Council meetings.* In the past three years 2009 to 2011, the overall attendance rate at Council meetings was on the decline, from 71% to 61%. Besides, the attendance rates of some members were 50% or below. *Audit has recommended that the DLS should: (a) closely monitor the attendance rates of Council members at meetings; and (b) issue reminders to Council members with low attendance rates, requesting them to attend meetings as far as possible.*

4. ***Management of conflicts of interest.*** The DLS has adopted a one-tier system for declaration of interests by Council members, which only requires a Council member to declare a conflict of interest as and when it arises. *Audit has recommended that the DLS should consider adopting a two-tier system for declaration of interests, which also requires Council members to declare general interests on appointment and annually thereafter.*

5. ***Corporate governance guidelines and procedures.*** The DLS does not have a corporate governance manual which sets out detailed guidelines and procedures on corporate governance. The Council has also adopted some practices with no formal documentation. Moreover, a framework of delegated and reserved powers of the Council has not been established. *Audit has recommended that the DLS should compile a corporate governance manual covering, among other things: (a) detailed rules and procedures for the proceedings of Council meetings; (b) established practices of the Council in managing the business and affairs of the DLS; and (c) a framework of delegated and reserved powers, delineating clearly authorities and responsibilities between the Council and the Administrator.*

Duty Lawyer Scheme

6. The Duty Lawyer Scheme provides legal representation to defendants appearing in Magistrates' Courts. To be eligible for legal representation, a person has to pass a merits test and a means test, and pay a fixed handling charge.

7. ***Means test.*** According to the requirements of the means test of the Scheme, applicants may be required to provide supporting documents of their financial means. However, in practice, the DLS did not require applicants to provide any documentary evidence for verifying the declared income. *Audit has recommended that the DLS should, on a risk basis, require applicants to provide supporting documents of their declared income for verification.*

8. ***Assignment of work to duty lawyers.*** The DLS observes two principles in assigning work to duty lawyers: (a) safeguarding the interests of defendants by assigning duty lawyers with suitable expertise and experience to trial cases; and (b) maintaining a fair and even distribution of work among duty lawyers. To strike a balance between these two principles, the DLS has set a general limit of 36 whole days a year on trial-court assignments. Audit analysed the distribution of assignments for 2009-10 and 2010-11, and found that there was room for more even distribution among duty lawyers. Audit also noted that, from 2007-08 to 2010-11, the number of duty lawyers competent and willing to handle trial cases increased by 13%, while the number of trial cases decreased by 11%. *Audit has recommended that the DLS should conduct a review of the system for distributing work among duty lawyers, with a view to maintaining a fair and even distribution of trial-court assignments. In particular, the review should examine whether the general limit of 36 whole days a year should be revised downwards.*

9. **Legal cost of the Scheme.** There was an increasing trend in the legal cost per defendant. During the five years 2006-07 to 2010-11, the legal cost per defendant had increased by 33% (from \$1,250 to \$1,667). *Audit has recommended that the DLS should: (a) conduct a review to ascertain the reasons for the increasing trend in the legal cost per defendant; and (b) take measures to contain the increasing legal cost per defendant.*

Other legal assistance schemes

10. **CAT Scheme.** This Scheme provides free legal assistance to persons (primarily overstayers and illegal immigrants facing repatriation) who have made a claim under the Convention. The Scheme has been operated on a pilot basis since December 2009. The DLS has set up an office and recruited additional staff for the Scheme. Apart from legislative amendments, Audit noted that there were other factors which might significantly affect the operation of the CAT Scheme, such as: (a) the planned increase in the number of cases referred daily by the Immigration Department; (b) the supply of duty lawyers; and (c) the supply of interpreters. *Audit has recommended that the DLS should: (a) closely monitor the factors which may have a significant impact on the operation of the CAT Scheme; and (b) taking into account these factors, plan ahead for the continuous provision of the service (if required) after the expiry of the pilot scheme in December 2012.*

11. **Free Legal Advice Scheme.** This Scheme provides free preliminary legal advice to members of the public as to their position in genuine cases. Audit noted that the average waiting time for meeting a volunteer lawyer (after making an appointment) increased from 25.2 days in 2007 to 55 days in 2011. In order to increase the number of legal advice sessions to shorten the waiting time, Audit considers that improvements need to be made in two areas: (a) recruitment of more volunteer lawyers; and (b) assignment of more legal advice sessions a year to each volunteer lawyer. *Audit has recommended that the DLS should: (a) closely monitor the trend of increasing waiting time; (b) seek the assistance of the Bar Association and the Law Society in inviting their members to join the Scheme as volunteer lawyers; and (c) appeal for the support of serving volunteer lawyers to take up more than three legal advice sessions a year.*

12. **Tel-Law Scheme.** This Scheme provides free recorded legal information to members of the public through telephone or the DLS website. According to the DLS, the information would be updated as and when required. For the recorded information on the website, the last amendment date of each topic is provided, but not the last review date. Audit notes that the last amendment dates are generally more than 10 years ago. This may give an impression to users that regular reviews of the information are not conducted. *Audit has recommended that the DLS should: (a) conduct regular reviews of the recorded information of the Tel-Law Scheme; and (b) provide the last review date of each topic for the recorded information of the Scheme on the DLS website.*

Administrative issues

13. ***Office premises for the Administration Office.*** The DLS's Administration Office is located at Grade-A office premises in Central (i.e. Hong Kong's central business district). In April 1998, when approving the DLS's proposal to move its Administration Office to the present location, the Government commented that it should not be taken as a precedent for renting an office of such grading in future removals. However, Audit noted that the DLS had not examined the option of relocating the Administration Office to office premises of a lower grading before it renewed the lease in 2001, 2004, 2007 and 2010. *Audit has recommended that the DLS should, before the expiry of the current lease of the Administration Office (in May 2013), critically examine, in consultation with the HAB, the option of relocating the Administration Office to office premises of a lower grading (including those outside Central) or suitable government premises, with a view to economising on accommodation cost.*

14. ***Housing allowance.*** The DLS's housing allowance is modelled on the civil service's private tenancy allowance. Over the years, the Government has introduced changes to its housing benefits. The private tenancy allowance is no longer available to civil servants appointed on or after 1 October 1990. Despite the changes in the housing allowances provided to civil servants since 1990, the DLS has not revised the terms of its housing allowance accordingly. *Audit has recommended that the DLS should, in consultation with the HAB, review the terms of the housing allowance for DLS staff who will become eligible for the allowance in future.*

Performance measurement and reporting

15. ***Performance targets.*** Challenging but attainable performance targets can help enhance performance. So far, the DLS has not set any performance targets for its legal assistance schemes. *Audit has recommended that the DLS should consider setting performance targets for its legal assistance schemes.*

16. ***Performance information for CAT Scheme.*** The HAB has provided in its Controlling Officer's Report performance information on the DLS, covering the Duty Lawyer Scheme, the Free Legal Advice Scheme and the Tel-Law Scheme, but not the CAT Scheme. *Audit has recommended that the Secretary for Home Affairs should, in consultation with the Secretary for Security, compile performance information for the CAT Scheme.*

Response from the Administration and the DLS

17. The Secretary for Home Affairs and the DLS agree with the audit recommendations.

April 2012