

Panel on Administration of Justice and Legal Services

List of outstanding items for discussion
(position as at 24 January 2008)

**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 - March 2008

- (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, 26 October 2006 and early 2007 that it was coordinating the response of the relevant departments and would provide a report in due course.

The Administration advised in October 2007 that it would submit a report to the Panel once it was in a position to do so. The Administration advised on 1 November 2007 that it would report progress at the meeting in March 2008.

2. Provision of legal aid services

The Panel received views from organizations on the approach of the next five-yearly review of the criteria for assessing financial eligibility of May 2008

legal aid applicants in March 2007. The Panel requested the Administration to consider the views and suggestions of the organizations, and the following views of members when formulating more specific proposals in the latter half of 2007 -

- (a) the scope of the Supplementary Legal Aid Scheme (SLAS) should be expanded;
- (b) the appropriateness of having a one-line financial eligibility limits, i.e. one limit for all types of cases under the Ordinary Legal Aid Scheme and the criminal legal aid cases, and another limit for SLAS; and
- (c) the present scope of legal aid should be extended from litigation to legal advice.

3. Criminal legal aid fees system

The request for a comprehensive review of the current remuneration system for lawyer engaging in criminal legal aid work was made by the two legal professional bodies in 2003. Such a review was supported by the Panel, the Legal Aid Services Council (LASC) and the Chief Justice (CJ).

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The Administration agreed to review the criminal legal aid fees system and discussed the relevant issues with the Panel at the meetings in December 2005, May 2006, February and June 2007. The Panel noted that the Administration had reached broad consensus with the legal professional bodies on the proposed structure of the criminal legal aid system, and had proposed rates for the various items for various court levels for their consideration. While the Bar Association was content with the proposal, the Law Society considered that the fee rates for the new system unreasonable. The Panel urged the Administration to continue discussion with the legal professional bodies in order to reach a mutually acceptable solution, and report to the Panel in due course.

The Administration advised in October 2007 that subject to the two professional bodies' feedback, it would report to the Panel in the first quarter of 2008.

4. 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 (PIS). The purpose of the review was to consider whether at the end of the five-year reinsurance

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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.

Since then, the Panel has monitored the review of the PIS and received progress reports from the Law Society.

In November 2004, members of the Law Society voted for a Qualifying Insurers Scheme (QIS) to replace the existing scheme. The Law Society proceeded with the drafting of the relevant rules to implement the new scheme. In June 2005, the Panel was advised that a more realistic date for implementing a QIS would be 1 October 2006.

In May 2006, the Law Society informed the Panel that its members had voted by a large majority not to replace the existing PIS 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.

At the Panel meeting in February 2007, the Law Society gave a report on the progress of work of the Review Working Party. The Working Party would proceed to consider a number of outstanding issues and submit a report with recommendations to the Council in due course. The Panel noted that the reinsurance contract was renewed w.e.f. 1 October 2006 for a period of three years, with an option to terminate after two years.

5. Demand for and supply of legal and related services

On 7 November 2001, a motion was passed by the Council urging, inter alia, the Government to conduct a comprehensive review on the demand for and supply of legal and related services.

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A Consultative Committee chaired by the Solicitor General was established to oversee the conducting of a Consultancy Study on the Demand for and Supply of Legal and Related Services in Hong Kong (the Consultancy Study) which started on 29 July 2004 and was expected to be completed within two years. It was hoped that the study would assist the Government and other stakeholders to make informed future policy decisions on the provision of legal and related services.

On 12 December 2006, the Panel was advised that the Consultancy Study was progressing well and a report was expected to be published in early 2007. The Administration was requested to report progress in due course.

6. 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 confirmed
by DoJ

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)).

The Panel received a letter from Hon Mandy TAM Heung-man in September 2007 requesting it to further pursue the matter with the Administration in the current session. At the Panel meeting on 22 October 2007, members agreed that it was opportune to request the Administration to reconsider the Panel's previous request to carry out studies into the proposals for limiting liability.

7. 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

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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.

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.

At the Panel meeting on 28 May 2007, DoJ reported progress of its reform proposal. DoJ advised that it would issue a Consultation Paper on the reform of the law of arbitration by the end of 2007 and the draft bill would likely be introduced during the 2008-2009 legislative session.

8. 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.

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The Panel decided to follow up issues relating to enforcement of judgments in civil cases. 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, the Administration advised that problems identified by the Panel in enforcing judgments in specific areas should be referred to Principal Officials concerned for consideration of 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. To facilitate further consideration of the Panel, 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 information such as problems encountered in enforcement of civil judgments and measures to improve the situation. The response of the Law Society and a solicitor's firm were issued to members (LC Paper Nos. CB(2)1100/06-07(01) and (02)) and the Administration.

9. 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" (RAs) 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.

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The Panel discussed this item at its meetings on 28 November 2005, 22 January and 23 April 2007. At the meeting on 23 April 2007, the Administration advised that it would -

- (a) take or consider measures to increase public awareness of the risks of the activities of RAs (broadcast of radio API, production of a television API, broadcast in the "Police Magazine" programme);
- (b) consider introducing legislation to the effect that contracts entered into by RAs and accident victims to be rendered illegal and unenforceable; and
- (c) consider instituting prosecution against activities of RAs where possible (seven cases under investigation by the Police).

The Administration was requested to revert to the Panel on the outcome of the cases under investigation and related issues in due course (paras. 34 to 36 of the minutes of the meeting on 23 April 2007 refer).

10. Pilot Scheme on Mediation of Legally Aided Matrimonial Cases

In the Final Report issued by the CJ's Working Party on Civil Justice Reform in March 2004, it recommended that the Legal Aid Department (LAD) should have power in suitable cases to limit its funding of persons who qualified for legal aid to the funding of mediation, alongside its power to fund court proceedings where mediation was inappropriate or had failed.

June 2008

In order for the Administration to consider the Working Party's recommendation, the LAD launched a one-year pilot scheme on 15 March 2005 to assess the cost-effectiveness and implications of providing legal aid to cover mediation of legally aided matrimonial cases.

The Administration briefed the Panel on the final evaluation of the Pilot

Scheme in June 2007. The Panel supported the Administration's proposal to extend legal aid to cover mediation in legally-aided matrimonial cases as a permanent arrangement. The Panel requested the Administration to work out a comprehensive proposal, taking into account the concerns raised, such as the funding arrangement for the proposed scheme, the level of mediators' fees, the desirability of making mediation mandatory, and the interface between mediation and legal services under the permanent arrangement as a legally-aided person and the other party involved in a matrimonial case could opt for mediation before or after the commencement of proceedings.

11. 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 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.

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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 submitted Part I and Part II of the Review to the Administration in November 2006 and November 2007 respectively.

At the meeting on 13 December 2007, the Administration briefed members on its initial response to the recommendations made in Part I of the Review. The Panel requested the Administration to provide -

- (a) a paper explaining why it did not see a case for subjecting the Electoral Affairs Commission and the District Councils to the Ombudsman's jurisdiction as recommended in Part I of the Review; and
- (b) a copy of Part I of the Review for reference of members.

12. Independent statutory legal aid authority

In its written response to the Panel regarding the proposed transfer of the legal aid portfolio from the Administration Wing of the Chief Secretary for Administration's Office to the Home Affairs Bureau, the LASC advised the Panel that while the majority of its members did not have

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strong views on the proposed transfer, it would step up its supervisory role to ensure that the provision of legal aid services was undertaken professionally and objectively without interference. The LASC also advised that it had recommended to the CE the establishment of an independent statutory legal aid authority in September 1998. Although the recommendation was not accepted by the Administration, the LASC considered it appropriate to seek a review of the issue in the current year.

At the meeting on 22 October 2007, the Administration was requested to liaise with the LASC regarding the progress and timetable of its study and advise members of the approximate timing for reverting to the Panel.

The Administration advised on 20 December 2007 that the LASC expected to complete the study around the end of 2008. The Administration also advised that it would revert to the Panel after it had considered the outcome of LASC's study.

13. Meeting with the Law Draftsman

On 9 October 2007, the DoJ announced the appointment of Mr Eamonn Patrick Aquinas MORAN, PSM QC, as the Law Draftsman, the head of the Law Drafting Division. Mr MORAN would assume duty in January 2008. April 2008

At the meeting on 11 October 2007, members agreed that the Law Draftsman be invited to brief the Panel on his work at an appropriate time.

14. 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. April 2008

On 15 December 2005, the Judiciary Administration (JA) 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. The Panel requested the JA to reconsider whether the proposed fees could be further reduced. At the Panel meeting on 22 January 2007, the JA briefed the Panel on the newly proposed directed/authorized/administrative fees for transcript and record of proceedings. The Panel suggested the implementation of the revised fees with effect from 1 February 2007.

JA was requested to respond to the following issues raised by members at the meeting on 22 January 2007 (paras 8, 22 and 23 of the minutes refer) -

- (a) review the fees for DARTS recording on audio tape/CD/DVD as soon as practicable;
- (b) consider how to rationalize the situation where the power and criteria for courts to waive transcript fees are prescribed in different statutory provisions; and
- (c) consider whether fees for all transcripts included in the appeal bundle should be waived, including cases where the appellant is not legally aided but is represented in criminal appeals.

15. Determination of judicial remuneration

In April 2003, Sir Anthony Mason's Consultancy Report (the Mason Report) on the system for the determination of judicial remuneration was submitted to the CE. The Judiciary expressed support to the recommendations and views contained in the Mason Report. In January 2004, the CE appointed the Standing Committee on Judicial Salaries and Conditions of Service (the Judicial Committee) to review the judicial remuneration mechanism and make recommendations on whether the Mason Report should be accepted. The Judicial Committee submitted its report to the CE in November 2005.

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In the context of discussing the budgetary arrangement and resources for the Judiciary at the Panel meeting on 28 May 2007, the Administration advised that given that the recommendations of both the Mason Report and the Report of the Judicial Committee would have very far-reaching effect on the judicial remuneration system in Hong Kong, the Administration needed some more time to consider the matter. The Panel requested the Administration to provide a paper to explain the Administration's concerns and how much longer it would take to consider the two Reports.

16. Court buildings

During a court visit by the Panel in the 2006-2007 session, members expressed the view that the design and the location of court buildings should reflect the importance and dignity of the courts and the independence of the Judiciary. The interior design of court buildings such as court/waiting rooms was also important. For example, members of the Panel had previously expressed concern about the setting of juvenile courts in Magistrates Court Buildings.

end of 2008/early 2009

JA advised in November 2007 that it planned to discuss the item with

the Panel at the end of 2008 or early 2009, having regard to the scope of the subject matter.

17. Conditional fees

The Report on Conditional Fees was published by the Law Reform Commission in July 2007. At the meeting on 22 October 2007, members agreed to discuss the issue at a future Panel meeting. To be confirmed

18. Free Legal Advice Scheme

At the meeting on 22 October 2007, the Chairman proposed and the Panel agreed that it was opportune for the Administration to review the Scheme. The Panel requested the Administration to provide an information paper on the Scheme for consideration of the Panel. To be confirmed

19. Development of mediation services

Promoting the development of mediation services to alleviate conflicts and foster harmony is one of the initiatives set out in the CE's 2007-2008 Policy Address. The Administration will map out how mediation can be more effectively and extensively applied in both commercial and community disputes, with the assistance of a Working Group to be established by the SJ at the end of 2007. June 2008

At the meeting on 22 October 2007, SJ briefed members on the initiative and undertook to provide a progress report on mediation for discussion by the Panel at the June meeting.

20. Court waiting times

The Chief Justice had previously advised that as a result of budgetary constraints faced by the Judiciary, the inevitable consequence was that the waiting times would be lengthened at all levels of court. The Judiciary had subsequently taken some measures to minimize the adverse impact on waiting times. Early 2008

In response to the concern expressed by Hon Audrey EU at the meeting on 22 October 2007, the Panel agreed to request the JA to provide a paper to update members on the present situation. Upon receipt of the paper, the Panel will decide whether it is necessary to discuss the item at a meeting.

21. Review of the non-commencement of ordinances

It has come to the Chairman's attention that certain parts of the Wills (Amendment) Ordinance 1995 has not yet come into operation despite the fact that the Bill was passed in July 1995. The Panel agreed at the meeting on 13 December 2007 that the Administration should brief members on the situation of the non-commencement of ordinances at the February meeting. February 2008

22. Pilot Scheme for Building Management Cases

At the meeting on 13 December 2007, the Judiciary briefed the Panel on the main features of the Pilot Scheme for Building Management Cases in the Lands Tribunal to be launched on 1 January 2008. The Judiciary Administration would conduct a review to evaluate the effectiveness of the Pilot Scheme after it had been launched for 12 months. The Panel agreed to follow up the matter in March or April 2009. March/April 2009

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