

Panel on Administration of Justice and Legal Services

List of outstanding items for discussion

(position as at 21 April 2009)

**Proposed
timing for
discussion**

1. Applicability of Hong Kong Special Administrative Region (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 28 April 2008, the Administration advised the Panel on the following -

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Constitutional and
Mainland Affairs
Bureau

- (a) 15 Ordinances which expressly bind the Government but are silent on their applicability to the Central People's Government (CPG) offices - amendments would be introduced to four Ordinances in the 2008-2009 legislative session. The Administration would discuss further with CPG on the remaining 11 Ordinances;
- (b) Personal Data Privacy Ordinance (PDPO) - the Administration and CPG was studying whether and if so how PDPO should apply to CPG offices set up in Hong Kong; and
- (c) 35 Ordinances which contain express references to the "Crown" - three Ordinances had already been adapted. Three Ordinances had been repealed. The Administration would continue to examine how the remaining 29 Ordinances should be adapted.

The Panel was dissatisfied with the little work progress achieved by the Administration after a lapse of 10 years. Members were particularly concerned about the applicability of PDPO to CPG offices in Hong Kong.

On behalf of the Panel, the Chairman wrote a letter to the Secretary for Justice (SJ) on 5 May 2008 conveying members' discontent and concerns. SJ's reply was circulated to members vide LC Paper No. CB(2)2646/07-08(02) on 18 July 2008. SJ advised that more time was needed by the Administration.

In respect of (a) above, the Administration introduced the Adaptation of Laws Bill 2009 into the Legislative Council (LegCo) on 11 February 2009 to amend the application provisions of four Ordinances, namely the Legislative Council Commission Ordinance (Cap. 443), Plant

Varieties Protection Ordinance (Cap. 490), Patents Ordinance (Cap. 514) and Registered Designs Ordinance (Cap. 522), to make them also applicable to the three offices set up by CPG in HKSAR. A Bills Committee has been formed to study the Bill.

2. Five-yearly review of the criteria for assessing the financial eligibility of legal aid applicants

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 and May 2008. 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 for financial eligibility limits -

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- (a) the scope of the Supplementary Legal Aid Scheme (SLAS) should be expanded;
- (b) in assessing a person's financial eligibility, relevant factors such as age, health and their earning power should be taken into account;
- (c) 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
- (d) the present scope of legal aid should be extended from litigation to legal advice.

At the meeting on 20 October 2008, the Administration advised that it was formulating concrete proposals on the possible options, with a view to consulting the Legal Aid Services Council (LASC) and the Panel in the first quarter of 2009.

At the meeting on 30 March 2009, the Administration advised that it needed more time to consider carefully the way forward and the relevant financial and other implications, and undertook to revert to the Panel on its recommendations on the five-yearly review as soon as practicable. The Administration also undertook to provide detailed responses to the issues raised by members at the meeting when it reverted to the Panel on the subject.

3. Criminal legal aid fee system

At the request of the two legal professions made in 2003, the Administration reviewed the criminal legal aid fee 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

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HAB

had reached broad consensus with the legal professional bodies on the proposed structure of the criminal legal aid fee 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 Administration reported progress of discussions with the two legal professional bodies to the Panel in February 2008. The Administration was requested to consider the Law Society's proposal that the hourly rate in criminal legal aid should be at a par with civil taxation rates on a party-to-party basis. At the meeting on 16 December 2008, the Administration informed members that it had offered a revised proposal on fee rates for the consideration of the Law Society, but a mutually acceptable proposal was yet to be made. The Panel urged the two parties to overcome their differences on the issue as soon as possible, and requested the Administration to report to the Panel on the progress in due course.

4. Professional Indemnity Scheme of the Law Society

In its report to the House Committee on 26 October 2001, the former Subcommittee on Solicitors (Professional Indemnity) (Amendment) Rules 2001 recommended that this Panel should follow up the progress of the independent review of the insurance arrangement under the Professional Indemnity Scheme (PIS) of the Law Society. Since then, the Panel has monitored the review of PIS and received progress reports from the Law Society.

To be decided
by the Panel

In November 2004, members of the Law Society voted for a Qualifying Insurers Scheme (QIS) to replace the existing scheme.

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 of the Law Society 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.

The Law Society's second report on the progress of work of the Review Working Party was issued to the Panel vide LC Paper No.

CB(2)1722/07-08(01) on 25 April 2008.

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.

June 2009
Department of
Justice (DoJ)/
HAB

A Consultative Committee chaired by the Solicitor General was established to oversee the 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.

The Panel discussed the Reports of the Consultancy Study in May 2008. The Panel requested the Administration to consider how to make use of the information in the Reports and report its consideration in the 2008-2009 legislative session. The Law Society was also invited to put forth a proposal on the supply of legal and related services.

At the meeting on 22 October 2007, the Chairman proposed and the Panel agreed that it was opportune for the Administration to review the Free Legal Advice Scheme which was under the purview of HAB. As free legal advice services provided by legal profession were covered in the Reports, the Chairman considered it appropriate to discuss the subject in the broader context of the demand for and supply of legal and related services in Hong Kong.

During the discussion on the subject of the five-yearly review of the criteria for assessing the financial eligibility of legal aid applicants at the meeting on 30 March 2009, the Administration advised that it would make its best efforts to revert to the Panel on its preliminary thinking on the proposal of extending the scope of legal aid from litigation to legal advice at the meeting scheduled for June 2009.

6. Limited liability partnership (LLP) for legal practice

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) prepared by the Research and Library Services Division of LegCo Secretariat (RLSD) and a submission made by the Hong Kong Institute of Certified Public Accountants on professional liability reform in Hong Kong.

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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 LLP.

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 (ending on 30 June 2007).

At the meeting on 22 October 2007, the Panel agreed that it was opportune to request the Administration to reconsider its position on professional liability reform. In response to the Panel, SJ advised on 22 February and 10 July 2008 that DoJ was prepared to consider LLP for legal professionals, and would meet with the Law Society to discuss the issue.

At the meeting on 16 December 2008, the Administration briefed the Panel on the developments of a proposal to permit LLP for legal practice. The Panel noted that the Administration had been in discussion with the Law Society on the related policy and legislative issues and it was expected that the relevant legislative amendments to be made to the Legal Practitioners Ordinance (Cap. 159) for the introduction of LLP would be introduced in LegCo around October to December 2009. In response to the Panel's request at the meeting, the Law Society and the Administration provided information on various issues relating to the legislative proposal on LLP for solicitors' practices in their respective letters dated 24 March and 3 April 2009 [LC Paper Nos. CB(2) 1199/08-09(01) and 1250/08-09(01)]. The Law Society had also set out in its letter its current position on solicitor corporations.

The Administration advised on 6 April 2009 that it could revert to the Panel on the latest developments of the LLP proposal at the meeting on 25 May 2009.

7. Review of the jurisdiction of the Office of The Ombudsman

The Panel considered the Research Report on "Jurisdiction of Ombudsman Systems in Selected Places" prepared by RLSD at 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 submitted Part I and Part II of the Review to the Administration in November 2006 and November 2007 respectively.

At the meetings on 13 December 2007 and 25 February 2008, the Panel discussed the Administration's initial response to the recommendations made in Part I of the Review.

At the meeting on 27 April 2009, the Administration will brief members on its consolidated responses to the remaining sections of Part 1 and Part 2 of the Review.

April 2009
Administration
Wing of the Chief
Secretary for
Administration's
office

8. 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 HAB, LASC advised the Panel that it had recommended to CE the establishment of an independent statutory legal aid authority in September 1998. Although the recommendation was not accepted by the Administration, LASC considered it appropriate to seek a review of the issue.

To be advised by
HAB

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

At the meeting on 28 January 2008, members agreed that a research study on legal aid systems in selected places should be conducted by RLSD. RLSD submitted an interim report for the consideration of the Panel in May 2008. RLSD advised in December 2008 that it was finalizing the English draft of the full research report and would make the report available for discussion in early 2009.

The Administration advised in February 2009 that LASC's study was still on-going.

9. 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.

November 2009
JA

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 JA to reconsider whether the proposed fees could be further reduced. At the Panel meeting on 22 January 2007, JA briefed the Panel on the newly proposed directed/authorized/administrative fees for transcript and record of proceedings. The Panel had no objection to the implementation of the revised fees with effect from 1 February 2007.

At the meeting on 28 April 2008, JA reported progress on the issues raised at the meeting on 22 January 2007. JA advised that -

- (a) it would conduct an overall costing review of transcript and recording services by end-2008; and
- (b) it would revert to the Panel on the proposed legislative amendments to revise/prescribe fees for transcript and record of proceedings and to provide a general power to

the court to waive, reduce or defer these fees which would be introduced into LegCo in 2009.

10. Review of 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.

Fourth quarter of
2009
JA

JA advised in November 2008 that a comprehensive review of the Judiciary premises was embarked with a view to mapping out a long-term accommodation strategy for the next decade that would meet the operational needs of the Judiciary. The scope of this review to be completed by late 2009 would cover -

- (a) policy matters regarding location, design and facilities of court buildings;
- (b) the existing provision of accommodation for the Judiciary in 12 different premises, including the adequacy of such provision or otherwise; and
- (c) whether there is any need for expansion to meet existing and future operational needs; and if so, how such needs should be met.

11. Report on Conditional Fees

The Report on Conditional Fees was published by the Law Reform Commission (LRC) in July 2007. At the meeting on 22 October 2007, the Panel agreed to discuss relevant issues at a future meeting.

Beginning of
2009-2010
session
DoJ/HAB

12. Development of mediation services

Following CE's announcement to develop mediation services in Hong Kong in the 2007 Policy Address, the Working Group on Mediation, chaired by SJ, was established to review the current development of mediation and to make recommendations on how mediation could be more effectively and extensively used to resolve disputes. At the meeting in June 2008, the Panel was informed that the Working Group had formed three Sub-groups in April 2008 to consider and make findings on specific issues, i.e. public education and publicity, accreditation and training, and regulatory framework. The Sub-groups

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would submit their reports to the Working Group in 18 months and the Working Group would release its report in about two years.

The Panel considered it important to help the ordinary people to resolve disputes by quicker and more effective ways instead of requiring them to resort to the judicial process. The Panel requested the Administration to explore ways to facilitate and encourage community mediation such as mediation of building management disputes, and to address the legal profession's concern about the availability of suitable venues for conducting community mediation, pending the outcome of the review of the Working Group in two years' time.

13. Pilot Scheme for Building Management Cases in the Lands Tribunal

At the meeting on 13 December 2007, JA 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 Panel noted that JA would conduct a review to evaluate the effectiveness of the Pilot Scheme after it had been launched for 12 months, and agreed to follow up the review.

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JA

14. Pre-trial interviewing of witnesses by prosecutors

It had come to the attention of the Panel that the Director of Public Prosecutions (DPP) had established a Working Group in 2007 to examine the feasibility of introducing a scheme of pre-trial witness interviews (PTWI) by prosecutors in Hong Kong, and accepted its recommendation that before any decisions were taken, a nine-month monitoring exercise would be conducted to collect relevant statistics and information with effect from 1 April 2008. At the meeting in June 2008, the Panel discussed the existing policy and practice on PTWI, the objectives of the monitoring scheme, and the experience of, and the schemes adopted in, other major common law jurisdictions.

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The Panel expressed concern that there was no prior consultation by the Administration with the two legal professional bodies before the launch of the monitoring scheme. The Administration explained that the Working Group would make recommendations in 2009 and all interested bodies would be consulted if it was decided that PTWI scheme should be taken forward. The Working Group would carefully consider the pros and cons of PTWI as well as its relevance in Hong Kong. Members requested the Administration to report progress to the Panel in due course.

15. Implementation of Civil Justice Reform (CJR)

The Panel has been monitoring the progress on preparation made by the Judiciary and the two legal professional bodies for the implementation of CJR. The Panel noted that CJ had established a Committee (the Monitoring Committee) to monitor the working of the reformed civil justice system after the implementation of CJR and to make suggestions to ensure its effective operation. The Panel requested JA to provide further information on the work of the Monitoring Committee and to brief members on the effectiveness of the reformed system at an appropriate juncture, say around six to 12 months after the implementation of CJR. In February 2009, JA advised that the Judiciary intended to keep the Panel informed of the progress of the implementation of CJR in about a year's time.

To be advised by
JA

16. Class actions

Under the current law in Hong Kong, the sole machinery for dealing with multi-party proceedings in Hong Kong is a rule on representative proceedings under the Rules of the High Court which was criticized as restrictive and inadequate by CJ's Working Party on Civil Justice Reform. In its Final Report in March 2004, the Working Party recommended that a scheme for multi-party litigation (i.e. class actions) should be adopted in principle.

To be advised by
DoJ

At the meeting on 14 October 2008, the Chairman proposed and the members agreed that, arising from the incident related to Lehman Brothers' minibonds in which a large number of consumer investors would need to take legal action individually for their losses, it would be opportune for the Panel to take up the issue with the Administration.

Upon the Panel's enquiry, DoJ advised on 29 October 2008 that a LRC subcommittee under the chairmanship of Mr Anthony NEOH, SC was appointed in November 2006 to consider whether a scheme for multi-party litigation should be adopted in Hong Kong. Both the Director of Legal Aid and the Consumer Council were consulted. A draft paper for public consultation was being finalized by the Subcommittee. The Administration would await the LRC's proposals before deciding on the way forward. At the meeting on 16 December 2008, the Panel endorsed the proposed research outline on class actions in selected places prepared by RLSD, which aims to complete the research report by April 2009.

The item was originally scheduled for discussion at the meeting on 25 May 2009. On 30 March 2009, DoJ advised that the LRC Subcommittee would not be able to issue the consultation paper in time for that meeting. DoJ would further report on the progress regarding the issuance of the consultation paper by the end of May 2009.

17. Mode of trial

At the Panel meeting on 13 January 2009, members noted the concern expressed by the Chairman of the Bar Association, in his speech delivered at the Ceremonial Opening of the Legal Year 2009, that many commercial fraud cases, including the substantial and complex ones, were heard before the District Court rather than in the Court of First Instance before a jury. The concern was that the current practice of resting the choice of Court solely with the Prosecution would deny the defendant the right to a jury trial.

To be confirmed
by DoJ

On 2 February 2009, in response to the Panel's request, DoJ provided information on the factors to which the prosecution would have regard in selecting the venue for trial [LC Paper No. CB(2)756/08-09(01)]. In its response, DoJ had also advised that although there were no plans to review the current practice, the question of whether any review was necessary or desirable would be examined in the light of the outcome of the judicial review proceedings concerning the decision of the prosecution to seek trials in the District Court rather than in the Court of First Instance in two separate cases of conspiracy to defraud, which were to be heard before Hon Justice Wright in the Court of First Instance from 2 to 4 February 2009.

In his judgment delivered on 9 February 2009 (HCAL 42/2008 and HCAL 107/2008), Hon Justice Wright has pointed out that there does not exist in Hong Kong any absolute right to a jury trial nor any mechanism by which a person to be tried of an indictable offence may elect to be so tried. The decision as to whether an indictable offence be tried in the Court of First Instance by a judge and jury or in the District Court by a judge alone is the prerogative of SJ. The learned judge found the reasons furnished by SJ for his decision to transfer the proceedings to the District Court sufficient on the factual situation of each case. Consequently both applications were dismissed.

At the Panel meeting on 23 February 2009, members agreed to include the subject in the Panel's list of outstanding items for discussion.

18. Drafting of legislation

This item was referred to the Panel by the Subcommittee to Examine the Implementation in Hong Kong of Resolutions of the United Nations Security Council in relation to Sanctions under the House Committee.

To be confirmed
by DoJ

The Subcommittee was of the view that the Law Drafting Division (LDD) of DoJ should carry out drafting and textual improvement to all

existing legislation and that guidelines should be provided to uphold the quality and standards of law drafting. The Subcommittee considered that the Law Draftsman should be invited to update the Panel on the work of LDD and its future initiatives, in particular, whether the Division would undertake to carry out improvement work on the drafting of bilingual legislation.

At the Panel meeting on 30 March 2009, members noted that a Drafting Techniques and Legislative Style Committee had been set up in LDD to put forward proposals to improve the comprehensibility of the Laws of Hong Kong. Members agreed to write to the Law Draftsman to enquire about the progress made in this regard and the appropriate timing for LDD to revert to the Panel on this item

Council Business Division 2
Legislative Council Secretariat
21 April 2009