

Panel on Administration of Justice and Legal Services

List of outstanding items for discussion

(position as at 19 May 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.

To be decided by the Panel

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.

At its meeting on 29 January 2004, the Panel considered the written submissions from LASC (LC Paper No. CB(2)1094/03-04(03)), the Bar Association (LC Paper No. CB(2)644/03-04(01)), the Law Society (LC Paper No. CB(2)1094/03-04(02)), and a paper provided by the Administration on the Court of Appeal case CACC 365 of 2000 (LC Paper No. CB(2)370/03-04(01)).

The Administration has undertaken to respond in writing to the submissions made by LASC and the Law Society.

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.

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.

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

5. Reciprocal enforcement of judgments (REJ) in commercial matters between the HKSAR and the Mainland

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

The Administration conducted a consultation exercise on the proposed arrangement for REJ in commercial matters between the

To be advised by the Administration

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.

At the meeting on 22 March 2004, the Administration advised the Panel that two rounds of informal meeting with the Mainland authorities had been held to discuss the scope of the arrangement and the technicalities in the recognition and enforcement of judgments in both jurisdictions. Positive developments were taking place but in the meantime it was difficult to foresee when an appropriate arrangement could be concluded.

6. 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 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.

To be decided by
the Panel

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.

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

This item was referred by the Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2001.

To be decided by
the Panel

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.

At the meeting on 26 April 2004, the Panel noted the background brief prepared by the Legislative Council Secretariat on "Review of sexual offences in Part XII of the Crimes Ordinance and related

issues", the Administration's response that it was prepared to continue reviewing the provisions related to sexual offences in the Crimes Ordinance which it originally proposed to amend in the previous legislative exercise (LC Paper Nos. CB(2)2008/03-04(01) and (02)). The Administration has been requested to revert to the Panel on the outcome of the review in due course.

8. 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 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.

24 May 2004

At the Panel meeting on 29 January 2004, the Judiciary Administration explained to the Panel recent measures introduced within the jurisdiction of the Judiciary to streamline the court procedure for repossession of premises. The Panel will follow up the progress of the measures introduced at the meeting on 24 May 2004.

9. 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).

28 June 2004

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.

10. 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.

24 May 2004

The Chief Justice has appointed an internal Working Party to conduct a review on the practice and procedures of the Labour Tribunal. The Working Party intends to submit its report to the Chief Justice by the end of June 2004.

A joint meeting of the two Panels will be held on 24 May 2004 to consider the Research Report on "The Operation of the Labour Tribunals and other Mechanisms for Resolving Labour Disputes in Hong Kong and Selected Places" and discuss the progress of review on the operation of the Labour Tribunal.

11. 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 on 24 November 2003. The written response subsequently received from the Administration was issued to the Panel vide LC Paper No. CB(2)1288/03-04(01) on 10 February 2004.

12. 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.

13. 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

14. 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

Pending reply from the Law Society

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. 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.

At the meeting on 18 December 2003, the Law Society briefed the Panel on the "Review Report on Insurance Arrangements of the Hong Kong Solicitors Indemnity Scheme" prepared by Willis. The Law Society would put forward the recommendations in the Willis Report to its members for discussion.

At the meeting on 26 April 2004, the Law Society informed the Panel that its members had different views on the matter and had yet to come to a decision on whether and how the existing mutual insurance scheme should be replaced by other alternative schemes. The Panel had requested the Law Society to revert to the Panel on -

- (a) the updated position of members of the Law Society on the preferred option to be adopted; and
- (b) the Law Society's views on the option of an indemnity scheme funded by levy imposed on certain types of transactions proposed by a member of the Panel.

15. Review of legislative 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.

16. Development of Hong Kong as a legal services centre

The item was discussed by the Panel at its meeting on 22 March 2004. At the meeting, the Administration briefed the Panel on, among other things, the undertaking of a consultancy study on the demand for and supply of legal and related services in Hong Kong. The Administration has been requested to provide updated information including the cost of the consultancy study, the consultant selected to conduct the study and other relevant details for further consideration of the Panel in due course.

To be decided by
the Panel

Council Business Division 2
Legislative Council Secretariat
19 May 2004