

Panel on Administration of Justice and Legal Services

List of outstanding items for discussion

(position as at 28 January 2004)

**Proposed
timing for
discussion**

1. Applicability of HKSAR laws to offices set up by Central People's Government in HKSAR

The item was discussed at a number of meetings of the Panel since 1998, and last discussed on 26 June 2001.

To be advised by the Administration

The Director of Administration (D of A) advised on 6 October 2003 that the relevant policy bureaux and departments would introduce the legislative amendments into LegCo in due course, having regard to the legislative priorities within the respective bureaux. The Constitutional Affairs Bureau will consult LegCo when concrete legislative proposals have been formulated.

2. Operation of Legal Aid Services Council (LASC)

The proposals of LASC to make certain amendments to the Legal Aid Services Council Ordinance and some other Ordinances to enhance the role and operation of LASC were discussed at the Panel meeting on 26 June 2001.

2004-05 session

At the meeting on 31 March 2003, the Panel was briefed on the progress of deliberation between LASC and the Administration regarding the legislative proposals. The Administration would revert to the Panel on the proposed legislative amendments to give effect to the relevant proposals agreed upon between LASC and the Administration in the next legislative session.

3. Review of provision of legal aid services

In October 2001, the Panel formed a Working Group to examine the relevant ordinances and subsidiary legislation concerning the provision of legal aid services in order to identify issues for the purpose of review and to make recommendations where appropriate. A list of issues for review (LC Paper No. CB(2)2646/01-02) was endorsed by the Panel and sent to the Administration for consideration on 1 August 2002.

29 January 2004

At the meetings on 23 June, 29 July and 27 October 2003, the Administration briefed the Panel on -

- (a) the proposed revisions of the financial eligibility limits for the Ordinary Legal Aid Scheme and the Supplementary Legal Aid Scheme (SLAS) as a result of the annual and biennial reviews;
- (b) the outcome of the five-yearly review of the criteria used for assessing the financial eligibility of legal aid applicants; and
- (c) its responses to the issues identified by the Panel for review by the Administration.

Arising from the discussions, the two legal professional bodies had been requested to give views on, inter alia, principles which should be adopted in considering the issue of financial eligibility limit for legal aid services, for the consideration of the Panel by mid-January 2004. The written submission from the Bar Association was issued to the Panel on 11 December 2003 (LC Paper No. CB(2)644/03-04(01)). D of A had also been requested to provide background information relating to the Court of Appeal case CACC 365 of 2000 and advise on the Administration's position on review of legal aid policy in the light of the court judgment in the case. The Administration's reply was issued to the Panel on 18 November 2003 (LC Paper No. CB(2)370/03-04(01)).

The item will be followed up by the Panel at its meeting on 29 January 2004.

4. Criminal legal aid fees system

The issue of criminal legal aid fees system was raised by the Bar Association and Law Society at the Panel meetings on 23 June and 29 July 2003 when the item on "Review of provision of legal aid services" was discussed. The two legal professional bodies were of the view that the existing system was outdated and should be reviewed in the context of the Legal Aid in Criminal Cases Rules by the Rules Committee set up under the Criminal Procedure Ordinance.

Pending receipt of the recommendations of the joint working party of the two professional bodies

The Panel was informed that the two legal professional bodies had formed a joint working party to consider the matter and the Administration would respond to the views and recommendations of the joint working party after it had completed the study. Members agreed that the subject matter should be followed up by the Panel in due course.

5. Procedure for endorsement of appointment and removal of judges by LegCo under Article 73(7) of the Basic Law

The report of the Panel on procedure for endorsement of appointment of judges by LegCo under Article 73(7) of the Basic Law was endorsed by the House Committee on 16 May 2003 (LC Paper No. CB(2)2059/02-03)).

To be decided by the Panel

At its meeting on 26 May 2003, the Panel agreed that the views of the Judiciary and the Administration should be sought on whether the procedure for endorsement of judicial appointments should also apply to endorsement of removal of judges. The replies from the Judiciary Administrator and D of A were issued to the Panel vide LC Paper Nos. CB(2)2710/02-03(01) and (02) respectively on 27 June 2003. JA has no comments on the matter and D of A has no objection to applying the procedure to endorsement of removal of judges.

On 11 November 2003, the Chairman requested the Secretariat to prepare a paper on the item for consideration of the Panel. A draft paper was issued to the Panel vide LC Paper No. CB(2)1073/03-04 on 27 January 2004. Subject to members' comments, the draft paper will be issued to the Administration, the Judiciary and the two legal professional bodies for comments. The finalized paper of the Panel will be submitted to the House Committee for endorsement.

6. Reciprocal enforcement of judgments (REJ) in commercial disputes between the HKSAR and the Mainland

The issue was first discussed at the meeting on 20 December 2001.

To be advised by the Administration

The Administration conducted a consultation exercise on the proposed arrangement for REJ in commercial matters between the HKSAR and the Mainland in March 2002. At the meeting on 27 May 2002, D of A briefed the Panel on the outcome of the consultation exercise, and sought the Panel's views on the Administration's proposal to establish a mechanism for REJ between the Mainland and the HKSAR.

The Administration advised in October 2003 that it was discussing with the Mainland authorities on the proposed scheme.

7. Government's policy on subsidiary legislation

The Bills Committee on Boilers and Pressure Vessels (Amendment) Bill 2001 requested that the issue of Government's policy on determining what kind of statutory instrument should be subsidiary legislation be considered by the Panel. Relevant extracts from

To be decided by the Panel

minutes of meeting and report of the Bills Committee were issued to members vide LC Paper No. CB(2)2177/01-02 on 5 June 2002.

At the meeting on 24 June 2002, the Panel agreed to follow up the matter.

On 11 November 2003, the Chairman requested the Secretariat to prepare a background paper on the item for consideration of the Panel.

8. Review of sexual offences in Part XII of the Crimes Ordinance

At the meeting on 24 June 2002, the Panel agreed to follow up the item which was referred by the Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2001.

23 February 2004

In scrutinising Part V of the Bill, the Administration accepted the Bills Committee's proposal to first deal with the offence of marital rape, leaving the other non-rape sexual offences in Part XII of the Crimes Ordinance to a full scale review in the context of a law reform at a later stage. The Bills Committee requested the Panel to follow up the progress of the review.

The Department of Justice (DoJ) advised in October 2002 that the Secretary for Justice had made it clear in her speech at the resumption of the Second Reading debate on the Bill that no full-scale review of sexual offences would be undertaken. The Administration would address identified inadequacies as they arose. Under the circumstances, there was no requirement to propose a time for discussion.

At the meeting on 28 October 2002, the Panel agreed that the issue should be followed up at an appropriate time.

On 11 November 2003, the Chairman requested DoJ to prepare a background paper on the item for consideration of the Panel at its meeting on 28 January 2004.

9. Court procedure for repossession of premises

At the meeting on 22 July 2002, the Panel agreed to follow up the item referred by the Bills Committee on Landlord and Tenant (Consolidation) (Amendment) Bill 2001. The Bills Committee considered that a fast-track procedure might have to be worked out for landlords to claim repossession of premises, particularly in the

29 January 2004

event of repeated defaults in payment of rent by tenants. Additional manpower and financial resources might be required to facilitate the courts in handling these claims.

The Judiciary Administration advised in March 2003 that the Bill was enacted in December 2002. If the Panel wished to focus on the effectiveness of the shortened relief period (from 28 days to seven days) as a result of the amended Ordinance, the matter might be discussed in early 2004 when the Judiciary had a year's experience on the new operation and sufficient data for a meaningful discussion. Where necessary, representatives from relevant policy bureaux, e.g. Housing, Planning and Lands Bureau, might also be invited to discuss matters of concern to the Panel.

The item will be discussed at the meeting on 29 January 2004.

10. Issues relating to the imposition of criminal liabilities on the Government

At the House Committee meeting on 4 October 2002, members agreed that this Panel should follow up on issues relating to the imposition of criminal liabilities on the Government or any public officers for contravening legislative provisions binding on the Government while performing official duties (LC Paper No. CB(1)2576/01-02 refers).

Pending
deliberation of the
Working Group

Pursuant to the decision of the Panel at the meeting on 28 October 2002, a Working Group was formed to study the relevant issues and to report to the Panel with recommendations where appropriate. The third meeting of the Working Group was held on 16 December 2003.

11. Operation of the Labour Tribunal

Two joint meetings were held by this Panel and the Panel on Manpower on 6 May and 19 June 2003 respectively.

2nd quarter of
2004

The Chief Justice has appointed an internal Working Party to conduct a review on the practice and procedures of the Labour Tribunal. It is anticipated that the Panels would be informed of the outcome of the review in early 2004.

March 2004

The Research Report on "The Operation of the Labour Tribunals and other Mechanisms for Resolving Labour Disputes in Hong Kong and Selected Places" prepared by Research and Library Services Division (RLSD) will be ready before and February 2004.

12. Budgetary arrangements for the Judiciary

At its meeting on 24 February 2003, the Panel was briefed on the approaches adopted by the Judiciary in promoting efficiency initiatives for achieving the target of saving of 1.8% in recurrent expenditure in 2003 - 2004, which was roughly \$18 million. The Judiciary expected that more substantial savings might be required in the years 2004-07. No conclusion, however, had been reached at this stage in respect of efficiency initiatives for 2004 - 2007.

To be decided by
the Panel

At the meeting, Hon Martin LEE moved a motion urging the Judiciary not to introduce, for the purpose of implementing the Government's austerity programme, any cost saving measures which would adversely affect the quality of judicial services. The motion was passed.

The Research Report on "Budgetary arrangements for overseas judiciaries" prepared by RLSD and the Administration's paper explaining the budgetary arrangements for the Judiciary were discussed at the meeting on 24 November 2003. RLSD would provide supplementary information on the system in Ontario of Canada for the Panel's consideration.

The Panel agreed that the item could be further considered, if necessary, upon receipt of the Administration's response to the issues raised at the meeting.

13. Disclosure of information to LegCo in the legislative process

This item was referred by the Bills Committee on Chemical Weapons (Convention) Bill to this Panel and the Panel on Constitutional Affairs (LC Paper No. CB(2)1653/02-03).

To be decided by
the Panel

The Bills Committee requested the Administration to provide the written agreed arrangement between the Central People's Government (CPG) and HKSARG on specifying officers as "in-country escorts" for reference. The Administration advised that the documents were for internal use only. In accordance with a general practice governing the handling of HKSARG's correspondence with other governments, the documents should not be released to persons outside the Administration. The Bills Committee, however, considered that the relationship between HKSARG and CPG should be different from that between HKSARG and other governments.

A similar concern was also raised by the Subcommittee on United Nations Sanctions (Afghanistan) (Amendment) Regulation 2002 and United Nations Sanctions (Angola) (Suspension of Operation) Regulation 2002. The Subcommittee considered that the Administration should in future provide to LegCo the relevant instruction given by the Ministry of Foreign Affairs (MFA) of the People's Republic of China in order to enable Members to assess whether a regulation made under the United Nations Sanctions Ordinance has given effect to the instruction in full. The matter was taken up by the Chairman of the House Committee with the Chief Secretary for Administration. The Chief Secretary for Administration had replied on 13 November 2003 that correspondence between CPG and HKSARG, including instructions from MFA, was intended for internal use only. The Administration considered it inappropriate to release internal correspondence to persons outside the Administration.

14. Resource centre for unrepresented litigants

The item was discussed by the Panel its meeting on 18 December 2003. Members agreed that the Judiciary Administration should provide a progress report on the operation of the Resource Centre for discussion of the Panel in June 2004.

28 June 2004

15. Professional Indemnity Scheme of the Law Society

In response to the request of the Subcommittee on Solicitors (Professional Indemnity) (Amendment) Rules 2001, the Law Society has agreed to conduct an independent review of the insurance arrangement under its Professional Indemnity Scheme. The purpose of the review is to consider whether at the end of the five-year reinsurance contract (expiring on 30 September 2005) the Law Society should maintain the existing mutual scheme with or without amendment, or to demutualise the scheme and put into effect such other options as might be proposed as a result of the review. The Law Society has undertaken to make a report to LegCo on the progress of the review on or before 30 September 2003.

To be decided by the Panel

In its report to the House Committee on 26 October 2001, the Subcommittee recommended that this Panel should follow up the progress of the review. Upon receipt of the report from the Law Society, the Panel should report to the House Committee which would then decide whether the report should be referred to a Panel or a subcommittee for further action.

In June 2003, the Law Society advised the Panel in writing that the consultants engaged by the Law Society to conduct the review had to defer their visit to Hong Kong because the World Health Organization travel advisory was in force as a result of the outbreak of SARS. A report of the Panel was made to the House Committee on 10 October 2003.

The Law Society briefed the Panel on the findings of the consultants at the meeting on 18 December 2003. As advised by the Law Society at the meeting, it had yet to form a view on the Consultancy Report and it would be putting forward the proposals to its members for discussion. The Society expected that it would be in a position to agree on what options to adopt by April 2004, and then proceed to liaise with the Department of Justice on law drafting matters.

The Panel has requested the Law Society to revert on the item in due course.

16. Review of legislation provisions containing the drafting formula "to the satisfaction" of an enforcement agency

The item was discussed at the meeting on 18 December 2003.

To be decided by
the Panel

The Panel has requested the Administration to undertake an analysis of the judgment of the Court of First Instance on the Lam Geotechnics case with a view to assessing the extent of its impact on existing legislative provisions containing similar drafting formula, before deciding whether it should proceed to conduct a comprehensive review on the legislative provisions. The Administration has been requested to revert to the Panel in due course.