

Panel on Administration of Justice and Legal Services

List of outstanding items for discussion
(position as at 20 November 2013)

**Proposed
timing for
discussion**

1. Statute Law (Miscellaneous Provisions) Bill

The Department of Justice ("DoJ") plans to seek members' views on the Statute Law (Miscellaneous Provisions) Bill 2014 which seeks to, among other things, introduce miscellaneous amendments which are minor, technical and largely non-controversial to various Ordinances and subsidiary legislation and, in particular –

December 2013

- (a) to amend and repeal certain provisions of the Crimes Ordinance (Cap. 200) that were ruled unconstitutional by the Court in the cases of *Leung TC William Roy v Secretary for Justice* (CACV 317/2005) and *Secretary for Justice v Yau Yuk Lung Zigo & Anor* (FACC 12/2006); and
- (b) to introduce legislative amendments proposed by the Equal Opportunities Commission in relation to the Sex Discrimination Ordinance (Cap. 480), the Disability Discrimination Ordinance (Cap. 487), the Family Status Discrimination Ordinance (Cap. 527) and the Race Discrimination Ordinance (Cap. 602).

2. The Law Society of Hong Kong's proposal to introduce a common qualifying examination for solicitors to replace the postgraduate qualification programme provided by the three law schools in Hong Kong

Hon Abraham SHEK proposed to discuss the issue of "The Law Society of Hong Kong's proposal to introduce a common qualifying examination for solicitors to replace the postgraduate qualification programme provided by the three law schools in Hong Kong".
Considering that under the current legal qualification

December 2013

system, law graduates are required to complete the Postgraduate Certificate in Laws (PCLL) before they can qualify as solicitors or barristers, any change to the legal qualification system would have far-reaching implications for the legal sector. Mr Dennis KWOK proposed to invite the relevant parties to give views on the matter.

The Law Society is appointing consultants to conduct a consultation on the common qualifying examination. It is estimated the consultation will be conducted towards the end of 2013. The results of the consultation and the recommendations of the consultants may be available in March/April 2014. The Law Society would like to clarify that no conclusion has been drawn on the common qualifying examination yet, i.e. whether it should be an addition to or alternative to PCLL, pending the recommendations of the consultants.

At the Panel meetings on 23 July 2013 and 10 October 2013, the Chairman suggested and members agreed that The Law Society and the relevant parties be invited to attend a meeting of the Panel to facilitate members' discussion on The Law Society's proposal of introducing a common qualifying examination for solicitors.

3. Judicial manpower situation at various levels of court and long court waiting times

At the special meeting on 30 October 2012 to discuss the 2012-2013 judicial service pay adjustment, members agreed to follow up with the Judiciary Administration on long court waiting times and related issues, including judicial manpower situation and whether the increasing number of cases involving unrepresented litigants had attributed to long court waiting times.

December 2013

4. Administration of Justice (Miscellaneous Provisions)

**Proposed
timing for
discussion**

Bill

The Judiciary intends to consult members on various legislative proposals relating to the court operation. The Bill includes proposals relating to the review of the "as of right" provision in section 22(1)(a) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484), technological relaxation for evidence-taking by live television links for criminal proceedings, the mode of delivery of reasons for verdicts and sentences in criminal proceedings in the District Court, the calculation of qualifying experience for appointment as magistrates, the improvement of the operation of the Labour Tribunal, and the administration of suitors' funds at various courts/tribunals.

1st quarter of
2014

For the review of the "as of right" provision, according to section 22(1)(a) of the Hong Kong Court of Final Appeal 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 Court of Final Appeal judgments (FAMV No. 20 of 2011 and FACV No. 2 of 2011), the Court had expressed the view that this "as of right" ground of appeal should be re-considered/abolished.

At the Panel meeting on 23 July 2013, members agreed to follow up the issue pending supplementary information from the Administration.

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

Hon Dennis KWOK proposed to discuss the issue of "Reform of the current system to determine whether an offence is to be tried by judge and jury or by judge alone".

1st quarter of
2014

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

**Proposed
timing for
discussion**

the Panel.

6. Proposed legislative amendments to the District Court Equal Opportunities Rules

In June 2012, the Judiciary Administration informed members of the outcome of the consultation on the review on adjudication of Equal Opportunities ("EO") claims by the District Court and the Judiciary's plan to improve the relevant procedures and practices for EO claims (LC Paper No. CB(2)2480/11-12(01)).

1st quarter of 2014 (tentative)

To take forward one of the key recommendations, namely to streamline the adjudication of EO proceedings in the District Court, the Judiciary would like to consult members on the proposed legislative amendments.

7. 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.

1st quarter of 2014, depending on outcome of discussion with the Chief Justice during the Panel visit to the Judiciary on 3 December 2013

At the Panel meeting on 23 July 2013, members agreed to follow up the issue with the Judiciary Administration.

8. 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

2nd quarter of 2014

**Proposed
timing for
discussion**

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.

9. Operation of the Resource Centre for Unrepresented Litigants 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.

June 2014

Separately, the Home Affairs Bureau ("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.

10. Adjustment to scale rates

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

To be confirmed
by the Judiciary
Administration

The Law Society of Hong Kong has recently commissioned

**Proposed
timing for
discussion**

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.

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 decided
by the Panel

12. Duty Lawyer Service for non-refoulement claims under the 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 confirmed
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.

13. 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 confirmed
by the Law
Society

**Proposed
timing for
discussion**

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.

14. Draft Solicitor Corporation Rules and consequential amendments to Legal Practitioners Ordinance (Cap. 159)

The Law Society of Hong Kong intends to consult the Panel on two issues relating to solicitor corporations, namely, whether solicitor corporations should be required to take out top-up professional indemnity insurance and notify clients of the identity of the supervising partners. According to the Law Society, the Chief Justice had granted his approval in principle to the draft Solicitor Corporation Rules and consequential amendments to the Legal Practitioners Ordinance (Cap. 159).

To be confirmed
by the Law
Society

The Law Society had already made submissions on the two issues in its paper to the Panel on 2 September 2013.

The Law Society will consider in due course the question of whether to allow solicitor corporations to form partnerships.

15. 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

To be confirmed
by HAB

**Proposed
timing for
discussion**

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.

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.

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 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

**Proposed
timing for
discussion**

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

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 the Secretary for Justice ("SJ"), a

To be decided by the Panel (Pending submission from

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.

**Proposed
timing for
discussion**

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.

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.