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Report of Panel on Administration of Justice and Legal Services for submission to the Legislative Council 2002-2003

Purpose

This report gives an account of the work of the Panel on Administration of Justice and Legal Services for tabling at the meeting of the Legislative Council (LegCo) on 2 July 2003 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 and 9 October 2002 for the purpose of monitoring and examining Government policies and issues of public concern relating to administration of justice and legal services. The terms of reference of the Panel are in **Appendix I.**

3. The Panel comprises nine members. Hon Margaret NG and Hon TSANG Yok-sing were elected Chairman and Deputy Chairman of the Panel respectively. A membership list of the Panel is in **Appendix II.**

Major work

Proposals to implement Article 23 of the Basic Law

Public consultation exercise

4. On 24 September 2002, the Administration issued a Consultation Document on "Proposals to implement Article 23 of the Basic Law" for public consultation. The Panel on Security and the Panel on Administration of Justice and Legal Services held five joint meetings between 26 September 2002 to 17 January 2003 to discuss the Consultation Document with the Administration. In addition, the two Panels held another seven joint meetings in November and December 2002 to listen to the views of deputations on the Consultation Document. A total of 271 organizations/ individuals had made submissions to the two Panels, and 114 of them had given oral representations.

5. Members and deputations raised various concerns and queries about the Administration's proposals to implement Article 23 of the Basic Law (BL23). Some deputations expressed opposition to enact legislation to implement BL23. Some Members and some deputations considered that it was presently not an appropriate time to enact laws to implement BL23. Some Members and some deputations were of the view that there was no need to pass any legislative proposals in haste, especially in view of the fact that there had not been any cases of treason or sedition in the past five years. These Members and deputations urged that the Administration should, after the consultation period, issue a white bill in early 2003 setting out the details of legislative provisions for public consultation, before introducing a blue bill.

6. Some other deputations expressed support for the enactment of legislation to implement BL23 and considered that there was no need to issue a white bill. However, some of these deputations had also raised concerns about various proposals in the Consultation Document.

7. The major areas of concern expressed by Members and deputations included the following -

(a) the human rights implications of the Administration's proposals;

(b) the proposal to make misprision of treason a statutory offence;

(c) the extra-territorial application of the offences of treason, secession, sedition and subversion to Hong Kong Special Administrative Region (HKSAR) permanent residents;

(d) the offences of sedition and possession of seditious publications;

(e) the proposals to protect information relating to relations between the Central Authorities and the HKSAR, and to create a new offence of unauthorized disclosure of protected information by unauthorized access;

(f) restriction of freedom of expression, freedom of the press and freedom of association;

(g) the proposal to provide the police with emergency power of entry, search and seizure without a warrant for investigation of certain BL23 offences; and

(h) the proposed mechanism to proscribe a local organization by the Secretary for Security (S for S) on the basis of a proscription by the Central Authorities of a Mainland organization to which the local organization is affiliated.

8. The Administration responded that with matters of principle having been discussed and the detailed proposals being made available, and with sufficient time to study the views received, there was no reason why the legislation to be proposed could not be enacted in July 2003. It is the wish of the Administration and the Central

People's Government that the proposals to implement BL23 should be enacted as soon as possible.

9. Regarding the issuance of a white bill, the Administration advised that it was not its usual practice to issue a white bill before the introduction of a blue bill. The Administration considered that a white bill and a blue bill could equally serve the purpose of providing details about the legislative proposals.

Compendium of Submissions

10. Following the three-month public consultation exercise, the Administration announced the outcome of the consultation exercise and issued a Compendium of Submissions on 28 January 2003. The two Panels held a joint meeting on 6 February 2003 to discuss the Compendium with the Administration.

11. Some Members were dissatisfied with the way the Administration dealt with the submissions received in compiling the Compendium. These Members considered that the Administration should not simply classify the views received into three categories. These Members considered that the Administration should also analyze and summarize the views expressed. They also pointed out that some organizations had complained that their submissions were either not included in the Compendium or wrongly classified.

12. Some other Members, however, considered that the Administration should focus efforts on the drafting of the Bill, rather than summarizing the views received.

13. The Administration had apologized for the errors made in the Compendium, and called on those who did not agree with the classification of their submissions to notify the Security Bureau in writing so that amendments could be made. The Administration informed Members that an addendum would be issued and a CD-ROM on the updated Compendium would be prepared and made available to the public. The updated Compendium would also be available on the Security Bureau's webpage.

National Security (Legislative Provisions) Bill

14. Following the statement made by S for S at the Council meeting on 12 February 2003 concerning the National Security (Legislative Provisions) Bill to implement BL23, the two Panels held a joint meeting on 15 February 2003 to receive a briefing on the Bill.

15. The Panels noted that the Administration had made a number of changes to its original proposals, having taken into account the views received in the consultation exercise. These changes included the following -

(a) the common law offence of misprision of treason would be abolished;

(b) the offence of possession of seditious publications would be abolished;

(c) the definition of "unauthorized access" to protected information would be strictly limited to access through criminal means, such as hacking, theft or bribery;

(d) protection of information relating to relations between the Central Authorities and the HKSAR would be limited to information on matters concerning the HKSAR that were within the responsibility of the Central Authorities under the BL, and disclosure of such information would only be an offence if it was damaging to the interests of national security;

(e) the power to proscribe a local organization would apply to a local organization which is subordinate to a Mainland organization, the operation of which had been prohibited on the ground of protecting the security of the PRC, as officially proclaimed by means of an open decree by the Central Authorities under the law of the PRC;

(f) to further protect freedom of the press, a judicial warrant would be required for any search or seizure of journalistic materials when conducting investigations of certain BL23 offences;

(g) no additional financial investigation powers would be proposed;

(h) only police officers at the rank of Chief Superintendent of Police or above would be able to authorize the exercise of investigation powers under emergency circumstances; and

(i) the offence of treason would only apply to Chinese nationals; outside the HKSAR, the offence would apply to Chinese nationals who were permanent residents of the HKSAR.

16. Some Members did not find the changes adequate and considered that there were still serious problems with the Bill, for example, the lack of public interest defence, the provisions relating to the proscription of local organizations and unauthorized disclosure of protected information. Some Members remained opposed to the introduction of the Bill.

Special meeting of the Panel on 20 June 2003

17. The Panel held a special meeting on 20 June 2003 to receive views on the Administration's proposals relating to the appeal procedure for a proscribed organization, and arrangements for disposal of assets of a proscribed organization. A total of nine organizations had made submissions to the Panel, and six of them had given oral representations.

18. Some organizations urged LegCo not to support the proposals which were not compatible with the basic freedoms safeguarded by BL and the International Covenant on Civil and Political Rights. The main areas of concern expressed by the organizations included the following -

(a) the power of S for S, who made decisions on whether an organization should be proscribed, to make regulations for handling appeals against proscription;

(b) appeal hearings conducted in the absence of the appellant or his legal representative;

(c) the criteria to be adopted by S for S to appoint a panel of special advocates to represent appellants; and

(d) the proposal for winding up a proscribed organization before an appeal was determined.

Mechanism for handling complaints against the conduct of judges

19. In the last legislative session, the Panel considered the research report prepared by the Research and Library Services Division of the LegCo Secretariat which studied the mechanism for handling complaints against judges in Canada, the United Kingdom, the United States and the State of New York. At its meeting on 28 October 2002, the Panel discussed with the Judiciary ways to improve the transparency of the existing mechanism for handling complaints against the conduct of judges.

20. Members enquired about the number of complaints against judges' conduct. The Judiciary advised that in 2001, there were a total of 29 such complaints some of which were made by the same complainants in respect of the same case. The number of complaints was very small compared to some 751 533 cases disposed of by judges and judicial officials in 2001. In response to some members' suggestion that a formal mechanism should be established for handling complaints against judges' conduct, the Judiciary advised that under the present system, the Chief Justice and Court Leaders in the Judiciary were responsible for handling complaints against judges. The present mechanism for handling complaints was a formal and effective system which achieved a right balance between proper handling of complaints against judges and respect for judicial independence.

21. In response to the Panel's request for improvements to be introduced to enhance the transparency of the complaints handling procedure, the Judiciary had agreed to prepare a user friendly leaflet on the existing mechanism for handling complaints and publish statistics on such complaints in its annual report. The leaflet on "Complaints against a judge's conduct" was published by the Judiciary on 21 May 2003. The leaflet provided information on, inter alia, the procedure for lodging a complaint, the complaints handling procedure, and the response time of the Judiciary.

The Statement of Prosecution Policy and Practice

22. The Panel received a briefing from the Administration on the Statement of Prosecution Policy and Practice which was published in November 2002. The Statement had substantially revised the previous policy guidelines issued in 1998. The two main concerns raised by members were the prosecution policy relating to unauthorized assembly, and prosecutoral independence.

23. A member expressed concern whether there had been a change of policy in relation to the prosecution for the offence of unauthorized assembly under the Public Order Ordinance. The member pointed out that no person had ever been prosecuted for the offence until the conviction of three defendants on 25 November 2002. The Chief Magistrate, in delivering the judgment, had expressed the view that the case was of a political nature and questioned whether it should be resolved in court. Another member however considered that there had been a large number of cases where participants of unauthorized assemblies openly defied the law after the reunification, and doubted whether it was proper for the Government not to take prosecution action in the vast majority of these cases.

24. The Administration explained that the prosecution policy of the Government had not changed. During the motion debate on the Public Order Ordinance moved by the Administration at the Council meeting on 20 December 2000, the Government had made clear its stance that the Ordinance would be enforced. When someone was suspected to have violated the law, it was only appropriate for the Government to refer the case to the court for the purpose of determining whether an offence had been committed by the person concerned.

25. A member expressed concern about the prosecutorial independence provided under BL63, following the appointment of the Secretary for Justice (SJ) as a principal official under the accountability system. The member considered that SJ should delegate her responsibility to control criminal prosecutions to the Director of Public Prosecutions (DPP) or an independent prosecution authority.

26. The Administration explained that many common law jurisdictions, including England and Wales, did not have a constitutionally guaranteed right of independent prosecutorial discretion. The right only existed in the form of convention. In Hong Kong, this right was enshrined in the BL, which the Government, the Chief Executive and principal Officials, had to uphold. The Administration's stance on the delegation of SJ's authority on criminal prosecutions had been explained to Members on previous occasions. Hong Kong followed the practice in many of the common law jurisdictions, including England and Wales, where the DPP was accountable to a Minister.

27. In response to members' enquiries on the consequences for violation of BL63, the Administration responded that if a person sought to influence a prosecution decision improperly, that could amount in itself to a criminal offence of attempting to pervert the course of public justice.

Implications of cost saving proposals of the Government and the Judiciary on the system of administration of justice

28. At the meeting on 24 February 2003, the Department of Justice (DoJ) and the Judiciary Administration briefed the Panel on the cost saving proposals to achieve the target saving of 1.8% in recurrent expenditure in 2003-04.

29. In response to members' questions, the Judiciary Administration advised that further savings would be required in the years 2004-07, and consideration was being

given to the possibility of rationalizing the number of Magistrates' Courts, reducing the number of temporary judges and leaving some judicial posts vacant. However, the Chief Justice had stated that despite budgetary constraints, the quality of justice must be maintained, even if it meant lengthening of waiting times of some cases to be heard by the courts.

30. Some members expressed concern about the impact of the cost saving measures on the quality of justice. They considered that the Judiciary, being independent from the executive authority, should not be bound by the Government's target to reduce operating expenditure. The following motion was passed by the Panel -

> "That this Panel urges the Judiciary not to introduce, for the purpose of implementing the Administration's austerity programme, any cost saving measures which would adversely affect the quality of judicial services."

31. Some members requested DoJ to reconsider its proposal to achieve savings through reducing the number of briefing out cases to private sector lawyers. They considered that briefing out helped promote a strong and independent local Bar, give the junior Bar exposure to prosecution work, and secure a pool of experienced prosecutors to supplement those within DoJ. DoJ advised that it had not proposed to reduce the Briefing Out Vote for 2003-04 as a cost saving measure. However, it would be difficult to assess at this stage the positions in the years beyond 2003-04. In the present financial climate, it was necessary to achieve a delicate balance between briefing out and prosecuting cases in-house by DoJ.

Official languages for conducting court proceedings

32. Following a press report on the use of Putonghua as an official language in court proceedings, the Panel received a briefing from the Judiciary Administration on the policy and practices regarding the use of official languages in court proceedings. In accordance with the Official Languages Ordinance (Cap. 5), a judge may use either English or Chinese or both in conducting court proceedings. The official language of Chinese in its spoken form usually referred to Cantonese but also included Putonghua. To facilitate judges to decide on the choice of official language in court proceedings, the Chief Judge of the High Court had, in January 1998, published guidelines for judges regarding the use of Chinese in court proceedings.

33. Some members considered it undesirable for the Judiciary to turn down applications for court proceedings to be conducted in Chinese, given that the majority of the citizens in Hong Kong spoke Chinese. They also considered that for criminal proceedings, more weight should be given to "the wishes of the accused or litigants", which was one of the "nine factors" stipulated in the guidelines. A member suggested that different weightings should be accorded to the "nine factors" to facilitate decision of judges. While the Judiciary Administration undertook to reflect members' views to the Judiciary, it had explained that the "nine factors" were factors which the judge might take into consideration in exercising his discretion, and were neither prescriptive nor exhaustive.

34. Some members expressed concern about conducting court proceedings in Putonghua, having regard to the inadequate provision of judges, judiciary staff and legal professionals with proficiency in Putonghua, and other court facilities. The Judiciary Administration responded that Putonghua had only been used in a limited number of instances in short proceedings or parts of proceedings by a number of bilingual judges. Of the 182 judges in the Judiciary, 118 were bilingual judges, and 52 had received some training in Putonghua. In case a judge decided to use Putonghua as an official language in conducting court proceedings, any parties to the proceedings who were not proficient in Putonghua would be assisted by a court interpreter.

35. Having regard to the fact that spoken Chinese included dialects other than Putonghua, some members considered that the Judiciary should carefully review the implications of allowing court proceedings to be conducted in Putonghua.

Translation of court judgments

36. Some members expressed serious concern about the Judiciary's proposal to engage a publisher to translate and publish certain court judgments. Given that Hong Kong was practising bilingualism, they considered that the standard of the translated judgments must not be compromised. They requested the Judiciary Administration to explain the reasons for the Judiciary to brief out translation of court judgments to a private publisher and the legal status of translated court documents.

37. The Judiciary Administration explained that the fundamental principle was that the authentic and the only authentic version of a judgment was the one in the language in which the judgment was delivered, be it English or Chinese. The translated version of a judgment had no legal status as a judgment.

38. The Judiciary Administration had further explained that it was not the policy of the Judiciary that all English judgments should be translated into Chinese, or vice versa. Translation of judgments should be carried out to meet the needs of the judges, the legal profession, the litigants and the public at large. For translation of English judgments into Chinese, the Judiciary considered that in the majority of the cases, translation of excerpts from judgments should suffice. It would be useful to have Case Books containing such Chinese translations. The Case Books would contain the Chinese translation of excerpts from commonly cited judgments in English of courts in Hong Kong and courts in other common law jurisdictions. A legal publisher (i.e. publisher experienced in legal publications) would be responsible for translation and publication. It was intended that three Case Books would be published on Criminal Law, Land Law and Employment Law respectively. The Criminal Law Case Book was expected to be published in July 2003. The publisher would own the copyright of the Case Books. It would be made clear in the Case Books that inclusion of the cases and the excerpts did not give those cases or the excerpts any legal status or authority which they did not otherwise have.

39. The Judiciary Administration advised members that where the whole judgment was translated, in-house translators of the Court Language Section of the Judiciary was responsible for the work, and there was no immediate plan to change the arrangement.

40. In response to the request of the Panel, DoJ provided information on the practice of translation of court judgements in various levels of courts in Canada and Macau for reference of the Panel.

Court Prosecutor (CP) grade

41. The CP grade was introduced in 1976 and made permanent in 1979. By 1994, CPs had taken over prosecution work from Police Inspectors in all Magistrates' Courts. The entry qualification to the CP rank is matriculation. New CPs undergo nine months of full-time, comprehensive training before they conduct prosecutions in Magistrates' Courts. Qualified CPs receive continuing legal education throughout their career.

42. The CP system had been a subject of concern of the Panel in the past legislative sessions. The Panel exchanged views with the Administration on the cost-effectiveness of the CP system, entry qualification, recruitment and training of CPs, and work performance of CPs vis-a-vis legal professionals. The Panel invited the Administration to consider the proposal of the Hong Kong Bar Association that more legally qualified persons instead of CPs should be engaged to undertake prosecution work in the Magistrates' Courts. The Bar Association pointed out the anomalous situation in which some defendants were represented by legal practitioners under the Duty Lawyer Scheme in the Magistrates' Courts, whereas prosecution work in the same courts was conducted by CPs who were not legally qualified.

43. The Administration advised that the qualifications of CPs were high and improving. The majority of them were degree holders, some had acquired legal qualifications and some were studying law with a view to getting themselves qualified. It was the view of the Administration that the CP system had operated well for the past 25 years. The service was not only professional but also cost-effective. The Administration's position was that the operational needs of the CP grade would be kept under review. The Panel agreed that the matter would be followed up in future if necessary.

Issues arising from the incident of the Police arresting a witness in a civil trial

44. Arising from the arrest by the Police of a witness giving evidence in a civil trial in the High Court on 11 March 2003, the Panel discussed the relevant issues at a meeting in April 2003. The Panel noted that the Police and the Judiciary had no specific guidelines governing arrests made within a court building, or the arrest of persons participating in legal proceedings.

45. The Police gave an account of the incident to the Panel. The Police advised that the incident was an isolated case. Having reviewed the incident, the Police agreed that the arrest action could have been executed differently to minimize disruption to the court proceedings. While the Police officers' conduct in the incident had caused inconvenience to the court, no disrespect to the court was intended and an apology had been tendered to the judge in the High Court. The Police was conducting a disciplinary investigation into the incident and would prepare internal guidelines on the procedures to be followed on arrest of wanted persons in court buildings.

46. Some members considered that the Police should have allowed the suspect to finish giving evidence before making the arrest in the incident in question. The arrest action clearly amounted to a contempt of court and obstruction of the due process of administration of justice.

47. The Police had reverted to the Panel at a subsequent meeting on the findings of its disciplinary investigation. A copy of the "Police Guidelines on Arrest of Wanted Persons in Court Buildings" was also provided to the Panel for reference. The Guidelines stipulated that any arrest action within the precincts of a court, which interfered with proper administration of justice, might amount to criminal contempt of court. The Police assured the Panel that the new procedures would ensure that effective communication with the Judiciary was maintained on the arrest action, including the arrest of a witness, within a court building.

Payment of compensation to persons wrongfully imprisoned

48. The Panel discussed the issue of whether persons who had served terms of imprisonment as a result of a criminal conviction, which was quashed on appeal or found to have been secured wrongfully, should be paid compensation from the public funds.

49. The Panel was advised that there were two compensation schemes. Under the administrative and ex gratia scheme, compensation was payable for damages done by the Government where it was not legally liable. The Secretary for Financial Services and the Treasury determined the amount of compensation after considering the circumstances of individual cases and the views of the Secretary for Justice and other bureaux and departments concerned. As regards the statutory compensation scheme under Article 11(5) of the Bill of Rights Ordinance, compensation was payable to a person who had suffered punishment as a result of a conviction of a criminal offence and when subsequently his conviction had been reversed or he had been pardoned on the ground that a new or newly discovered fact showed conclusively that there had been a miscarriage of justice. A claim of compensation was to be determined by the court.

50. According to the Administration's record, only one application for compensation from a person wrongfully imprisoned had been received in 2001. Members considered that the Administration should step up efforts to promote public awareness of the two compensation schemes. They suggested that information on the schemes should be widely disseminated to the relevant parties such as members of the Judiciary, the legal professional bodies, organizations involved in the provision of legal aid, front-line social workers, Members of the Legislative Council and District Councils. Measures should also be introduced to ensure that acquitted persons should be properly informed of their right to claim for compensation under the schemes and the procedures for lodging claims.

51. The Administration had subsequently proposed that information on the compensation schemes be included on the website of the Department of Justice, and. provided to the two legal professional bodies and the law schools. In addition, the prosecuting counsel would be instructed, in cases where issues of miscarriage of justice arose, to inform as appropriate the court, the defendant, or his legal

representative of the possibility of making a claim under either of the compensation schemes.

Operation of the Labour Tribunal (LT)

52. The Panel held two meetings with the Panel on Manpower to discuss the operation of the LT. The Panel received views from major labour organizations and employers' associations. The major issues of concern raised by the deputations included the following -

(a) the waiting time between date of filing of a claim to hearing should be shortened;

(b) procedures involved in a LT hearing were too cumbersome and time-consuming;

(c) claimants/defendants were often forced to compromise or reach settlement in the course of conciliation conducted by Tribunal Officers and Presiding Officers;

(d) attitude and impartiality of Tribunal Officers and Presiding Officers;

(e) the existing arrangement of requiring claimants and defendants of different cases to report to LT in the early morning or afternoon was unsatisfactory;

(f) duplication of the role between the Labour Department (LD) and LT in undertaking conciliation work; and

(g) forms used by LD and LT should be standardized and transmission of information relating to a case between LD and LT should be improved.

53. The Panels requested the Judiciary and the Administration to implement short-term measures to improve the operation of LT and to conduct an overall review on the practice and procedures of LT. The Judiciary advised that the Chief Justice had decided to appoint an internal Working Party comprising judges and judicial officers to conduct a review. It was anticipated that the Panels would be informed of the outcome of the review in early 2004.

Review of provision of legal aid services

54. In the last legislative session, the Panel formed a working group to examine issues relating to the provision of legal aid services. A total of 11 individual/organizations had made submissions to the Panel, and eight of them had given oral representations. After considering the views received, the Panel compiled a "List of Issues for Review on Provision of Legal Aid Services". The list was forwarded to the Administration for consideration on 1 August 2002.

55. At the meeting on 23 June 2003, the Administration briefed the Panel on its findings on the annual review of financial eligibility limits of legal aid applicants to take account of inflation, and the biennial review to take account also of changes in litigation costs. The Administration proposed that -

(a) the financial eligibility limits for the Ordinary Legal Aid Scheme and the Supplementary Legal Aid Scheme should be revised from $169,700 to $163,080, and from $471,600 to $453,200 respectively, to take into account consumer price changes so as to preserve the real value of the limits; and

(b) no change to the financial eligibility limits should be made on account of changes in the litigation costs during July 2000 to July 2002.

56. In response to members' queries, the Administration had explained that neither the legal professional bodies nor the Judiciary had statistics compiled on equal basis to enable it to establish a definite trend on changes in litigation costs. The information derived from the small number of cases sampled by the Judiciary could hardly be regarded as representative of the private litigation costs. Furthermore, the change in the median litigation costs compiled by the Legal Aid Department might not be indicative of the increase or decrease in litigation costs, as the costs of individual cases might be affected by the amount of work done, length of the hearing or the complexity of the case. The Administration concluded that it did not see a need to adjust the financial eligibility limits to reflect changes in litigation costs over the past two years as there was no conclusive evidence to show that significant changes in litigation costs had taken place. The current downward adjustment of the financial limits was proposed solely on the basis of consumer price changes.

57. Some members considered that any changes in litigation costs should be taken into account in reviewing the financial eligibility limits. The legal professional bodies had pointed out that the recent reduction of 4.3% in criminal legal aid fees, prosecution fees and duty lawyer fees was unrealistic and unreasonable, and would create pressure for the financial eligibility limits of legal aid applicants to be adjusted downward. Some members shared the concern of the legal profession that the proposed downward adjustment of the financial eligibility limits would result in a reduction in the number of eligible legal aid applicants. They requested the Administration to give an undertaking to the effect that the policy intent of conducting the review of the financial eligibility limits of legal aid applicants was not to reduce the number of people eligible for legal aid.

58. The Panel noted that the Administration had decided to defer the downward adjustment to the financial limits in 2001 because of the small change in consumer prices (-1.2%). A member considered that the existing mechanism for adjustment of financial limits following review should be adhered to as far as possible so as to avoid any drastic adjustments as a result of the cumulative changes. Another member was of the view that annual adjustments to reflect small changes in consumer price might cause confusion to the public, and a balance should be struck between prudent use of public funds and right of access to legal services.

59. At the Panel meeting on 28 July 2003, the Administration will brief members on the outcome of the five-yearly review of the criteria used to assess the financial eligibility of legal aid applicants. The Administration will also give an overall response to the issues set out in "List of Issues for Review on Provision of Legal Aid Services" prepared by the Panel.

Pilot Scheme for the Reform of Ancillary Relief Procedures in Matrimonial Proceedings

60. At its meeting on 27 January 2003, the Panel received a briefing from the Administration and members of the Steering Committee on the Pilot Scheme for the Reform of Ancillary Relief Procedures in Matrimonial Proceedings. The Steering Committee, appointed by the Chief Justice, was to advise on the implementation of the reformed ancillary relief procedures on an experimental basis for a period of two years, and to evaluate the effectiveness of the pilot scheme, and to report to the Chief Justice on its effectiveness and the way forward.

61. Members in general expressed support for simplifying the existing ancillary relief procedure with a view to promoting a culture of settlement and reducing the legal costs incurred. Members sought clarifications on the implementation details of the reformed ancillary procedures. Although the legal professional bodies, the Hong Kong Family Law Association and the Legal Aid Department were members on the Steering Committee, some members considered that the Administration should conduct further consultation with the relevant parties, especially the women groups, before implementation of the pilot scheme.

62. In May 2003, the Administration reported the outcome of the consultation exercise on the pilot scheme to the Panel. The Administration had invited views from 19 local women's organizations and services agencies, the Women's Commission, and the two legal professional bodies had further consulted their fellow members, on the scheme. The feedback had generally been positive. The Administration intended to bring the pilot scheme into operation in the latter half of 2003. The Panel had no objection to the Administration introducing the Matrimonial Causes (Amendment) Rules into LegCo.

Review of financial jurisdictional limits of the District Court (DC)

63. The financial limits of DC were increased from $120,000 to $600,000 in September 2000. Following a review covering the period from 1 September 2000 to 31 August 2002, the Judiciary Administration briefed the Panel on its recommendation to increase the financial limit of the civil jurisdiction of DC from $600,000 to $1 million. However, the current limits for land matters and equity jurisdiction where land was involved should remain unchanged.

64. Members expressed a number of concerns, including the demand for court services, the pattern in costs of litigation, the development of qualified judges and judicial officers to cope with the last and any further increases in civil jurisdiction limits.

65. At the request of the Panel, the Judiciary Administration provided the comments received from the two legal professional bodies on the proposal, and the Judiciary's responses to these comments, for members' consideration. The Panel noted that the new civil jurisdictional limits of DC would take effect on 1 December 2003, subject to the approval of LegCo.

Other issues

Legislative and financial proposals

66. The Administration briefed the Panel on the Law Amendment and Reform (Miscellaneous Provisions) Bill prior to its introduction into LegCo. The Bill covered a number of proposals, including the provisions relating to proof of title and presumption of due execution of deeds by corporations in the Conveyancing and Property Ordinance, which had been deliberated in detail by the Panel at a number of meetings in the last and the current legislative sessions.

67. The Administration briefed the Panel on its proposal to adjust the criminal legal aid fees, prosecution fees and duty lawyer fees by 4.3% to reflect changes in the Consumer Price Index (C) following the 2002 biennial review. Following approval of the proposed fee adjustment by the Finance Committee, the Administration would seek the Council's approval of the relevant amendment Rules by resolution. Some members considered that the current fees were already set at exceptionally low levels and also questioned the need for an uniformed cut on the fees. As the Administration did not adjust the fees in accordance with the 1998 and 2000 reviews, some members considered that the Administration should adhere to the established mechanism in fee adjustments.

Working group formed under the Panel

68. The Panel formed a working group to study issues relating to imposition of criminal liability on the Government or pubic officers in the course of discharging their public duties for contravening any legislative provisions binding on the Government. The working group held a meeting in March 2003 and agreed that the Administration should be requested to provide information on a number of issues raised by members, including a comparative research into the French and German positions. Members agreed that the next meeting should be held when the Administration's response was available.

Procedure for endorsement of appointment of judges by LegCo under BL73(7)

69. In the light of the experience of the two exercises on judicial appointments, the Panel decided to review how the process of appointment of judges could be improved to enhance its transparency and accountability. On 1 December 2001, the Panel published the Consultation Paper on Process of Appointment of Judges. Having considered the views received during the consultation period and deliberated the relevant issues, the Panel set out its deliberations and recommendations in the Report on Process of Appointment of Judges which was published on 20 September 2002.

70. Having consulted the Committee on Rules of Procedure, the Panel agreed to modify its recommended procedure to enable the House Committee to refer the recommended judicial appointment(s) to a subcommittee, instead of a Panel, for discussion. The modified procedure for endorsement of appointment of judicial appointments under BL73(7) was endorsed by the House Committee on 16 May 2003.

Visits

71. On 20 January 2003, members of the Panel made a visit to the Judiciary. Members had met with the Chief Justice and other senior members of the Judiciary. Members had a tour of the Court of Final Appeal building and observed a mock trial presentation conducted in the new Technology Court in the High Court. Some members of the Panel also conducted a joint visit with members of the Bills Committee on Evidence (Miscellaneous Amendments) Bill 2002 to the Technology Court on 14 March 2003.

72. On 13 March 2003, members of the Panel visited the Juvenile Courts situated at the Eastern Law Courts Building and Kowloon City Magistrates' Courts. Members observed the physical setting of the Juvenile Courts and the detention facilities inside the Court Building for keeping juvenile offenders in temporary confinement before and after attending court. Members generally felt that the detention facilities were less than satisfactory and requested the Administration to consider making improvements.

Panel meetings

73. Between the period from October 2002 and June 2003, the Panel held a total of 28 meetings. Of these meetings, 14 were held jointly with the Panel on Security and two were held jointly with the Panel on Manpower. A working group under the Panel also held one meeting to discuss issues relating to imposition of criminal liability on the Government or pubic officers.

Council Business Division 2
Legislative Council Secretariat
30 June 2003

Appendix I

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.

Appendix II

Legislative Council
Panel on Administration of Justice and Legal Services

Membership List

Chairman	Hon Margaret NG
Deputy Chairman	Hon Jasper TSANG Yok-sing, GBS, JP
Members	Hon Albert HO Chun-yan Hon Martin LEE Chu-ming, SC, JP Hon James TO Kun-sun Hon CHAN Kam-lam, JP Hon Miriam LAU Kin-yee, JP Hon Ambrose LAU Hon-chuen, GBS, JP Hon Emily LAU Wai-hing, JP Hon TAM Yiu-chung, GBS, JP Hon Audrey EU Yuet-mee, SC, JP (Total : 11 Members)
Clerk	Mrs Percy MA
Legal Adviser	Mr Arthur CHEUNG
Date	10 October 2002