

Panel on Administration of Justice and Legal Services

List of outstanding items for discussion

(position as at 17 October 2007)

**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 -

To be confirmed
by CMAB

- (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.

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 legal aid applicants in March 2007. The Panel requested the Administration to consider the views and suggestions of the

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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).

First quarter of 2008

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 contract (expiring on 30 September 2005) the Law Society should

To be confirmed after consulting the Law Society

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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2008

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 DoJ advised in October 2007 that it would confirm timing of discussing the item at a later stage.

7. 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' Rights 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 originally ran until 31 August 2006 but was extended until the end of September 2006 at the request of relevant parties.

The Secretary to the Working Party advised on 7 December 2006 that given the large number of responses, the Working Party has yet to decide on its methodology for the next stage of work and it was too early to predict when its final recommendations would be formulated.

8. 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.

January/February
2008

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.

9. 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.

January/February
2008

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.

10. 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.

March/April 2008

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).

11. 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.

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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.

12. 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.

December 2007

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

was available, the Administration advised that if the Ombudsman's proposals involved policy or legislative changes, it would 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 was of the view that the course of actions to be taken would depend on the content of the report and what aspects of the report the public would be interested in.

The Ombudsman submitted Part I of the Review to the Administration in November 2006. The Administration advised in October 2007 that it was examining the proposals in Part I of the Review in the light of the views collated from relevant parties within the Government.

13. 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 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.

To be confirmed
by HAB

The Administration advised in October 2007 that it would advise the Panel the time for discussing the issue after reviewing the outcome of LASC's study when available.

14. 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.

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.