

Panel on Administration of Justice and Legal Services

List of outstanding items for discussion

(position as at 6 December 2006)

**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. When the item was last discussed by the Panel on 26 June 2001, the Administration advised the Panel on the following -

1st quarter 2007

- (a) 15 Ordinances which expressly apply to the Government but are silent on their applicability to the Central People's Government (CPG) offices - the relevant policy bureaux and departments would study and follow up on the legislative work;
- (b) Personal Data Privacy Ordinance (PDPO) - Hong Kong and Macau Affairs Office needed time to assess whether and if so how the operation of CPG offices would be affected if PDPO were to apply to them; and
- (c) 35 Ordinances which contain express references to the "Crown" - the relevant policy bureaux would proceed with the legislative amendments once they had dealt with the policy considerations.

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, 30 September 2005 and 26 October 2006 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.

At the meeting on 27 November 2006, members expressed dissatisfaction at the lack of progress of the item. The Administration was requested to provide a progress report by mid January 2007.

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. For details on the Panel's suggestions and the Administration's response, members are requested to refer to the background brief prepared by the LegCo Secretariat (LC Paper No. CB(2)904/04-05(01)).

February 2007

The Panel was consulted on the findings of the annual (2002 – 2006) and biennial (2002, 2004 and 2006) reviews of financial eligibility limits of legal aid applicants and the five-yearly review of the criteria for assessing financial eligibility of legal aid applicants completed in May 2003.

D of Adm has proposed to consult the Panel on the approach of the five-yearly review of the criteria for assessing financial eligibility of legal aid applicants in February 2007. The Panel agreed at its meeting on 27 November 2006 that the opportunity should be taken to discuss issues related to legal aid.

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.

March 2007

The Panel received submissions from the Bar Association and the Law Society respectively (issued vide LC Paper Nos. CB(2)1588/04-05(01) on 18 May 2005 and CB(2)1793/04-05(01) on 6 June 2005). The Administration was also urged to expedite the review of the criminal legal aid fees system by a working party as suggested by the Chief Justice (CJ).

The Panel also noted the view of the Legal Aid Services Council (LASC) that there was a need to review the Rules (letter from the Chairman of LASC to D of Adm issued vide LC Paper No. CB(2)260/05-06(01) on 1 November 2005).

The Panel discussed this item at the meeting on 15 December 2005. D of Adm informed members that the Administration would invite representatives from the two legal professional bodies, the Judiciary, the Department of Justice (DOJ) and the Legal Aid Department before Christmas for joint discussion on the review. The Administration was requested to report progress of the review to the Panel in six months' time.

D of Admin reported progress to the Panel in May 2006. D of Adm advised on 29 September 2006 that it had held four meetings with the relevant stakeholders since March 2006 to discuss the details of an improved system. D of Admin will report to the Panel again on further developments as soon as practicable.

4. 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. May 2007

The Panel considered that the Judiciary's budgetary arrangement should be reviewed to build in clearer institutional safeguards to ensure that judicial independence was not subject to executive influence, and that the Judiciary was provided with adequate resources for the proper administration of justice. The Panel had made a number of suggestions for the consideration of the Administration and the Judiciary, such as there should be a general rule against reduction of the Judiciary budgetary provision and the Judiciary should have autonomy to determine its budget based on objective yardsticks.

The Administration agreed to adopt a revised budgetary arrangement for the Judiciary's draft Estimates for 2006-2007 and to extend the revised arrangement as a standing practice for the coming Estimates.

However, the Administration did not agree to members' suggestion that there should be a general rule or practice against reduction of the Judiciary's budgetary provision, as the Administration could not rule out the need for downward adjustments to the Judiciary's funding provision having regard to overall economic constraints. As regards the suggestion that the Judiciary should have autonomy to determine its budget on the basis of some objective yardsticks or predetermined formulae, both the Administration and the Judiciary advised that they would adopt an open mind on any suggested measures within the parameters of the Basic Law. However, as the revised budgetary arrangement had just been in place and had worked satisfactorily, the situation would be closely monitored before they would consider whether any further measures were necessary.

The Judiciary Administration advised in September 2006 that it would submit a paper to the Panel in the second quarter of 2007.

5. Professional Indemnity Scheme of the Law Society

February 2007

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.

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 Law Society updated the Panel on the progress on the implementation of the QIS at the meeting on 27 March 2006. The Panel noted that the Administration had indicated its support in principle of the QIS, subject to the conditions set out in its letter dated 16 February 2006 to the Law Society (LC Paper No. CB(2)1204/05-06(03)).

In its letter dated 18 May 2006, the Law Society informed the Panel that its members had voted by a large majority not to replace the existing Professional Indemnity Scheme by a QIS at its Extraordinary General Meeting on 27 April 2006. The Law Society had set up a Professional Indemnity Scheme Review Working Party to identify any deficiencies in the existing scheme, consider how they might be remedied, and make appropriate recommendations (LC Paper No. CB(2)2079/05-06(01)).

The Law Society advised in its letter dated 29 November 2006 that it would report progress of the review to the Panel in February 2007.

6. Development of Hong Kong as a legal services centre

The item was last discussed by the Panel at its meeting on December 2006

22 March 2004.

At the policy briefing on 20 October 2006, the Panel -

- (a) was briefed on the measures taken and progress made in assisting in building Hong Kong as a regional centre for legal services and dispute resolution; and
- (b) was advised that the consultancy study on the demand for, and supply of, legal and related services in Hong Kong commissioned by DOJ in July 2004 was progressing well and a report was expected to be published in early 2007.

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

January 2007

The Judiciary Administration briefed the Panel on its proposals on how the fees for transcript and record of proceedings at all levels of court should be set and administered on 15 December 2005. Members and the Law Society had expressed reservation about the proposed revised fees. The Panel requested the Judiciary Administration to reconsider whether the proposed fees could be further reduced, and defer the implementation date pending further discussion on the matter by the Panel. The Chairman also requested the Judiciary Administration to provide a table to set out the fees proposed for different types of transcript, the types of transcript which were subject to the waiver mechanism, and those which would be supplied to the parties without charge for members' reference.

The Judiciary Administration advised in September 2006 that it intended to consult the two legal professional bodies on the revised charges before reverting to the Panel in December 2006/January 2007.

8. Juvenile justice system

On the recommendation of this Panel and the Panel on Security, a Subcommittee was formed by the House Committee on

To be confirmed
by the Admin

7 November 2003 to follow up the policy issues arising from the review on juvenile justice system.

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). The Subcommittee recommended that the Administration should report to the relevant Panels on the following issues in the 2004-2005 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 United Nations Committee on the Rights of the Child issued its concluding observations on 30 September 2005 after consideration of the report of the HKSAR under the Convention on the Rights of the Child. The Committee has made a number of recommendations relating to criminal responsibility and legal protection of a child in its concluding observations. At its meeting on 8 November 2005, the Panel on Home Affairs agreed that the relevant recommendations should be referred to the Panel on Administration of Justice and Legal Services for follow-up.

Enhanced support resources for unruly children and young offenders

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).

Development of a new juvenile justice system

As regards the issue of development of a new juvenile justice system incorporating principles and practices of restorative justice, the Administration advised on 2 June 2005 and 26 October 2006 that it was a more complex matter and deliberations among bureaux and departments were still ongoing.

The Administration has been requested to provide a written progress report by the end of December 2006.

9. 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 (HKICPA) on professional liability reform in Hong Kong.

To be decided by the Panel

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)).

At the meeting on 27 March 2006, the Administration informed members that it had decided that no further studies would be carried out into proposals on limitation of liability to pay compensation during the remainder of the Chief Executive (CE)'s term of office. Members, the Law Society and the HKICPA were disappointed at the Administration's decision and agreed to relay members' views to the Financial Secretary for consideration (LC Paper No. CB(2)1645/05-06(01)). On 16 May 2006, the Secretary for Financial Services and the Treasury replied on behalf of the Financial Secretary, reiterating that the Administration had already taken account of all the arguments put forth by the relevant professional organizations as well as views expressed by the Panel in arriving at the decision that no further studies would be carried out into the proposals for limiting liability during the remainder of CE's term of office (LC paper No. CB(2)2061/05-06(01)).

10. Solicitors' rights of audience

The item was proposed by the Law Society.

To be confirmed by JA

In June 2004, CJ appointed the Working Party on Solicitors' Right of Audience to consider whether solicitors' existing rights of audience should be extended and if so, the mechanism for dealing with the grant of extended rights of audience to solicitors.

On 9 June 2006, the Working Party issued a Consultation Paper on Solicitors' Rights of Audience to solicit public views on whether solicitors should be granted extended rights of audience in the higher

courts of Hong Kong (issued vide LC Paper No. CB(2)2312/05-06(01)). The consultation period runs until 31 August 2006.

Pursuant to the decision of the Panel at its meeting on 27 November 2006, the Judiciary Administration has been requested to provide information on the timetable and the approach of the next stage of work of the Working Party.

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

May/June 2007

A working group was established by the Administration in September 2005 to consider and take forward this reform proposal. Representatives of the legal profession, arbitration experts and others have been appointed to the working group to prepare a draft Bill and consultation paper.

12. 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 decided by the Panel

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. In its reply dated 19 September 2006 (issued vide LC Paper No. CB(2)3092/05-06(01) on 26 September 2006), the Administration advised that since Principal Officials were each responsible for specific policy portfolios, if the Panel identified problems in enforcing judgments in specific areas, they would be glad to help refer the matter to the relevant bureaux, for them to consider the need to introduce appropriate measures to address the specific problems, taking account of policy and resources consideration.

The Panel followed up the matter at its meeting on 23 October 2006. Members agreed that a further meeting with the participation of the relevant Panels and relevant bureaux would be held in due course. The Administration was requested to provide relevant information to the Panel (paragraphs 17, 19 and 23 of the minutes of meeting on 23 October 2006 refer). The legal professional bodies had also been requested to provide relevant information to facilitate further consideration of the Panel.

13. 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.

January 2007

The Panel discussed this item at its meeting on 28 November 2005. The Administration subsequently provided a paper to explain the measures implemented to prevent illegal activities of recovery agents and its policy on recovery agents, which was issued to members vide LC Paper No. CB(2)1560/05-06(01) on 28 March 2006.

In view of the on-going investigation by the Police of certain suspected cases, the on-going consultation regarding conditional fees which might have a bearing on the policy regarding recovery agents, and the current developments of the statutory framework to regulate recovery agent activities in the UK, the Administration proposed to continue to monitor the situation in Hong Kong and the UK before deciding the way forward.

14. Pilot Scheme on mediation of legally aided matrimonial cases

At the special meeting of the Panel on 17 October 2005 when members received a briefing on CE's Policy Address 2005/2006 by D of Adm, some members expressed concern about the small number of cases referred to the Legal Aid Department (LAD)'s Pilot Scheme and proceeded to mediation since the Scheme was launched on 15 March 2005.

June 2007

The Panel considered the Administration's interim progress report on the Pilot Scheme at the meeting on 22 May 2006. The Administration aimed to conduct a final evaluation of the Pilot Scheme in around mid 2007 and to report to the Panel before the end of the 2006-2007 session.

The Administration also agreed to provide information on the relevant schemes of the Administration and Judiciary to the Panel (paragraphs 30 and 39 of the minutes of meeting on 22 May 2006 refer).

15. Civil Justice Reform

The Final Report of the Working Party on Civil Justice Reform was published on 3 March 2004, with a total of 150 recommendations. On 19 March 2004, CJ announced that he had accepted all the recommendations made by the Working Party. It was expected that it would take two to three years to implement the recommendations. December 2006

On 12 April 2006, the Steering Committee on Civil Justice Reform appointed by CJ issued a Consultation Paper on Proposed Legislative Amendments for the Implementation of the Civil Justice Reform to seek views from the legal profession and other interested parties by 12 July 2006. The Judiciary Administration gave a briefing to the Panel on the Consultation Paper at the meeting on 26 June 2006.

The Judiciary Administration advised in September 2006 that it was consolidating and considering all the comments received and aimed to report the outcome of the consultation exercise and the way forward to the Panel in December 2006.

16. Policy relating to recruitment of law draftsmen

At the meeting on 24 April 2006, the Panel expressed concern about the recruitment of draftsmen with experience and competency in drafting legislation in English. It requested DOJ to review its policy relating to recruitment of law draftsmen to the Law Drafting Division of DOJ e.g. to consider, inter alia, relaxing the requirement in respect of Chinese language proficiency for appointment. DOJ agreed to conduct a review on the present arrangements and would let the Panel know its conclusions as soon as possible. March/April 2007

The Panel also requested DOJ to provide other relevant information (paragraph 64 of the minutes of meeting on 24 April 2006 refers).

17. Review of the jurisdiction of the Office of the Ombudsman

Noting that the Ombudsman was conducting a review of the jurisdiction of the Office of the Ombudsman, the Panel agreed that a research be conducted on the purviews of ombudsmen in overseas jurisdictions at To be confirmed by D of Adm

the meeting on 15 December 2005. The Research Report on "Jurisdiction of Ombudsman Systems in Selected Places" was presented to the Panel on its meeting on 26 June 2006.

At the same meeting, the Ombudsman informed members that the review of the jurisdiction of the Office of the Ombudsman would consist of two parts : Part I would be an "operational" review of the Ombudsman Ordinance (Cap. 397), and Part II a more generalized review of developments in ombudsmanship. The Ombudsman would complete her review for submission to the Administration in a few months' time.

In response to the Panel's request for a copy of the review report when it is available, the Administration has advised that if the Ombudsman's proposals involve policy or legislative changes, it will consult the relevant parties on a need basis. As regards the Panel's request that a consultation document be issued to seek public views on the report, the Administration is of the view that the course of actions to be taken will depend on the content of the report and what aspects of the report the public will be interested in. (The Administration's reply was issued to the Panel vide LC Paper No. CB(2)2688/05-06 on 10 July 2006.)

The Ombudsman advised in early November 2006 that Part I of the Review was nearing completion and would be submitted to the Administration within that month. Pursuant to the decision of the Panel at its meeting on 27 November 2006, the Administration has been requested to advise when it could discuss the review report with the Panel.

18. Implementation of a five-day week for the Judiciary

At the meeting on 26 June 2006, the Judiciary Administration briefed the Panel on the implementation of a five-day week in the Judiciary by three phases –

December 2006

- (a) Phase I would commence on 1 July 2006. No court sittings would normally be listed on Saturdays, except for admission ceremonies for senior counsel, barristers and solicitors in the High Court. A five-day week would also apply to those back offices without any interface with members of the public;
- (b) Phase II, which would commence on 1 January 2007, covered services with a public interface where the implementation of a five-day week would require administrative preparations but not legislative

amendments. The offices which were likely to be covered under Phase II included libraries and the Resource Centre for Unrepresented Litigants; and

- (c) Phase III would cover services with a public interface where the implementation of a five-day week would require legislative amendments. These included the court registries and general offices of Magistrates' Courts, Accounts Offices, Bailiffs' Offices, Probate Registry and Oaths and Declarations Office. The implementation of Phase III and its timing would depend on the outcome of the comprehensive study being conducted by the Judiciary Administration on all necessary amendments to legislation as well as Practice Directions.

The Judiciary Administration agreed to revert to the Panel on its final decision concerning the implementation of a five-day week under Phase II and Phase III.