

Panel on Administration of Justice and Legal Services

List of outstanding items for discussion

(position as at 23 January 2015)

**Proposed
timing for
discussion**

1. Draft Court Procedural Rules for the Competition Tribunal

Since the enactment of the Competition Ordinance (Cap. 619), the Judiciary has been making preparations for the setting up of the Competition Tribunal. The Tribunal is a superior court of record established under the Competition Ordinance having primary jurisdiction to hear and adjudicate on enforcement cases brought by the Competition Commission, follow-on private actions, alleged contravention of a conduct rule as a defence raised in proceedings before the Court of First Instance, as well as reviews of certain determinations of the Commission.

February 2015

The Judiciary is preparing the procedural and other related rules for the Tribunal. These are subsidiary legislation. It will consult the Panel when ready.

2. Proposed amendment of the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91B) and adjustment of the financial eligibility limits of the Ordinary and Supplementary Legal Aid Schemes

The Administration proposes to amend the bandwidth of assessed financial resources for determining the contribution payable under the Ordinary Legal Aid Scheme ("OLAS") and to adjust the financial eligibility limits for OLAS and the Supplementary Legal Aid Scheme in accordance with changes of the Consumer Price Index (C).

February 2015

**Proposed
timing for
discussion**

3. Criteria for approving legal aid applications

Dr Hon Priscilla LEUNG proposes to discuss this item in the 1st quarter of 2015.

March 2015

4. 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, the Department of Justice ("DoJ") briefed members on the relevant background and the latest developments regarding the captioned issue. Members agreed to further discuss the issue when the parties concerned had prepared detailed submissions on the subject.

March – April 2015

5. Mechanism for handling complaints against judicial conduct

In their joint 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.

2nd quarter of 2015

The Panel was briefed by the Judiciary Administration ("JA") on the mechanism for handling complaints against judicial conduct at its meeting held on 23 July 2013. The Panel further received views from deputations on the mechanism for handling complaints against judicial conduct at its meeting held on 25 February 2014.

Having regard to the fact that the existing mechanism for handling complaints against judicial conduct has been working for some time, the Chief Justice has set up an internal working group (involving the Court Leaders) to review the mechanism, to see what improvements could be made. The JA will inform the Panel of the outcome of the review which is expected to be completed by end-2014.

**Proposed
timing for
discussion**

6. Manpower and other support for the Judiciary

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.

2nd quarter of 2015

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.

7. Review on the implementation of Civil Justice Reform

Hon Dennis KWOK proposed to discuss the issue of "Review on the implementation of Civil Justice Reform" as the legal profession has identified problems and deficiencies since the Civil Justice Reform came into operation in April 2009 (LC Paper No. CB(4)784/13-14(01)).

2nd quarter of 2015

At the Panel meeting on 24 June 2014, members agreed that the issue be included in the list of items for discussion by the Panel.

8. Operation of the Resource Centre for Unrepresented Litigants and the two-year pilot scheme to provide legal advice for Litigants in Person ("LIPs Scheme")

The Resource Centre for Unrepresented Litigants 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.

2nd quarter of 2015

Separately, Home Affairs Bureau ("HAB") launched in March 2013 a two-year pilot scheme to provide free legal advice for LIPs to assist those LIPs who have commenced or are parties to

**Proposed
timing for
discussion**

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 has submitted a paper to account for the first year of operation of the LIPs Scheme which was issued on 18 June 2014 (LC Paper No. CB(4)822/13-14(06)).

9. Legal education and training in Hong Kong

At the Panel meeting held on 16 December 2013 to discuss The Law Society of Hong Kong ("the Law Society")'s proposal to introduce a common entrance examination 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 offered by local universities.

May - July 2015

Dr Hon Priscilla LEUNG proposes to discuss the issue of "Legal education and training in Hong Kong" in the 1st/2nd quarter of 2015, and to invite relevant stakeholders, such as law professors and students, to give views on the matter.

10. 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 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.

3rd quarter of 2015

11. Bilingual legislation drafting

The Subcommittee to Examine the Implementation in Hong Kong of Resolutions of the United Nations Security Council in

3rd quarter of 2015

**Proposed
timing for
discussion**

relation to Sanctions agreed that the Panel be requested to follow up with the Administration on the suggestion of setting up a panel of advisory language specialists to help ensure that there are no discrepancies between the English and Chinese defined terms in the drafting of legislation.

12. Measures for handling sexual offences cases

Dr Hon Elizabeth QUAT proposed to discuss the following measures for handling sexual offences cases: (i) extending the definition of the term "witness in fear" under the Criminal Procedure Ordinance (Cap. 221) to allow a witness falling within the extended definition to give evidence in court under the provision of a screen or by live television link, and enter/leave the court building through special passageways; (ii) revising section 154(1) of the Crimes Ordinance (Cap. 200) to stipulate the criteria for granting of leave by the judge; and (iii) enhancing training for the legal sector and the Police on the handling of sexual offence cases.

To be confirmed

At the Panel meeting on 22 December 2014, members agreed that the issue be included in the list of items for discussion by the Panel.

13. 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 OLAS.

To be advised by
HAB

HAB submitted an information paper to the Panel on the progress

**Proposed
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of the review of SLAS which was issued on 18 June 2014 (LC Paper No. CB(4)822/13-14(06)).

14. Implementation of Land Titles Ordinance (Cap. 585)

Although the Land Titles Ordinance (Cap. 585) ("LTO") was enacted in 2004, the LTO has not yet come into force. During the discussion of the item on "Law Reform Commission Report on Adverse Possession" at the Panel meeting on 22 December 2014, Hon Dennis KWOK proposed that the Administration should be invited to brief members on the implementation progress of the LTO.

To be advised

15. Abolition of the common law offence of champerty

At the Panel meeting on 25 March 2014, members were briefed on the recent developments of the common law offences of maintenance and champerty in Hong Kong and the Administration's position in relation to the item. Members were generally of the views that the common law offences of maintenance and champerty were outdated and should be reviewed to better suit the present day circumstances. The Administration was urged to adopt a liberal approach in addressing the issue and come up with ways to enhance access to justice for the middle-income group.

To be advised by
DoJ

The Secretariat has received a letter from Hon LEUNG Kwok-hung dated 1 September 2014 requesting the Panel to discuss the issue of abolition of the common law offence of champerty again.

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

At the meeting on 16 December 2013, members received a briefing from the Law Society on its consultation (ran from 1 December 2013 to 14 February 2014) on the feasibility of implementing a common entrance examination as a means of

To be advised by
the Law Society

admitting individuals to practice as solicitors in Hong Kong. After discussion, members agreed to keep in view the progress of the Law Society's consultation exercise and the Standing Committee on Legal Education and Training's comprehensive review, and would re-visit this subject in due course.

In September 2014, the Law Society informed the Panel that a total of 104 responses were received by the consultants appointed by the Law Society to conduct the consultation. In addition, the consultants conducted 11 interviews with stakeholders. The consultants have reviewed the responses, and are liaising with the Law Society on their findings and recommendations, which will in due course be considered by the various Committees with recommendations to the Council of the Law Society.

17. Adjustment to scale rates

Hon Dennis KWOK proposed to discuss the issue of "Adjustment to scale rates" (LC Paper No. CB(4)571/12-13(01)) as the rates for calculating legal costs for solicitors and their staff on party and party taxation ("scale rates") were last revised by the Registrar of the High Court in 1997.

To be advised by
JA

Following a review of the scale rates, the Law Society had in early 2013 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.

In December 2013, the Judiciary informed the Panel that it 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 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 has appointed a working party to review the matter and make recommendations.

**Proposed
timing for
discussion**

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

18. 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 advised by
the Security Bureau

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.

As the implementation of the unified screening mechanism falls within the purview of the Panel on Security, Hon Dennis KWOK will follow up with the Chairman of the Panel on Security on including the provision of duty lawyer service for non-refoulement claims in the Panel on Security's discussion with the Administration on the unified screening mechanism and inviting members of the Panel on Administration of Justice and Legal Services to join such discussion.

19. Recovery of costs in pro bono cases

Hon Dennis KWOK proposed to discuss the issue of "Recovery of costs in pro bono cases".

To be advised by
DoJ

At the meeting on 24 November 2014, members agreed that the issue be included in the list of items for discussion by the Panel.

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

**Proposed
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The Law Society wrote to the Panel on 15 July 2013 inviting 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 (LC Paper No. CB(4)911/12-13(01)).

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.

The Chief Justice has asked that the Law Society should first consult the Panel on the proposals before seeking his final approval.

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

During the scrutiny of the IPCC Bill introduced into the Legislative Council ("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

**Proposed
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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.

22. 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 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.

Pending submission
from the Bar
Association in early
2015

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 Bar Association was available.

Council Business Division 4
Legislative Council Secretariat
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