

**Panel on Administration of Justice and Legal Services**

**List of outstanding items for discussion**

*(position as at 12 October 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 -

To be advised by  
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" - six of these Ordinances required no further action (viz. three had already been adapted, and three had been repealed). The Administration would continue to examine how the remaining 29 Ordinances should be adapted.

On behalf of the Panel, the Chairman wrote a letter to the Secretary for Justice (SJ) in May 2008 conveying members' discontent with the little work progress achieved by the Administration after a lapse of 10 years and concerns about the applicability of PDPO to CPG offices in Hong Kong. SJ advised in July 2008 that more time was needed by the Administration.

In respect of (a) above, the Adaptation of Laws Ordinance was passed by the Legislative Council (LegCo) in April 2009 and commenced operation on 8 May 2009. The Ordinance has extended the applicability 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 the three offices set up by CPG in HKSAR.

In addition, legislative amendments have been proposed in respect of the Arbitration Ordinance (Cap. 341). The Arbitration Bill, introduced into LegCo on 8 July 2009, provides that, aside from the being applicable to the Government, it will also apply to the offices set up by CPG in HKSAR.

## **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 current five-yearly review of the criteria for assessing financial eligibility of legal aid applicants in March 2007 and May 2008. 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.

First quarter of  
2010  
Home Affairs  
Bureau (HAB)

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.

The following issues were referred by the Subcommittee on Proposed Resolution under Section 7(a) of the Legal Aid Ordinance (Cap. 91) to the Panel for follow-up in the context of the current five-yearly review -

- (a) review of the mechanism for conducting biennial reviews of financial eligibility limits of legal aid applicants, in particular the viable means for collecting information on private litigation costs; and
- (b) review of the policy concerning provision of publicly-funded legal aid services to employees in respect of employees' compensation claims and employer insolvency cases.

The Subcommittee had also suggested that the views of the Panel on Manpower should be considered in the review in paragraph (b) above.

## **3. Criminal legal aid fees system**

At the request of the two legal professions made in 2003, the Administration reviewed the criminal legal aid fees system and discussed the relevant issues with the Panel at six meetings held between December 2005 and June 2009. The Panel noted that while the

Subject to the  
outcome of the  
Administration's  
discussion with

Administration had reached broad consensus with the legal professional bodies on the proposed structure of the criminal legal aid fees system, the Administration was yet to resolve the divergence of views over the fee rates with the Law Society. The Panel also noted the Bar Association's suggestion that in view of the lack of progress of the discussion between the two parties, implementation of the revised criminal legal aid fees system for barristers should be de-linked from that for solicitors should the Administration and the Law Society fail to reach agreement on the fee rates.

the Law Society  
HAB

When the Panel received a report from the Administration on the latest progress of its discussion with the Law Society on fee rates for solicitors in June 2009, members noted that the Administration had put forth a revised proposal on fee rates for the Law Society's consideration, but the fundamental difference between the two parties on the basis for determining fee rates had yet to be resolved. Members noted the Law Society's view that the revised rates did not properly reflect the professional responsibilities of solicitors in criminal legal aid work and were still far below the civil party-to-party taxation rates for remunerating civil legal aid cases. The Panel urged the two parties to iron out their differences as far as practicable and requested the Administration to report to the Panel when they were able to come to an agreement on the matter.

#### **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  
Department of  
Justice (DoJ)/Law  
Society

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. Free Legal Advice Service**

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. First quarter of  
2010  
HAB

The Panel discussed the Reports of the Consultancy Study in May 2008 and requested the Administration to consider how to make use of the information in the Reports.

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.

At the meeting on 22 June 2009, the Panel received a progress report on the Administration's consideration of the Reports on the Consultancy Study. Members expressed strong dissatisfaction with the absence of concrete proposals from the Administration to address the gaps in service availability and unmet legal needs identified in the Reports. Members were particularly dissatisfied that the Administration had not put forth any proposal for reviewing the effectiveness and adequacy of the existing Free Legal Advice Scheme, notwithstanding that the Reports had clearly pointed to an unmet demand for legal advice service in the community. At the Panel's request, the Administration undertook to work out proposals for improving the existing operation of and support to the free legal advice service and report to the Panel at the beginning of the 2009-2010 legislative session.

## **6. Limited liability partnerships (LLPs) 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.

December 2009  
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 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 LLPs 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 LLPs for legal practice. The Panel noted that the relevant legislative amendments to be made to the Legal Practitioners Ordinance (Cap. 159) for the introduction of LLPs were expected to be introduced into LegCo around October to December 2009.

The subject was further discussed at the meeting on 25 May 2009. The Panel noted that other than the issue of whether LLP partners should be held personally liable for ordinary debts of business such as rent and salaries, the Administration and the Law Society had agreed on all important matters of principle concerning the LLP proposal. The Administration was requested to report to the Panel again on the legislative proposals for the introduction of LLPs early in the next legislative session.

## **7. 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

Subject to  
completion of the  
study conducted  
by LASC  
HAB

considered it appropriate to seek a review of the issue.

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.

The Administration advised in September 2009 that according to LASC, the study was still on-going.

## **8. 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. End of 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 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.

## **9. 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. December 2009  
and the second  
quarter of 2010  
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 which would be completed by late 2009.

During its visit to the Judiciary in July 2009, the Panel received a briefing from JA on the accommodation strategy of the Judiciary. Members suggested that a specialized domestic violence court be established and the design of the Small Claims Tribunal and the Family Court be improved. JA advised in September 2009 that it planned to consult the Panel on the construction of additional courtrooms and associated facilities in December 2009 and on the construction of the West Kowloon Law Courts Buildings in the second quarter of 2010.

## **10. 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.

HAB will address the issue concerning the Supplementary Legal Aid Scheme in 2010 in the context of the review of criteria of assessing the financial eligibility of legal aid applicants.

DoJ will revert to the Panel on the remainder of the Law Reform Commission's Conditional Fees Report towards the end of the 2009-2010 session.

## **11. 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. According to the Administration, the Working Group would make

January 2010  
DoJ

recommendations in 2009 and all interested bodies would be consulted if it was decided that PTWI scheme should be taken forward. Members requested the Administration to report progress to the Panel in due course.

In April 2009, DoJ advised that it has launched a six-month consultation exercise to seek the views of the two legal professional bodies, the law enforcement agencies, LRC, the Judiciary and the victim groups on the proposed scheme of pre-trial witness interviews. The consultation period will run until September 2009. DoJ will revert to the Panel on responses received in the consultation exercise.

## 12. 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 the Chief Justice (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 brief members on the effectiveness of the reformed system at an appropriate juncture after the implementation of CJR.

Third quarter of  
2010  
JA

## 13. 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.

November 2009  
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 November 2009.

#### 14. 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 decided by  
the Panel  
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 on the Panel's list of outstanding items for discussion.

In September 2009, DoJ advised that the issue had been considered by the Court of Appeal, which had upheld the decision of Hon Justice Wright in the Court of First Instance (CACV 151 of 2009).

#### 15. 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.

November 2009  
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. In response to the Panel's enquiry, the Law Draftsman advised on 4 June 2009 that the Drafting Techniques and Legislative Style Committee had held 22 meetings so far to discuss a range of initiatives on improving the comprehensibility of the laws of Hong Kong in both the English and Chinese texts. Some of these initiatives had already been implemented and others were slated for future implementation. He also advised that LDD could revert to the Panel on this item at the beginning of the 2009-2010 legislative session.

#### **16. Appointment of Temporary/Deputy Judges and Judicial Officers**

In response to the Panel's request made at the meeting on 30 March 2009, JA had provided for members' reference an information paper on the engagement and deployment of temporary judicial resources [LC Paper No. CB(2)1375/08-09(01)]. At the meeting on 27 April 2009, members agreed to include the subject on the Panel's list of outstanding items for discussion.

Third quarter of  
2010  
JA

#### **17. Inclusion of the statutory Independent Police Complaints Council (IPCC) under the purview of The Ombudsman**

During the discussion on the subject of "Review of jurisdiction of the Office of The Ombudsman" at the Panel meeting on 27 April 2009, members raised the issue of whether the statutory IPCC to be established on 1 June 2009 should be subject to The Ombudsman's jurisdiction. Members noted that the issue had been considered during the scrutiny of the IPCC Bill, and the Administration's view then was that the statutory IPCC should not be brought under The Ombudsman's ambit for the time being. Members agreed to bring up the issue for

To be decided by  
the Panel  
Admin Wing

discussion after the statutory IPCC had been in operation for some time.

The Administration advised in September 2009 that it would continually monitor the situation and consider the issue when the statutory IPCC had been in operation for some time.

**18. Legal Aid in Criminal Cases Rules**

At the meeting on 25 May 2009, the Panel discussed the proposal of the Hong Kong Human Rights Monitor (HKHRM) to amend the Legal Aid in Criminal Cases Rules (Cap. 221D) to allow for legal aid to be granted in cases going to Court of Final Appeal not involving a conviction, as set out in its letter dated 14 April 2009 to the Chairman of LASD, copied to the Panel Chairman, among others. The Panel expressed support for HKHRM's proposal and requested the Administration to revert to the Panel on its consideration of the proposal at the first regular meeting of the Panel in the 2009-2010 session. The Administration was also requested to consider the observations made by the legal adviser to the Panel on the availability of legal aid in the Rules.

December 2009  
HAB

**19. Research report on "Legal aid systems in selected places"**

At the request of the Panel, RLSD has prepared a research report on "Legal aid systems in selected places" (RP01/08-09). The research has studied the legal aid systems in England and Wales of the United Kingdom, the Province of Ontario of Canada and the State of New South Wales of Australia in respect of the following areas: development of legal aid system, authority responsible for providing legal aid, scope of legal aid services, eligibility for legal aid, legal aid fees for lawyers, legal aid expenditure per capita and legal aid services at the community level.

December 2009  
HAB

When the research report was presented to the Panel at the meeting on 22 June 2009, members agreed that written views be sought on the research report from LASC, the two legal professional bodies and concerned organizations for the Administration's response and for members' consideration at the first regular Panel meeting in the 2009-2010 legislative session.

**20. Arrangements of replacing Police Constable with security guards at Magistrates' Courts**

On the basis of the outcome of a study conducted by the Administration in 2004 to identify opportunities for civilianization in the disciplined services departments with a view to enhancing efficiency and

To be decided by  
the Panel  
JA/SB

cost-effectiveness, a new arrangement of replacing part of the Police Constable establishment at Magistrates' Courts with security guards was implemented by phase in early 2009. The arrangement, worked out by the Security Bureau (SB) and the Police in consultation with JA, involves the replacement of 58 Police Constable crowd control posts with contracted security personnel at seven Magistrates' Courts. SB and JA advised in June 2009 that the two parties would continue to monitor the new arrangement to ensure its effectiveness in maintaining the same level of crowd control and security at the Magistrates' Courts. The Chairman proposed that the Panel should monitor the operation of the new arrangement.

**21. The role of the Judiciary in the adjudication system under the Control of Obscene and Indecent Articles Ordinance (COIAO)**

The Commerce and Economic Development Bureau (CEDB) has embarked on a review of COIAO with two rounds of public consultation. During the first round of public consultation conducted from 3 October 2008 to 31 January 2009, the Judiciary and some members of the legal profession proposed to remove the administrative classification function (i.e. making an interim classification and, upon appeal, a final classification on a submitted article) from the Obscene Articles Tribunal, leaving it to deal with judicial determinations only (i.e. determining whether an article is obscene or indecent upon referral by a court or a magistrate arising from a civil or criminal proceeding). According to CEDB, there was little deliberation of this issue among the public. It would discuss within the Government and with the relevant stakeholders and look for possible improvement measures in the second round of public consultation to be commenced in the end of 2009. During the Panel's visit to the Judiciary on 13 July 2009, participating Members noted the strong view of the Judiciary about this issue and agreed that the Panel should follow it up at a future meeting.

End of 2009  
JA/CEDB

**22. Proposed repeal of the Solicitors (Trade Marks and Patents) Costs Rules**

After a review of the subsidiary legislation relating to the Legal Practitioners Ordinance, the Law Society has recommended the repeal of the Solicitors (Trade Marks and Patents) Costs Rules in its entirety on the grounds that these rules are obsolete with the passage of the Trade Marks Ordinance on 4 April 2003. The Council of the Law Society has endorsed the recommendation and the Costs Committee has no objection to the proposed repeal. While CJ also has no objection in principle to the proposed repeal, it is advised that the Panel should be consulted. In response to CJ's Office, the Law Society has advised that a recommended fee guide on Trade Mark applications has been issued

To be decided by  
the Panel  
Law Society

which serves as a benchmark only. There are no sanctions for departing from the recommended fee guide and non-compliance would not be the subject of disciplinary proceedings by the Law Society. The Law Society has also issued recommended fees for patents and registered designs.

**23. Legislative proposal to extend the jurisdiction of the Hong Kong courts to make ancillary orders after the dissolution of a marriage in a jurisdiction outside Hong Kong**

The item was proposed by the Administration.

March 2010  
DoJ

**24. Conviction rates**

Concern has been raised about the high conviction rates in various levels of court. According to the data provided in the yearly review of the Prosecutions Divisions of DoJ, the conviction rates for 2008 was 94.8% in the Court of First Instance and 92.6% in the District Court. The Chairman proposed to include the subject on the Panel's list of outstanding items for discussion.

To be decided by  
the Panel  
DoJ