

Panel on Administration of Justice and Legal Services

List of outstanding items for discussion
(position as at 21 May 2014)

**Proposed
timing for
discussion**

1. Proposed creation of judicial posts and a non-civil service position in the Judiciary and strengthening of the directorate structure of the Judiciary Administration

Upon the passage of the Appropriation Bill, the Judiciary Administration plans to submit the captioned proposals to the Establishment Subcommittee for endorsement and the Finance Committee for approval. Before doing so, the Judiciary Administration would like to seek Members' views and support on the proposals as follows: –

June 2014

- (a) To create seven permanent posts of Judges and Judicial Officers ("JJOs"), namely three posts of Justice of Appeal, one post of Judge of the Court of First Instance, one post of Judge of the District Court and two posts of Magistrate, at various levels of court to cope with the increased workload in the High Court and to cover the absence of JJOs for dealing with judicial educational matters and attending judicial training activities;
- (b) To create a non-civil service position pitched at a level equivalent to the rank of D3 in the Civil Service, and designated as Executive Director (Judicial Institute), to head the Executive Body of the Hong Kong Judicial Institute to be set up; and
- (c) To strengthen the directorate structure of the Judiciary Administration to enhance both the Information Technology teams and the Finance Section of the Judiciary Administration (including the proposed creation of one Chief Systems Manager at D1 level to oversee the technical side of the Information Technology Strategy Plan implementation and the proposed upgrading of a Senior Treasury Accountant post to the rank of Chief Treasury Accountant at D1 level to oversee the financial monitoring

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of the project on top of many other heavy responsibilities over the financial management of the Judiciary as a whole).

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

At the meeting on 10 July 2012, members agreed that the Panel should follow up with the Administration on proposals not supported for inclusion in SLAS, including the 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; and related issues, such as raising the financial eligibility limits for SLAS as well as the Ordinary Legal Aid Scheme.

June/July 2014

3. Implementation of the measures to strengthen the governance and operational transparency of the Legal Aid Department

On 30 April 2013, the Legal Aid Services Council ("LASC") submitted to the Chief Executive its recommendations on the feasibility and desirability of the establishment of an independent legal aid authority in Hong Kong together with the report of a consultancy study on the issue. While the LASC agreed with the consultant that there is no immediate need to establish an independent legal aid authority, it has recommended a host of measures to enhance its function to oversee the delivery of quality legal aid services to strengthen the governance and operational transparency of the Legal Aid Department.

June/July 2014

At the Panel meeting on 25 June 2013, members received views from the deputations on the future development of legal aid in Hong Kong. Members agreed to follow up the issue pending supplementary information from the Administration. In September 2013, the Administration submitted an information paper to the Panel on legal aid costs for members' reference.

4. Development of Mediation Services in Hong Kong

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discussion**

The Steering Committee on Mediation chaired by the Secretary for Justice ("SJ") and with cross-sector membership was set up in late 2012 to further promote and develop mediation in Hong Kong. The Department of Justice ("DoJ") would like to update the Panel on the latest progress of work undertaken by the Steering Committee in various areas.

July 2014

5. Reform of the current system to determine whether an offence is to be tried by judge and jury or by judge alone

At the Panel meeting on 22 April 2014, DoJ briefed members on the relevant background and latest developments regarding the captioned subject. Representative of the Hong Kong Bar Association (the "Bar Association") expressed its concerns and suggested relevant parties to prepare more detailed submissions highlighting the communications between the Bar Association and DoJ and the latest developments in the law regarding the issue in the last four years for the Panel's consideration at a meeting in late 2014. Members agreed.

To be advised by DoJ (last quarter of 2014)

6. The Law Society of Hong Kong's proposal to introduce a common entrance examination in Hong Kong

At the meeting on 16 December 2013, members received a briefing on The Law Society of Hong Kong's consultation on the feasibility of implementing a common entrance examination ("CEE") as a means of admitting individuals to practice as solicitors in Hong Kong.

To be advised by the Law Society

Whilst noting that the consultants to be engaged by the Law Society would report on its findings and recommendations upon completion of the consultation on the feasibility of implementing CEE in Hong Kong, members agreed to arrange a meeting of the Panel to receive views from the relevant stakeholders and members of the public, such as those who could not get admitted to the Postgraduate Certificate in Laws ("PCLL programmes").

7. Operation of the Resource Centre for Unrepresented Litigants

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and the Two-year Pilot Scheme to Provide Legal Advice for Litigants in Person

The Resource Centre for Unrepresented Litigants ("Resource Centre") was set up by the Judiciary in 2003 to provide assistance on court procedures to unrepresented litigants in civil proceedings in the High Court and the District Court. The purpose is to save the courts' time in explaining rules and procedures to the unrepresented litigants, thereby expediting the court process and lowering legal costs.

To be advised by the Home Affairs Bureau ("HAB")

Separately, the HAB launched in March 2013 a two-year pilot scheme to provide free legal advice for litigants in person ("LIPs") to assist LIPs who have commenced or are parties to legal proceedings in the District Court or higher courts and have not been granted legal aid. The pilot scheme seeks to provide procedural advice to facilitate access to justice by LIPs and other parties involved.

HAB will submit a progress report to the Panel in June 2014 to account for the pilot scheme's first year of operation since March 2013 for Members' information.

8. Adjustment to scale rates

Hon Dennis KWOK proposed to discuss the issue of "Adjustment to scale rates".

To be advised by the Judiciary Administration

The Law Society of Hong Kong has recently commissioned a review of the rates for calculating legal costs on party and party taxation ("scale rates") which were last revised by the Registrar of the High Court in 1997. The Law Society has formally endorsed the recommendations of the review report, including that the solicitors' hourly rates be raised to better reflect the current market conditions and that the scale rates should be adjusted annually according to an inflation-linked index.

The Judiciary considers that there are many important issues relating to the Solicitors' Hourly Rates for taxation on a party and party basis. They would not only affect the work and interests of

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the solicitors but would also have a much broader impact on many stakeholders in the community at large in the overall context of access to justice. The Chief Justice is in the course of appointing a working party to review the matter and make recommendations.

An information paper on "Review of solicitors' hourly rates" provided by the Judiciary Administration had been issued to the Panel in December 2013.

9. Mechanism for handling complaints against judicial conduct

In their letter dated 22 May 2013, Hon LEUNG Kwok-hung and Hon WONG Yuk-man requested to discuss the arrangement for Masters to handle court cases.

To be advised by
the Judiciary
Administration

The existing mechanism for handling complaints against judicial conduct had been working for some time. The Chief Justice considers that it may be time for an internal review to be conducted, and has recently set up an internal working group to review the mechanism to see what improvements could be made.

At the Panel meeting on 25 February 2014, members received views from deputations on the mechanism for handling complaints against judicial conduct. Whilst noting the internal working group of the Judiciary had yet to complete its review, the Judiciary Administration was requested to provide information regarding the number of complaint cases against judicial conduct received in the past three years, broken down by the nature of complaints, the level of courts and the rank of judges involved, as well as how these complaint cases had been dealt with. Members also requested information on the current mechanism for handling complaints against judicial conduct in other jurisdictions.

The Judiciary Administration will provide in May or June 2014 the earliest an information note in response to the Panel's request for members' information. The Judiciary Administration will also inform the Panel of the outcome of the review which is expected to be completed by end-2014.

10. Manpower and other support for the Judiciary

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discussion**

Whilst deliberating on the judicial manpower situation at various levels of court and long court waiting times at the Panel meeting on 16 December 2013, members expressed concern on the long court waiting times, the shortage of judicial manpower and the under-provision of courtrooms and office accommodation for the Judiciary.

To be advised by the Chief Secretary for Administration's Office (Administration Wing) and the Judiciary Administration

Members agreed to follow up with the Administration on issues relating to judicial manpower and courtroom facilities/office accommodation for the Judiciary at a future meeting.

11. Procedure for the making of subsidiary legislation relating to the legal professional bodies

The Subcommittee on Solicitors (General) Costs (Amendment) Rules 2013 agreed that the Panel on Administration of Justice and Legal Services be requested to follow up with the Administration and related parties on the proper procedure for the making of subsidiary legislation relating to the legal professional bodies.

To be advised by DoJ

12. Bilingual legislation drafting

The Subcommittee to Examine the Implementation in Hong Kong of Resolutions of the United Nations Security Council in relation to Sanctions agreed that the Panel on Administration of Justice and Legal Services be requested to follow up with the Administration regarding the suggestion of the setting up of a panel of advisory language specialists to help ensure no discrepancies between the English and Chinese defined terms in the drafting of the legislation.

To be advised by DoJ

13. Issues relating to the role and functions of the Hong Kong Mediation Accreditation Association Limited

At the meeting on 26 November 2013, Dr Hon CHIANG Lai-wan suggested and members agreed to revisit the issues relating to the role and functions of the Hong Kong Mediation Accreditation Association Limited at a future meeting.

To be advised by DoJ

14. Duty Lawyer Service for non-refoulement claims under the

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unified screening mechanism

Hon Dennis KWOK proposed to discuss the issue of the "Duty Lawyer Service for non-refoulement claims under the unified screening mechanism".

To be advised by
the Security
Bureau and HAB

At the Panel meeting on 23 July 2013, members agreed that the issue be included in the list of items for discussion by the Panel.

15. Proposed amendments to Rule 4B(2) of the Solicitors' Practice Rules and Rule 8(4) of the Foreign Lawyers Practice Rules

The Law Society of Hong Kong invites the Panel's views on its proposed amendments to Rule 4B(2) of the Solicitors' Practice Rules and Rule 8(4) of the Foreign Lawyers Practice Rules.

To be advised by
the Law Society

At the Panel meeting on 23 July 2013, members agreed that the Law Society be invited to brief members on the proposed amendments to Rule 4B(2) of the Solicitors' Practice Rules and Rule 8(4) of the Foreign Lawyers Practice Rules.

16. Inclusion of the statutory Independent Police Complaints Council ("IPCC") under the purview of The Ombudsman

During the scrutiny of the IPCC Bill introduced into LegCo in July 2007, the relevant Bills Committee discussed the question of whether the statutory IPCC to be established under the Bill should be subject to the jurisdiction of The Ombudsman. The relevant Bills Committee had sought the views of The Ombudsman on the matter, who indicated that she had no objection in principle to having the statutory IPCC under her purview though it was recognized that the decision was ultimately one of policy.

To be decided by
the Panel

At the Panel meeting held 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 agreed to bring up the issue after IPCC had been in operation for some time.

The Administration informed the Panel in writing on

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discussion**

23 September 2011 that it had consulted the Security Bureau on including the statutory IPCC under the purview of The Ombudsman. The Security Bureau advised that IPCC had discussed the proposal in May 2011. IPCC members raised unanimous concern that the proposal, if implemented, would undermine the image and public perception of IPCC being an independent oversight body established under the IPCC Ordinance (Cap. 604) if IPCC were subjected to the scrutiny of another statutory authority.

At the meeting on 28 November 2011, members agreed that the Panel should review the issue in future.

17. Extending the applicability of the Ordinances of HKSAR to the offices set up by the Central People's Government ("CPG") in HKSAR

The following five Ordinances have been adapted -

1. The Legislative Council Commission Ordinance (Cap. 443)
2. Plant Varieties Protection Ordinance (Cap. 490)
3. Patents Ordinance (Cap. 514)
4. Registered Designs Ordinance (Cap. 522)
5. Arbitration Ordinance (Cap. 341)¹.

Relevant policy bureaux and departments are studying the remaining 10 Ordinances under their respective purview to examine the extension of applicability of the Ordinances to the CPG Offices.

Relevant bureaux and departments will consult their relevant LegCo Panels on the proposed amendments to the 10 remaining Ordinances according to their respective work programmes.

18. Prosecutorial independence

¹ Arbitration Ordinance (Cap. 341) was repealed and replaced by Arbitration Ordinance (Cap. 609), which was enacted in 2010. Section 6 of the Arbitration Ordinance (Cap. 609) provides that the Ordinance applies to the Government and the offices set up by the CPG in the HKSAR.

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During the discussion on issues relating to prosecution policy and practice at the Panel meeting on 27 June 2011, 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 Director of Public Prosecutions 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 and the control of prosecutions should continue to be rested with SJ.

To be decided by the Panel
(Pending submission from the Hong Kong Bar Association)

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 requested to consider whether a similar protocol should be adopted in Hong Kong. The Panel Chairman suggested that the Panel of the Fifth LegCo should be invited to consider as to how the issue should be followed up when the written submission of the Hong Kong Bar Association was available.