

Panel on Administration of Justice and Legal Services

List of outstanding items for discussion

(position as at 19 April 2012)

**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 Administration advised the Panel in April 2008 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 were 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 three had already been adapted, and three had been repealed).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.

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. The Arbitration Ordinance (Cap. 341) which was passed on 10 November 2010 has provided 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.

In May 2011, the Constitutional and Mainland Affairs Bureau advised that the Administration was still studying the extension of the applicability of the remaining 10 Ordinances to offices set up by CPG in HKSAR in phases. As more time was needed by the Administration to consider the issues involved, the Administration hoped to report further to the Panel in the course of the 2011-2012 legislative session.

2. Professional Indemnity Scheme of the Law Society of Hong Kong

In accordance with the recommendation made by the former Subcommittee on Solicitors (Professional Indemnity) (Amendment) Rules 2001, the Panel has monitored the review of the insurance arrangement under the Professional Indemnity Scheme ("PIS") of the Law Society of Hong Kong and received progress reports from the Law Society.

To be advised by
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 were available.

3. 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 Administration's view during the scrutiny of the IPCC Bill 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 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 though it was recognized that the decision

was ultimately one of policy. 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.

In September 2011, the Admin Wing advised that it had consulted the Security Bureau on this issue. The Security Bureau advised that IPCC discussed the proposal on the inclusion of IPCC under the purview of The Ombudsman in May 2011. IPCC members raised unanimous concern to the suggestion of putting IPCC under the purview of The Ombudsman. IPCC members' consensus was that the proposal would undermine the image and the public's perception of IPCC being an independent oversight body established under the IPCC Ordinance if it were subjected to the scrutiny of another statutory authority.

At the meeting on 28 November 2011, members noted the view of IPCC members and agreed that the Panel should review the issue in future.

4. Law Reform Commission ("LRC") Report on Hearsay in Criminal Proceedings

The Report on Hearsay in Criminal Proceedings was published by the LRC in November 2009. At the meeting on 15 December 2009, the Panel agreed to discuss relevant issues at a future meeting. April 2012
Department of Justice ("DoJ")

5. LRC Report on Double Jeopardy

The consultation period on the Consultation Paper published by the LRC's Double Jeopardy Subcommittee ended on 31 May 2010. At the Work Plan Meeting, it was agreed that the Panel should discuss the relevant report at a future meeting. The Report on Double Jeopardy was published by LRC on 28 February 2012. April 2012
DoJ/LRC

6. Framework Agreement on Hong Kong/Guangdong Co-operation ("Framework Agreement") relating to co-operation on legal matters

At the meeting on 23 May 2011, the Administration briefed the Panel on the implementation of measures concerning co-operation on legal matters under the Framework Agreement. The two legal professional bodies had expressed views on the development of legal services under the Framework Agreement and the Mainland and Hong Kong Closer Economic Partnership Arrangement. For April 2012
DoJ

the Panel's further discussion of the subject, the Panel agreed that the Administration should provide a written response to the views expressed for the consideration of the legal professional bodies.

When the Panel was briefed on the 2011-2012 policy initiatives of DoJ at its meeting on 20 October 2011, members agreed to follow up on the initiatives to be undertaken by the Administration in facilitating the provision of legal and arbitration services in Qianhai, Shenzhen by Hong Kong service providers.

7. Prosecutorial independence

At its meeting on 27 June 2011, the Panel held a discussion with SJ, the incumbent Director of Public Prosecutions ("DPP"), the former DPP, legal profession and legal academics on the issues relating to an independent DPP. Some members were of the view that the existing arrangement of having SJ, a political appointee, to control prosecutions would undermine the public perception of the prosecutorial independence. They considered that the power to make prosecutions should rest with an independent DPP to ensure that prosecution decisions were free from political interference. Some other members, however, shared the Administration's view that it was SJ's constitutional responsibility to control criminal prosecutions as stipulated in Article 63 of the Basic Law ("BL 63") and the control of prosecutions should continue to be rested with SJ.

May 2012
DoJ

Members noted that in the United Kingdom, a protocol between the Attorney General and the prosecuting departments was drawn up setting out when, and in which circumstances that the Attorney General would or would not be consulted on prosecution decisions and how the Attorney General and the Directors of the prosecuting departments would exercise their functions in relation to each other. The Administration was suggested to consider whether a similar protocol should be adopted in Hong Kong. Members agreed that the Panel should be invited to consider as to how the issue should be followed up when the written submission of the Bar Association is available.

8. 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

June 2012
HAB

September/October 2011 with a view to implementing the proposals before the end of 2011. The Administration has subsequently advised that it would introduce the legislative proposals into LegCo in the latter half of 2011 for LegCo's scrutiny. Members noted that the Administration would also conduct a study on amending the Legal Aid Ordinance (Cap. 91) ("LAO") 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 ("OLAS") 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 for expanding the scope of SLAS to cover claims against property 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 for including derivative claims under OLAS. The Administration briefed the Panel on the legislative amendments and reported on the review of outstanding issues related to SLAS expansion in December 2011. The Administration gave notice on 13 April 2012 to move a motion at the Council meeting of 2 May 2012 to seek the approval of LegCo to amend Schedules 2 and 3 of LAO to expand the scope of OLAS and SLAS. The subcommittee formed to study the proposed resolution has completed its work. Subject to the passage of the resolution by LegCo, the Administration will make the amendment regulations to effect the revised application fee and rates of contribution under the expanded SLAS. It is expected that the amendment regulations will be tabled at LegCo for negative vetting in early June 2012.

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 at a future meeting.

9. Judicial manpower situation

At its meeting on 27 June 2011, members discussed the appointment of serving Justices of Appeal of the Court of Appeal of the High Court as non-permanent Hong Kong judges of the Court of Final Appeal ("CFA") and the judicial manpower situation at CFA and other levels of court. Members agreed to follow up on the judicial manpower situation. Members requested that information on the waiting times for court cases and the number of occasions where deputy judges were engaged in the interim before substantive appointments were made should be made available to facilitate members' deliberation on the subject.

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Judiciary
Administration
("JA")/Adm
Wing

At its meeting on 20 October 2011, the Panel was briefed on the 2011-2012 Judicial Service Pay Adjustment recommended by the Standing Committee on Judicial Salaries and Conditions of Service. Members were of the view that there should be a consensual mechanism for judicial remuneration review and agreed to consider the issue when the judicial manpower situation was discussed at a future meeting.

During the Panel's visit to the Judiciary on 27 February 2012, members suggested that the establishment of judges and judicial officers ("JJO") be reviewed having regard to the operational requirements, court waiting time and population size. The Judiciary is requested to provide the relevant statistics when the Panel is to review the issue in May 2012. Besides, members were also concerned about the sufficiency of judicial training for JJOs to help bring their legal knowledge up-to-date. The Judiciary is also requested to consider wider application of information technology in conducting proceedings to help enhance logistics support to JJOs.

10. Relocation of the Court of Final Appeal ("CFA") to the site of the former LegCo Building

At the meeting on 27 June 2011, members had enquired about the Judiciary's plan regarding the usage of the former LegCo Building after its handover to the Judiciary. JA has provided an update which was issued vide LC Paper No. CB(2)312/11-12 on 16 November 2011. The Judiciary and the Architectural Services Department will consult the Panel on the proposed facilities of CFA to be provided at the Building and the works programme at a future meeting.

To be advised
by JA

During the Panel's visit to the Judiciary, members were advised

that the conversion works at the former LegCo Building were expected to be completed by end 2014 so that the relocation of CFA could take place in the first half of 2015.

11. Implementation of Civil Justice Reform ("CJR")

The Panel has been monitoring the progress on the implementation of CJR. The CJR Monitoring Committee chaired by the Chief Judge of the High Court has endorsed a list of 32 key indicators in six broad areas for assessment of the effectiveness of CJR. To be decided by the Panel
JA

The Panel was briefed on the findings on the first year of implementation of CJR (i.e. from 2 April 2009 to 31 March 2010) at its meeting on 21 December 2010. At the Panel's request, JA has provided an update by including relevant findings of the second year of implementation (i.e. from 1 April 2010 to 31 March 2011) which has been issued vide LC Paper No. CB(2)713/11-12(01). The Panel will discuss the updated position with JA at a future meeting.

12. Review of the "as of right" provision in section 22(1)(a) of the Hong Kong Court of Final Appeal ("CFA") Ordinance

According to section 22(1)(a) of the Hong Kong CFA Ordinance, a civil appeal lies as of right from any final judgment of the Court of Appeal where the matter in dispute amounts to or is worth \$1 million or more. In two CFA judgments (FAMV No. 20 of 2011 and FACV No. 2 of 2011), the Court has expressed the view that this "as of right" ground of appeal should be re-considered/abolished. At its meeting on 20 December 2011, the Panel agreed to take up the issue with the Administration. To be advised by Admin Wing

In his speech delivered at the Ceremonial Opening of the Legal Year 2012 on 9 January 2012, the Chief Justice called for necessary legislative changes so that the type of cases that fell within section 22(1)(a) of the Hong Kong CFA Ordinance shall also be subject to the requirement of leave to appeal.

13. Procedure for seeking an interpretation of the Basic Law ("BL") under BL158(1)

In the course of the discussion on the procedure for seeking an interpretation of BL under BL158(3) at the Panel meeting on 27 To be decided by the Panel

February 2012, members raised issues relating to interpretation of DoJ BL under BL158(1) including whether the Standing Committee of the National People's Congress should exercise its power of interpretation of BL under BL158(1) and the procedure for seeking an interpretation of BL under BL158(1). Members have agreed to explore the relevant issues at a future meeting.

Council Business Division 2
Legislative Council Secretariat
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