

Panel on Administration of Justice and Legal Services

List of outstanding items for discussion

(position as at 12 April 2011)

**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 decided by
the Panel
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 three had already been adapted, and three had been repealed).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 being applicable to the Government, the Ordinance will also apply to the offices set up by CPG in the HKSAR.

The Administration is working on the extension of the applicability of the other Ordinances in (a) above to CPG offices in HKSAR. The Administration will consider separately the issues in (b) and (c) above.

At the meeting on 14 October 2010, members expressed grave dissatisfaction with the slow progress in the extension of the applicability of HKSAR laws to CPG offices in HKSAR and agreed that the Administration should be requested to report to the Panel on relevant progress of its work as soon as practicable.

2. 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 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 of Hong Kong. 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.

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Home Affairs
Bureau ("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.

In its letter to the President of the Law Society dated 11 February 2010 (LC Paper No. CB(2)973/09-10(01)), the Administration advised that it was making preparation for the legislative process to put in place the revised criminal legal aid fees structure and rates. The Administration will brief the Panel on the finalized legislative amendment rules at the meeting in April 2011.

3. 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
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 Law Society's second and third reports on the progress of work of the Review Working Party were issued to the Panel on 25 April 2008 (LC Paper No. CB(2)1722/07-08(01)) and 20 October 2009 (LC Paper No. CB(2)148/09-10(01)) respectively. According to the third progress report, the reinsurance contract had been extended from 1 October 2009 for a period of four years, with an option to terminate after two years should PIS be replaced by an alternative form of indemnity arrangement.

The Law Society advised in October 2009 that it had commissioned actuaries and brokers respectively to review the formula for calculating the contributions payable under PIS and to compare the costs of insurance to law firms under a Master Policy Scheme and PIS, and that it would be better able to advise on an appropriate time for discussion of the review of PIS when these findings are available.

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

To be decided by
the Panel
Admin Wing

The Administration Wing of the Chief Secretary for Administration's Office ("Admin Wing") advised in September 2010 that the work of the statutory IPCC was last discussed by the Panel on Security at its meeting on 21 July 2010, and the subject would continue to be followed up at the forum of the Panel on Security.

To facilitate the Panel's further consideration of the issue, the Clerk wrote to The Ombudsman on 3 November 2010 inviting his views on whether the statutory IPCC should be subject to The Ombudsman's jurisdiction. In his reply dated 3 December 2010 (LC Paper No. CB(2)530/10-11(01)), The Ombudsman advised

that during the scrutiny of the IPCC Bill in 2008, the then Ombudsman had pointed out that the statutory bodies included under Part I of Schedule 1 to The Ombudsman Ordinance (Cap. 397) had the common features of being substantially funded by the General Revenue or statutory fees or charges; performing administrative functions, and are not solely advisory, adjudicative or appellate in nature; and having interface with or impact on the public in the course of discharging their functions. Given that the statutory IPCC as proposed in the draft Bill shared these features, the then Ombudsman saw no objection in principle to bringing the statutory IPCC within her purview. The Ombudsman considered these observations regarding the statutory IPCC still applicable after it had come into operation and advised that he also had no objection to having the statutory IPCC put under his purview.

5. 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.

June 2011
CEDB/JA

The Administration has been requested to brief the Panel on its initial thinking and relevant progress of work at its meeting in June 2011.

6. Law Reform Commission Report on Hearsay in Criminal Proceedings

The Report on Hearsay in Criminal Proceedings was published by the Law Reform Commission in November 2009. At the meeting on 15 December 2009, the Panel agreed to discuss relevant issues at a future meeting.

June 2011
Department of
Justice ("DoJ")

7. Implementation of the scheme for granting higher rights of audience to solicitors

This item was referred to the Panel by the Bills Committee on Legal Practitioners (Amendment) Bill 2009.

To be advised by
DoJ

The Bills Committee considered it necessary to review the scheme for granting higher rights of audience to solicitors at an appropriate junction, say around two years after its implementation, and had referred the issue to the Panel for follow-up.

The Bill was passed by LegCo on 20 January 2010. During the scrutiny of the Bill, the Administration informed the Bills Committee that the Higher Rights Assessment Board was expected to be in a position to invite applications for higher rights about 12 months after the enactment of the Bill.

8. Consultation Paper on Double Jeopardy published by the Double Jeopardy Subcommittee of the Law Reform Commission

The Law Reform Commission's Double Jeopardy Subcommittee has published the above Consultation Paper for public consultation until 31 May 2010. The Panel agreed to discuss the Consultation Paper at a future meeting.

To be decided by
the Panel
Law Reform
Commission

9. Issues relating to drafting of legislation and proposal for a new numbering system for bills

During the discussions on the proposed changes to the document design of Hong Kong legislation at the Panel meeting on 26 April 2010, some members had expressed concern about the readability of Chinese text of legislation. Members noted that following the Panel's discussion on law drafting at the meeting in December 2009, the Legal Service Division of the LegCo Secretariat and the

May 2011
DoJ

Law Drafting Division ("LDD") had held regular working meetings to discuss views expressed by Members on law drafting in the course of examination of bills. Members agreed that the issue of readability of Chinese text of legislation be discussed at a future Panel meeting with reference to concrete examples raised during the scrutiny of bills.

Having regard to the concern expressed by Members on the use of "examples" in the Motor Vehicle Idling (Fixed Penalty) Bill during the scrutiny of the relevant Bills Committee, the Chairman proposed in November 2010 that the issue should also be covered in the discussion with LDD. The Administration has also proposed to consult Members on the feasibility of adopting a decimal numbering system for legislation with a large number of sections under this discussion item.

10. Appointment of serving Justices of Appeal as non-permanent judges of the Court of Final Appeal ("CFA") and judicial manpower situation in CFA and other levels of courts

The item was referred to the Panel by the former Subcommittee on Proposed Senior Judicial Appointments. June 2011
JA

During the deliberations of the Subcommittee, some members expressed grave concern that serving Justices of Appeal to the Court of Appeal of the High Court were being made non-permanent judges of CFA. They considered that the arrangement of allowing the same pool of judges to sit in both courts could give the public the impression that they were denied a real appeal in CFA and would erode public confidence in the administration of justice even though these non-permanent Hong Kong judges would not hear appeals from cases in which they had sat. Members were of the view that the crux of the problem was the relatively small number of permanent judges in CFA, and more resources should be provided to the Judiciary to allow more judges to be appointed.

The Subcommittee had referred the policy issues of appointing serving Justices of Appeal as non-permanent judges of CFA and of judicial manpower situation in CFA and other levels of courts to the Panel for follow up.

The item of "Appointment of Temporary/Deputy Judges and Judicial Officers" was originally scheduled for discussion in June 2010. However, as the former Subcommittee on Proposed Senior

Judicial Appointments had referred to the Panel for follow up the issue of judicial manpower situation at CFA and other levels of court, JA suggested that the information intended to be provided under the item of "Appointment of Temporary/Deputy Judges and Judicial Officers" be covered in an overall paper on judicial manpower situation, covering both the substantive and temporary/deputy judicial manpower situation at all levels of court. Members agreed to JA's suggestion. To allow sufficient time for JA to prepare the paper, members also agreed to defer the discussion of the item to a future meeting.

11. Framework Agreement on Hong Kong/Guangdong Co-operation relating to co-operation on legal matters

At the meeting on 24 May 2010, the Panel agreed to include the item in the Panel's list of outstanding items for discussion.

May 2011
DoJ

At the meeting on 22 October 2010, the Panel agreed that the two legal professional bodies be invited to give views on the development of legal services under the Mainland and Hong Kong Closer Economic Partnership Arrangement, including any difficulties encountered by the legal profession.

12. Procedural matters of appeal boards

The item was referred to the Panel by the Bills Committee on Building Energy Efficiency Bill.

To be decided by
the Panel
DoJ

During the scrutiny work of the Bills Committee, issues relating to the treatment of appeal board procedure, and definition and coverage of "cost of appeal proceedings" have been raised. It is noted that there is no universal treatment across the board regarding procedural matters of appeal boards. At present, the procedure is either provided in the principal ordinance, in subsidiary legislation as authorized in the principal ordinance, or is left to the appeal boards to decide if the procedure is not provided in the laws. The Bills Committee also notes that there is no uniform definition for "costs of appeal proceedings". The Panel has been requested to follow up these issues. An information paper will be provided by DoJ by the end of the current legislative session.

13. The trend of legislative proposals being put forward by the Administration in the form of subsidiary legislation

At the meeting of the Committee on Rules of Procedure on 2 November 2009, some members expressed concern about the trend of legislative proposals being put forward by the Administration in the form of subsidiary legislation and not bills. There was concern that given their importance and far reaching implications, some of the legislative proposals should be put forward in the form of bills or subsidiary legislation subject to the positive vetting procedure, rather than subsidiary legislative subject to the negative vetting procedure, so as to allow sufficient time for LegCo to scrutinize the proposals. The issue has been referred to the Panel for consideration.

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DoJ

14. Proposed construction of the West Kowloon Law Courts Building

JA consulted the Panel on the construction of the West Kowloon Law Courts Buildings at its meeting on 26 April 2010. According to the Judiciary's paper (LC Paper No. CB(2)1349/09-10(04)) provided for the meeting, the next consultation with the Panel is scheduled for the second quarter of 2011.

Fourth quarter of 2011
JA

On 21 February 2011, JA has advised the Secretariat that as the invitation of tender for the West Kowloon Law Courts Building will be deferred to March 2011, the proposed timing for discussion of this item will have to be deferred to the fourth quarter of 2011.

15. Reciprocal recognition/enforcement of matrimonial judgments with the Mainland

In view of the significant increase in cross-border marriages, the Administration proposes to enter into formal discussion with the Mainland on a possible arrangement for reciprocal recognition and enforcement of judgment in matrimonial matters. Such an arrangement will help to facilitate resolution of disputes arising from breakdown of cross-border marriages and enable parties on both sides to seek assistance in the enforcement of matrimonial judgments.

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DoJ

16. Free legal advice service

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 on the Demand for and Supply of Legal and Related Services in Hong Kong commissioned by DoJ. 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. The Administration was requested to work out proposals for improving the existing operation of and support to the free legal advice service and report to the Panel.

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HAB

At the meeting on 29 March 2010, the Administration briefed the Panel on its plan to enhance the support services for volunteer lawyers under the Free Legal Advice Scheme. At the request of the Panel, the Administration undertook to revert to the Panel on its recommendations for expanding free legal advice service before the end of the current financial year.

17. Development of mediation services

Following the Chief Executive'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.

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On 8 February 2010, the Working Group published its report for a three-month public consultation. The Panel received a briefing by the Administration on the recommendations in the report at its meeting on 22 February 2010.

The Panel will receive a briefing by the Administration in April 2011 on the progress of its work on the implementation of the recommendations in the report.

18. Mediation service for building management cases

At the meeting on 22 October 2010, some members suggested that the Administration should implement practicable measures to facilitate expeditious resolution of building management disputes such as provision of free mediation service by the Home Affairs Department. The Panel agreed to discuss the issue at a future meeting.

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19. Issues relating to prosecution

At the meeting on 28 March 2011, members agreed that the Panel should invite SJ, the newly appointed Director of Public Prosecutions ("DPP"), the then DPP, Mr Grenville Cross, legal profession and academics to join the future discussion of the issue relating to an independent DPP. At the Chairman's suggestion, members further agreed to invite the newly appointed DPP to brief the Panel on prosecution policy and practice, as well as any recent initiatives to improve the quality and efficiency of the work of the Prosecutions Division.

June 2011
DoJ

The Hong Kong Human Rights Monitor issued a press release on 21 December 2010 expressing its view over the Government's decision to press charge against two juvenile demonstrators [LC Paper No. CB(2)733/10-11(01)]. The issue will be addressed during the future discussion of this item.

20. Further expansion of the Supplementary Legal Aid Scheme ("SLAS")

At the meeting on 28 March 2011, the Administration briefed the Panel on its proposals for expanding the scope of SLAS and undertook to introduce relevant legislative proposals into LegCo in September/October 2011 with a view to implementing the proposals before the end of 2011. Members noted that the Administration would also conduct a study on amending the Legal Aid Ordinance (Cap. 91) with a view to enabling money claims in derivatives of securities, currency futures or other futures contracts be covered under the Ordinary Legal Aid Scheme when fraud, misrepresentation/deception was involved at the time of purchase and intended to consult the Panel and the Legal Aid Services Council on the detailed proposals in the next legislative session. The Administration, however, did not support other proposals of expanding the scope of SLAS to cover claims against property

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developers by minority owners in respect of compulsory sales of building units, claims against sale of goods and provision of services, claims in respect of trusts, property damage claims against incorporated owners, claims against small marine boat accidents and claims involving disputes between limited companies and their minority shareholders.

Members agreed that the Panel should monitor closely the work of the Administration in taking forward the legislative proposals and the proposal of including derivative claims under SLAS. The Administration was requested to provide a progress report in June 2011. Members also agreed that the Panel should follow up on other proposals not supported by the Administration, particularly the proposed inclusion of claims against property developers by minority owners in respect of compulsory sales of building units and claims against sale of goods and provision of services under SLAS, in the next legislative session.