

Panel on Administration of Justice and Legal Services

List of outstanding items for discussion

(position as at 16 October 2008)

**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 -

To be advised by
Constitutional and
Mainland Affairs
Bureau (CMAB)

- (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 Three Ordinances had been repealed.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 were 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 stationed 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.

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 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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Bureau (HAB)

- (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.

The Administration advised that it would consult stakeholders on the proposal for financial eligibility limits and revert to the Panel at the end of 2008.

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 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.

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 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.

To be decided
by the Panel

Since then, the Panel has monitored the review of 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 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.

Mid-2009
Department of
Justice (DoJ)

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. 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.

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 next legislative session. The Law Society was also invited to put forth a proposal on the supply of legal and related services.

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

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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 last session. The Administration responded on 22 February and 10 July 2008 that limited liability for professional practices cut across a number of sectors and areas of policy responsibility. DoJ was prepared to consider limited liability among legal professionals. DoJ would meet with the Law Society to discuss the issue and would inform the Panel of any progress.

7. Solicitors' rights of audience

The item was proposed by the Law Society.

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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 Secretary of the Working Party briefed members on the Final Report on 13 December 2007. Both the Bar Association and the Law Society expressed support for the recommendations of the Final Report. After the meeting, DoJ advised the Panel that it would try its best to obtain a legislative slot to introduce the proposed legislation at the next LegCo session, and the code of conduct was expected to be available for discussion by the Panel before the introduction of the Bill.

8. 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.

Early 2009
DoJ

The Panel discussed this item at its meetings on 28 November 2005, 22 January, 23 April 2007 and 19 March 2008. At the last meeting, the Administration was requested to update the Panel on the timeframe for launching the Announcements of Public Interest to combat illegal activities of recovery agents, the outcome of the cases under Police investigation and other related issues in due course. The Administration's response was issued to members vide LC Paper No. CB(2)2575/07-08 on 9 July 2008.

9. 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.

March/April 2009
HAB

In order for the Administration to consider the Working Party's recommendation, 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 was briefed on the main features of the proposal to extend legal aid to cover mediation in legally-aided matrimonial cases as a permanent arrangement at the meeting in June 2008. The Panel supported the proposal. The Administration has consulted LASC, the two legal professional bodies and relevant mediation bodies on the proposed arrangement. As the Panel has expressed support for the proposal, the Administration will introduce legislative amendments in the second half of the legislative session.

10. 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.

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Administration
Wing of the Chief
Secretary for
Administration's
office

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. The Administration will formulate its final response to the recommendations made in Part I of the Review and revert to the Panel in the first quarter of 2009.

11. 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 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. LASC also advised 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

At the meeting on 22 October 2007, the Administration was requested to liaise with 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 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.

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 aims at completing the English draft of the whole research report by the end of November 2008.

12. 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.

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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 Panel meeting on 28 April 2008, JA reported progress on the issues raised in the course of discussing the matter at the last 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.

13. 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.

To be advised by
JA

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.

14. 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, members agreed to discuss the issue at a future Panel meeting.

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15. 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 free legal advice scheme. The Panel has requested HAB to provide an information paper on the scheme for consideration of the Panel.

To be advised by
HAB

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

June 2009
DoJ

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.

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

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. JA 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
JA

18. Operation of the Resource Centre for Unrepresented Litigants

The item was referred by the Subcommittee on Draft Subsidiary Legislation Relating to the Civil Justice Reform. When the impact of the procedural changes in the Civil Justice Reform on unrepresented litigants was discussed by the Subcommittee at the meeting on 26 March 2008, members expressed concern about the adequacy of the services currently provided by the Resource Centre for Unrepresented Litigants. Members of the Panel have agreed to include the item on this list.

January 2009
JA

19. 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.

April/May 2009
DoJ

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.

20. Civil Justice Reform

The item was referred by the Subcommittee on Draft Subsidiary Legislation Relating to the Civil Justice Reform (CJR). The Subcommittee has requested JA to ascertain the progress on preparation and training of the two legal professional bodies for the implementation of CJR in late 2008 and report the matter to this Panel by early January 2009, before gazettal of the commencement notice for the subsidiary legislation which would be subject to the negative vetting procedure of LegCo.

January 2009
JA

The Subcommittee also discussed the revised procedure for application to Court of Appeal for leave to appeal. Members expressed concern about the proposed amendments on the calculation of time for making an application for leave to appeal or appeal from the date of an order, instead of the date of the perfection of an order as at present. Members suggested that the Judiciary should consider drawing up a performance pledge or the timeframe for the perfection of an order and agreed that the issue be referred to this Panel.

21. Arbitration Bill

This item was proposed by the Administration.

February 2009
DoJ

DoJ published the Consultation Paper on Reform of the Law of Arbitration in Hong Kong and the Draft Arbitration Bill on 31 December 2007 to seek views on reform of the law of arbitration in Hong Kong. The Panel was briefed on the Consultation Paper at its meeting on 28 January 2008. The Consultation Paper sought to create a unitary regime of arbitration on the basis of the UNCITRAL Model Law on International Commercial Arbitration (Model Law) adopted by the United Nations Commission on International Trade Law for all types of arbitration, thereby abolishing the distinction between domestic and international arbitrations under the existing Arbitration Ordinance (Cap. 341). The draft Bill adopted the structure of the Model Law as its framework. Members in general expressed support for the proposals in the Consultation Paper.

The Administration advised in October 2008 that it would introduce the Arbitration Bill to reform the law of arbitration based on the recommendations in the 2003 Report of the Committee on Arbitration Law and the results of the consultation exercise conducted by DoJ in the first half of 2008. The Administration also advised that it would brief the Panel before the introduction of the Bill into LegCo.

22. 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 the Chief Justice'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. A subcommittee was established in November 2006 under LRC to consider whether a scheme for multi-party litigation should be adopted in Hong Kong and, if so, to devise a suitable scheme.

To be advised
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. DoJ has been requested to advise the Panel of its current view on the issue. RLSD is preparing an outline of its research report on relevant schemes implemented in comparable jurisdictions for the Panel's consideration.

Council Business Division 2
Legislative Council Secretariat
16 October 2008