

Panel on Administration of Justice and Legal Services

List of outstanding items for discussion

(position as at 10 October 2005)

**Proposed
timing for
discussion**

1. Applicability of HKSAR laws to offices set up by the 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 confirmed

In response to the Panel's request for an update on the item and advice on the timing for reverting to the Panel, the Secretary for Constitutional Affairs advised on 26 November 2004 and 30 September 2005 that the relevant policy bureaux and departments would introduce the legislative amendments in due course, having regard to competing legislative priorities. The Administration would consult the Legislative Council (LegCo) when concrete legislative proposals were formulated.

2. 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 Director of Administration (D of Adm) for consideration on 1 August 2002.

To be confirmed

A number of meetings were held by the Panel to discuss the following issues –

Annual and biennial review of financial eligibility limits of legal aid applicants

The Panel noted that as a result of the annual review of the financial eligibility limits to take account of inflation during the reference period, the eligibility limit for the Ordinary Legal Aid Scheme (\$169,700) and Supplementary Legal Aid Scheme (\$471,600) was revised to \$163,080 and \$453,200 respectively in the 2002 review, and further revised to \$155,800 and \$432,900 in the 2003 review. Although the change in the CPI(C) was recorded as +0.4% in the 2004 annual review, the

Administration proposed to withhold the adjustment pending the outcome of the next annual review due for August 2005. D of Adm advised in September 2005 that the outcome and the Administration's proposal pursuant to the 2005 annual review should be available in the fourth quarter of 2005.

In the light of the inconclusive reading of the two biennial reviews conducted in 2002 and 2004 respectively to take account of changes in litigation costs during the reference period, the Administration considered that there was little basis to propose any change to the financial eligibility limits.

Five-yearly review of the criteria for assessing financial eligibility of legal aid applicants (Five-yearly Review)

The Administration briefed the Panel in June 2003 on the outcome of the Five-yearly Review. The Administration reviewed the assessment criteria for financial eligibility and other issues identified by the Panel including possible changes to the Supplementary Legal Aid Scheme. The Administration proposed to introduce legislative amendments to improve the assessment criteria. The Administration informed the Panel in writing in July 2005 that it was working on the drafting of the amendment regulations to give effect to the proposals, with a view to tabling the amendment regulations in LegCo upon the commencement of the 2005-06 legislative session (LC Paper No. CB(2)2319/04-05(01)).

Remaining issues identified by the Panel for consideration by the Administration

At a number of meetings held in 2003, the Panel was briefed on the Administration's responses to issues such as scope of legal aid, financial eligibility limits for legal aid applicants, assessing of financial resources and legal aid in criminal proceedings (LC Paper No. CB(2)2581/02-03(03)).

3. 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 confirmed

At the meeting on 29 July 2003, the Panel was advised 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. The Panel agreed to follow up the matter upon the completion of the study by the joint working party.

The Law Society advised the Panel on 16 March 2005 that each of the two professional bodies would prepare its own submission, and the Chief Justice (CJ) has suggested that D of Adm should consider setting up a working party and undertaking a review. (LC Paper No. CB(2)1127/04-05(02) issued on 21 March 2005).

The submissions from the Bar Association and the Law Society respectively were issued to the Panel vide LC Paper No. CB(2)1588/04-05(01) on 18 May 2005 and CB(2)1793/04-05(01) on 6 June 2005.

D of Adm informed the Panel in July 2005 that it had started to examine the separate submissions from the two legal professional bodies, and undertook to update the Panel on the progress and timetable of making a substantive response to the submissions. D of Adm also advised that the Administration had completed the 2004 biennial review of criminal legal aid fees, and had decided not to adjust the fee level downward in accordance with the recorded deflation rate of 4.4%, taking into account the views of the two legal professional bodies. It would reserve the 4.4% reduction and consider it together with the findings of the next biennial review due in mid 2006 (LC Paper No. CB(2)2319/04-05(01) issued on 18 July 2005).

Both the Law Society and the Bar Association wrote to D of Adm in August 2005 urging the Administration to expedite the review of the criminal legal aid fees system by a working party as suggested by CJ.

D of Adm advised the Panel in September 2005 that the Administration was actively considering all the proposals and would revert to the professional bodies and CJ in due course. The Panel would be kept informed of developments.

4. 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.

October 2005

The Administration conducted a consultation exercise on the proposed arrangement for REJ in commercial matters between the HKSAR and the Mainland in March 2002 and briefed the Panel on the outcome of the consultation exercise at its meeting on 27 May 2002.

The Administration briefed the Panel on the progress of discussion with the Mainland authorities on the REJ arrangement at its meeting on

22 November 2004. According to the Administration, there were still differences between both sides as regards the preferred arrangement to be adopted. Any arrangement eventually agreed would need to be underpinned by local legislation in the HKSAR. The Administration undertook to report development and consult the Panel in due course.

The Administration proposes to brief the Panel on this item at the meeting in October 2005.

5. 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.

Second quarter of
2006

At the Panel meetings on 29 January and 24 May 2004, the Judiciary Administration briefed the Panel on the measures introduced within the jurisdiction of the Judiciary to streamline the court procedure for repossession of premises. The Judiciary Administration also informed the Panel that the Chief Justice had directed that the Lands Tribunal Rules (LTR) as a whole should be reviewed, and the Panel would be consulted when the review was completed.

At its meeting on 25 April 2005, the Panel discussed the Judiciary Administration's paper on the review of both the Lands Tribunal Ordinance and the LTR (LC Paper No. CB(2)1320/04-05(02)) and a submission from the Bar Association on the recommendations in the review (LC Paper No. CB(2)1360/04-05(01)). A revised submission from the Bar Association was subsequently issued to the Panel on 5 May 2005 (LC Paper No. CB(2)1466/04-05(01)).

The Judiciary Administration advised the Panel that legislative amendments to implement the recommendations were expected to be introduced into LegCo in 2006. The Panel had requested the Judiciary Administration to revert on the progress after completing its consultation with the two legal professional bodies.

6. 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 issues relating to the imposition of

Fourth quarter of
2005

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).

A Working Group was formed under the Panel to study the relevant issues and to report to the Panel with recommendations where appropriate. The report of the Working Group was considered and endorsed by the Panel at its meeting on 28 June 2004 (LC Paper No. CB(2)2917/03-04(01)). On the continuing operation of Crown immunity in Hong Kong, the Working Group recommended that the Administration should consider -

- (a) in respect of regulatory offences, that Crown immunity should be removed as a matter of policy on a case-by-case basis and when legislative opportunities arose; and
- (b) the development of alternative approaches taken in the United Kingdom and New Zealand in removing Crown immunity.

In response to the Panel's request to propose a timing for reverting on the matter, the Secretary for Constitutional Affairs advised on 10 September 2005 that the Constitutional Affairs Bureau was studying the issues together with the relevant bureaux and departments. The Administration hopes to brief the Panel on the matter in the fourth quarter of 2005.

7. Budgetary arrangement for the Judiciary

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. The Judiciary Administration was requested to take note of the budgetary arrangements in the overseas judiciaries in relation to maintenance of the independent operation of the judiciaries.

To be confirmed

The Panel followed up with the Judiciary Administration and the Administration on the budgetary arrangement for the Judiciary at a number of meetings. Pursuant to the discussion of the Panel at its meeting on 25 April 2005, the suggestions of members on the budgetary arrangement for the Judiciary were forwarded to the Administration and the Judiciary Administration for consideration.

At its meeting on 12 July 2005, the Panel considered the responses from the Administration and the Judiciary Administration, including arrangements to enhance independence of the Judiciary in preparing its budget and the Judiciary's proposal to withdraw some of the savings measures previously submitted to the Government. The Panel agreed

to follow up the progress in due course.

The Financial Services and the Treasury Bureau advised in September 2005 that it would review the revised budgetary arrangement upon completion of the estimates preparation work for 2006-07, tentatively scheduled for end of February 2006.

8. 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 agreed to conduct an independent review of the insurance arrangement under its Professional Indemnity Scheme. The purpose of the review was 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. 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.

After November
2005

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 Panel discussed the matter at two subsequent meetings on 26 April and 14 June 2004 respectively.

At the meeting on 22 November 2004, the Law Society informed the Panel that its members had voted for a Qualifying Insurers Scheme (QIS) to replace the existing scheme, and it would proceed with the drafting of the relevant rules to implement the new scheme.

At the meeting on 27 June 2005, the Law Society briefed the Panel on the proposed QIS and provided a copy of the 4th draft of the Solicitors' Professional Indemnity Qualifying Insurance Rules. The Panel was advised that a more realistic date for implementing a QIS would be 1 October 2006. The Panel requested the Law Society to provide update on the progress of implementation of the QIS in the new legislative session.

The Department of Justice (DOJ) advised on 30 September 2005 that further views from the Law Society are awaited and proposed to revert to the Panel after November 2005.

9. Review of legislative provisions containing the drafting formula "to the satisfaction" of an enforcement agency

The item was referred by the Subcommittee on proposed resolution under section 7 of the Factories and Industrial Undertakings Ordinance and discussed by the Panel on 18 December 2003.

Not early than
February 2006

The Panel requested DOJ 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.

At the Panel's meeting on 12 July 2005, DOJ informed the Panel that it had identified 86 provisions in subsidiary legislation and 10 provisions in principal legislation containing drafting formulas similar to the phrase "to the satisfaction of". It appeared that the elements of offence under those provisions were not clearly set out. The Administration was inclined to conduct a review to decide whether any of the provisions should be amended. The Administration would undertake an internal consultation and report to the Panel on the approach to be taken.

10. 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, DOJ 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. DOJ provided supplementary information on the cost of the consultancy study, the consultant selected to conduct the study and other relevant details after the meeting (LC Paper No. CB(2)3139/03-04(01)).

December 2005

At the meeting of the Chairman with the Administration on 3 November 2004, DOJ advised that the consultancy study had begun, and the first report by the Consultants was expected to be available after July 2005. It was agreed that the matter should be followed up in the 2005-2006 session.

11. Transcript fees

Issues relating to the fee charging mechanism for production of transcripts of court proceedings and the impact of transcript fees on litigants' ability to pursue appeals were first discussed at the Panel meeting on 23 June 2003, and followed up at the meeting on 28 June 2004. The Panel requested the Judiciary Administration to consider, inter alia, standardising the fee charging mechanism for both criminal and civil appeal cases, and specifying clear policy guidelines

October 2005

on the circumstances under which the court might exercise discretion to waive the transcript fees in appeal cases.

The Judiciary Administration advised that it could revert to the Panel on the item in July 2005.

12. Development of a new juvenile justice system

On the recommendation of this Panel and the Panel on Security, a Subcommittee was formed by the House Committee on 7 November 2003 to follow up the policy issues arising from the review on juvenile justice system, and also discussed the Consultancy Report released by the Administration on "Measures Alternative to Prosecution for Handling Unruly Children and Young Persons : Overseas Experiences and Options for Hong Kong". The Subcommittee's report was endorsed by the House Committee at its meeting on 25 June 2004 (LC Paper No. CB(2)2895/03-04).

To be confirmed

The Subcommittee recommended that the Administration should report to the relevant Panels on the following issues in the 2004-05 legislative session -

- (a) the effectiveness of the enhanced support measures introduced by the Administration since October 2003; and
- (b) the outcome of the review on the development of a new juvenile justice system incorporating the principles and practices of restorative justice.

Where appropriate, the Panel(s) might recommend to the House Committee the setting up of a subcommittee to follow up the relevant issues.

The Administration informed the Panel in writing on 30 May 2005 that it would aim at submitting a report to the Panel on the effectiveness of the enhanced support measures in about three months' time. The issue of development of a new juvenile justice system incorporating principles and practices of restorative justice was a more complex matter and deliberations among bureaux and departments are still ongoing (LC Paper No. CB(2)1760/04-05(01) issued on 2 June 2005).

The Administration provided a paper setting out the progress and effectiveness of the enhanced support measures targeting at unruly children and young offenders (circulated vide LC Paper No. CB(2)2508/04-05(01) on 31 August 2005).

13. Limited liability for professional practices

At its meeting on 31 March 2005, the Panel considered the Research Report on “Limited Liability Partnership and Liability Capping Legislation for the Practice of Law in Selected Places” (RP04/04-05) and a submission made by the Hong Kong Institute of Certified Public Accountants on professional liability reform in Hong Kong.

After December 2005

The Panel continued discussion on the relevant issues at its meeting on 23 May 2005, with particular reference to the report prepared by the Law Society’s Working Party on Limited Liability Partnership. DOJ advised the Panel that it would prepare a paper on the subject matter for the consideration of the Policy Committee in about six months’ time.

The Consumer Council, which was represented at the Panel meeting on 31 March 2005, submitted its preliminary views on the issue of limited liability partnership to the Panel in a letter dated 24 June 2005 (circulated vide LC Paper No. CB(2)2210/04-05(01)).

14. Solicitors’ rights of audience

The item was proposed by the Law Society.

To be confirmed

In response to the Panel’s enquiry, the Law Reform Commission’s Working Party on Solicitors’ Rights of Audience advised that it intended to complete a consultation paper by the latter half of 2005 to evaluate the arguments for and against extending higher rights of audience to solicitors. It would then identify the issues which needed to be addressed if it was decided that such higher rights of audience should be granted. The Working Party considered it premature at this stage to predict when it would complete its work and come up with its final conclusions and recommendations (LC paper Nos. CB(2)165/04-05(03) and (04) issued on 25 October and 2 November 2004).

At its meeting on 9 November 2004, the Panel agreed that the item should be followed up at a future meeting.

15. Reform of the law of arbitration

At its meeting on 27 June 2005, the Panel discussed the proposal made in the Report issued by the Committee on Hong Kong Arbitration Law of The Hong Kong Institute of Arbitrators to apply the Model Law of the United Nations Commission on International Trade Law to both domestic and international arbitrations in Hong Kong. The implementation of the proposal would result in a unitary regime

After March 2006

whereby the distinction between the two types of arbitrations in the Arbitration Ordinance would be abolished.

The Panel supported the Administration to proceed to the next stage of formation of a working group to draft legislation and to issue the draft legislation as a consultative document. The Administration was requested to revert to the Panel on progress and development in due course.

16. Maximum sentence for offence of perverting the course of justice

DOJ proposed to consult the Panel on the issue of revising the sentencing limit in section 101I of the Criminal Procedure Ordinance. It would prepare and circulate a public consultation paper seeking the views of interested parties including the legal profession, the law schools and the Judiciary Administration. The consultation process was expected to be completed in mid-2005. After collating the responses, the Administration would formulate proposals for discussion by the Panel in the 2005-06 legislative session.

Second half in
2005-06

17. Establishment of a third law school

When the Administration briefed the Panel on the Statute Law (Miscellaneous Provisions) Bill 2005 at the meeting on 14 December 2004, members noted the proposal to include representatives of the Chinese University of Hong Kong (CUHK) in the membership of the Standing Committee on Legal Education and Training, in anticipation that a law school would be established by CUHK. Members expressed concern about whether the relevant parties had been consulted on the proposed establishment of a third law school in Hong Kong and the likely impact of such a development on the provision of legal services.

November/
December 2005

At the invitation of the Panel, the Administration and representatives of CUHK, the law schools of the University of Hong Kong and the City University of Hong Kong and the University Grants Committee (UGC) attended the Panel meeting on 23 May 2005 to discuss the item. The Panel requested the Planning Committee of the new law school to revert to the Panel in six months' time on the progress of the establishment of the new law school and the formulation of its academic curricula. The Panel agreed that the item should be followed up at a future meeting.

A paper provided by the UGC which responded to the issues raised by members at the meeting on 23 May 2005 concerning funding of the existing law schools and the new law school at CUHK was issued to the Panel vide LC Paper No. CB(2)2625/04-05(01) on 23 September

2005.

18. Enforcement of judgment in civil cases

The issue of enforcement of Labour Tribunal Awards, among other things, was examined by the Judiciary's Working Party on the Review of the Labour Tribunal. The Report issued by the Working Party in June 2004 was considered at a number of joint meetings of this Panel and the Panel on Manpower.

To be confirmed

The Working Party recognised that similar problems concerning enforcement of Tribunal awards also existed in the execution of judgments and orders of other levels of court, and considered that it would be inappropriate for it to recommend measures solely in the context of awards made by the Labour Tribunal. The Working Party suggested that the matter should be left to an overall review of enforcement of judgments in civil cases generally.

The Chairman wrote to D of Adm on 11 March 2005 to seek the Administration's views on, inter alia, how the existing mechanism of enforcement of court judgments in civil cases in general, and in labour and matrimonial cases in particular, could be improved.

An interim reply from D of Adm was issued to the Panel vide LC Paper No. CB(2)2299/04-05(01) on 18 July 2005. D of Adm informed the Panel that the Administration was seeking advice and information relating to the enforcement of court judgments from the Judiciary. The Judiciary Administration advised the Panel in September 2005 that it would revert to D of Adm on the information requested in October 2005.

19. Recovery agents

An Executive Summary and a report from the Special Committee on Recovery Agents of the Bar Association was circulated to the Panel vide LC Paper No. CB(2)1516/04-05(01) on 10 May 2005 (Appendix I to the report was issued vide LC Paper No. CB(2)1646/04-05 on 23 May 2005). A circular on "Recovery Agents" issued by the Law Society to its members was circulated to the Panel vide LC Paper No. CB(2)1609/04-05(01) on 19 May 2005.

October 2005

The Secretary for Justice had responded to a written question raised by Hon LI Kwok-ying on the issue at the Council meeting on 15 June 2005. DOJ advised in September 2005 that the Administration would be happy to exchange views on the issue with Panel members, and would need to monitor the development before

deciding the way forward.

20. Issues relating to legal professional privilege arising from the Police attempts to execute search warrants in the Legal Aid Department (LAD) offices

The item was originally scheduled for the Panel meeting on 27 June 2005 but postponed for discussion at the request of the Administration, pending conclusion of the relevant court proceedings. October 2005

The Director of Legal Aid advised in writing on 1 August 2005 that the judicial review proceedings relating to the execution of the search warrants in the LAD offices had concluded. The Administration would explain its views and position on the matter to the Panel if called upon.

New item proposed by the Administration

21. Relocation of the Labour Tribunal to South Kowloon Magistrates Court Building

The Chief Justice accepted in June 2004 the recommendations of Working Party set up by him to review the operation of the Labour Tribunal, one of which is the re-location of the Tribunal to the now vacant South Kowloon Law Courts Building at Gascoigne Road, Yaumatei. The Working Party's report was discussed at two joint meetings of this Panel and the Manpower Panel in November and December 2004. Panel Members noted the proposal to re-locate the Labour Tribunal. The Judiciary Administration plans to inform the Panel on the updated position on the re-location.

First quarter of
2006

Council Business Division 2
Legislative Council Secretariat
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