

Panel on Administration of Justice and Legal Services

List of outstanding items for discussion
(position as at 6 October 2003)

**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. Enforcement of arbitral awards between Hong Kong and Macau

The Bills Committee on Arbitration (Amendment) Bill 1999 raised concern as to how arbitral awards between Hong Kong and Macau would be mutually enforced following resumption of sovereignty of Macau by China on 20 December 1999, and requested this Panel and the Panel on Security, as appropriate, to follow up the issue in due course.

To be decided by
the Panel

The Administration Wing provided an information note on the subject matter in December 2002 (circulated vide LC Paper No. CB(2)733/02-03(01) on 19 December 2002). The Administration considered it unnecessary to have a separate arrangement for reciprocal enforcement of arbitral awards with Macau.

3. Solicitor corporation

The issue was first raised at the Panel meeting on 19 December 2000. At the meeting on 27 May 2002, the Department of Justice (DoJ) pointed out that under the draft rules prepared by the Law Society, there was no requirement for a company to have insurance coverage

To be advised by
DoJ

before it could be approved as a solicitor corporation. However, it was the initial view of the Law Society that the cover provided by the existing Hong Kong Solicitors Professional Indemnity Scheme was sufficient protection for the public. Members requested the Administration and the Law Society to continue discussion and revert to the Panel.

DoJ advised in March 2003 that the draft Rules had been submitted for the approval of the Chief Justice. DoJ further advised in September 2003 that the Law Society was considering comments of the Judiciary and DoJ on the draft Rules.

4. Review of jury system in Hong Kong

Resulting from the deliberation of the Jury (Amendment) Bill 1997 by the Bills Committee, the Administration agreed to conduct a comprehensive review of the jury service 12 months after jury trials conducted in Chinese had been introduced in the High Court. The Bill was passed by LegCo on 17 June 1997. As agreed by members at the meeting on 20 February 2001, the Administration was requested to advise the Panel of the outcome of the review.

Pending
completion of
LRC's study

In his letter dated 17 June 2003 (circulated vide LC Paper No. CB(2)2536/02-03(01)), D of A advised that the Administration had decided, after consulting the Judiciary, to refer the subject of review of jury system to the Law Reform Commission (LRC). LRC is expected to complete the study in 12-months' time. The Administration would consult the Panel on LRC's recommendations in due course.

5. Operation of Legal Aid Services Council

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.

October/
November 2003

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. Members agreed that the Panel should follow up the relevant issues in six months' time.

6. 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 and 29 July 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.

The Panel agreed that the relevant issues should be further discussed in the 2003-04 legislative session.

7. 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.

To be decided by the Panel

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.

8. 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 (JA) 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.

9. 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 March 2003 that it was discussing with the Mainland authorities on the proposed scheme.

10. 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.

11. 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.

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.

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.

12. 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.

Early 2004

The Judiciary Administration advised in March 2003 that the legal procedures for repossession of premises were thoroughly discussed by the Bills Committee. The Bill was enacted in December 2002. The Judiciary Administration proposed that if the Panel wished to focus on the effectiveness of the shortened relief period (from 30 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.

13. Promotion of mediation service in communities and districts

At the meeting with LegCo members on 9 May 2002, members of Eastern District Council (EDC) appealed for members' support for the promotion of mediation service in communities and districts, including building management disputes. Members attending the meeting agreed to refer their view to this Panel and the Panel on Home Affairs (HA) for consideration.

To be decided by the Panel

The development of a non-statutory mediation mechanism to resolve building management disputes was one of the issues considered by the Subcommittee on Review of Building Management Ordinance (Cap. 344) formed under the HA Panel. The Subcommittee last discussed the matter at its meeting on 10 July 2002. An extract from the minutes of meeting was issued to members vide LC Paper No. CB(2)1312/02-03 on 26 February 2003.

The Secretary for Home Affairs (SHA) advised the Subcommittee that the Hong Kong Mediation Council and the Hong Kong Mediation Centre had agreed to undertake 10 dispute cases as pilot cases under a trial mediation scheme on resolving building management disputes. The Administration considered it premature to draw any conclusion on the effectiveness of the pilot scheme based on the outcome of the three cases handled up to March 2003. It would review the effectiveness of mediation in building management disputes in six months' time after more cases have gone through the pilot scheme. SHA's letter to the Subcommittee dated 26 March 2003 was circulated vide LC Paper No. CB(2)1610/02-03(01) on 27 March 2003.

14. 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. At its second meeting on 29 July 2003, the Working Group requested the Administration to provide additional information to facilitate further discussion.

15. Government's policy on implementation of resolutions and conventions made by the United Nations

The item was referred by the Subcommittee on United Nations Sanctions (Afghanistan) (Amendment) Regulation 2002 and United Nations Sanctions (Angola) (Suspension of Operation) Regulation 2002 (the Subcommittee). The Subcommittee requested the Panel to clarify with the Administration the Government's policy regarding the variety of measures which were taken to give effect to UN conventions which applied to the HKSAR and UN Security Council resolutions. A preliminary response from DoJ was circulated vide LC Paper No. CB(2)734/02-03(01) on 20 December 2002.

To be decided by the Panel

The relevant issues were considered at the Panel meeting on 31 March 2003. Members agreed that the item should be further discussed by the Panel in the light of the report of the Subcommittee submitted to the House Committee. The report of the Subcommittee was presented to the House Committee on 3 October 2003.

16. 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.

Early 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.

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) is expected to be completed in October 2003.

November 2003

17. Juvenile court system and proceedings

The Bills Committee on Juvenile Offenders (Amendments) Bill 2001 suggested that this Panel should follow up -

To be decided by the Panel

- (a) what improvements should be made to the existing juvenile court system and proceedings; and
- (b) the recommendations of the consultancy study on the review of services for juvenile offenders which was expected to be completed in mid-2003.

On 13 March 2003, the Panel visited the Juvenile Courts at Eastern and Kowloon City Magistracies. In the light of members' comments on the detention facilities for juveniles at the Magistracies, the Administration has advised in writing on the follow-up actions taken to improve the situation (issued vide LC Paper No. CB(2)2978/02-03(01) on 12 August 2003).

The Research Report on "Operation of Youth Courts in Selected Overseas Places" prepared by RLSD (RP07/02-03) was presented to the Panel at its meeting on 26 May 2003. A supplementary Information Note on the Research Report (IN31/02-03) was issued vide LC Paper No. CB(2)2924/02-03 on 29 July 2003. A written response from JA to the issues raised by members at the meeting on 26 May 2003 was circulated vide LC Paper No. CB(2)2880/02-03(01) on 22 July 2003.

Members have agreed that the Panel should either hold a joint meeting with the Panel on Security or invite members of the Panel on Security to discuss the subject matter in due course. In relation to (b) above, the Secretary for Security advised on 16 June 2003 that the consultant was finalising the report on services for juvenile offenders. It was expected that the report would be submitted to the Administration in August 2003. The Security Bureau would be ready to brief the Panel(s) on the findings of the report in the next legislative session.

18. 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 could be presented to the Panel at its regular meeting in November 2003.

November 2003

19. 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.

The Panel has agreed to consider the issue in the context of disclosure of information to LegCo in the legislative process. Members of the Panel on Constitutional Affairs will be invited to attend the meeting for discussion of the item.

20. Court procedure for enforcement of maintenance order

The Bills Committee on Interest on Arrears of Maintenance Bill 2001 requested this Panel to follow up with the Administration on ways to streamline the court procedures in relation to enforcement of maintenance order and to address the problem of evasion of service of summons by maintenance payers who had defaulted on their maintenance payments. Some members of the Bills Committee suggested that the summons should be considered to have been served so long as the summons had been served to the address provided by the payer.

January 2004

21. Translation of court judgments

At the meeting on 24 February 2003 to discuss cost saving proposals of the Judiciary, the Panel was informed that the Judiciary would engage a publisher to translate and publish certain court judgments. The Panel noted that three Case Books on Criminal Law, Land Law and Employment Law containing Chinese translation of excerpts from commonly cited judgments would be published.

To be decided by the Panel

At the request of the Panel, the Judiciary Administration has provided the following additional information -

- (a) a paper explaining the reasons for briefing out translation of court judgments and the legal status of translated court judgments (LC Paper No. CB(2)1856/02-03(01)); and
- (b) a paper on the practices adopted in Canada and Macau relating to translation of court judgments (LC Paper No. CB(2)2566/02-03(01)).

The Panel agreed that the issue should be further considered at a future meeting.

22. Resource centre for unrepresented litigants

At the request of the Panel at the meeting on 31 March 2003, the Judiciary Administration has provided a paper on the progress of the setting up of the Resource Centre (LC Paper No. CB(2)2183/02-03(01)).

To be decided by the Panel

23. 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.

Pending report from the Law Society

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. While the review was proceeding, the report of the Law Society to LegCo would unlikely be available before end of October 2003.

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