

Panel on Administration of Justice and Legal Services

List of outstanding items for discussion
(position as at 16 June 2015)

**Proposed
timing for
discussion**

1. Implementation of the recommendations made by the Law Reform Commission

The Law Reform Commission ("LRC") made its first annual report to the Panel in June 2013 on the Administration's progress in implementing the recommendations of the LRC. The second annual report was discussed at the Panel meeting on 27 May 2014.

July 2015

The LRC will provide its third annual report to the Panel to set out the latest progress.

2. 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.

July 2015

The Department of Justice ("DoJ") plans to brief members on the subject in the 3rd quarter of 2015.

3. 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 be requested to follow up with the Administration on the suggestion of setting up a panel of advisory language specialists to help ensure that

3rd quarter of 2015

there are no discrepancies between the English and Chinese defined terms in the drafting of legislation.

DoJ plans to brief members on the subject in the 3rd quarter of 2015.

4. Proposed legislative amendments to implement the final phase of a five-day week in the Judiciary

The Judiciary has decided to implement a five-day week for the Judiciary in phases. The last phase of such implementation covers services with a public interface where legislative amendments are required. The Judiciary plans to consult the Panel on the proposed legislative amendments before they are made.

4th quarter of 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.

4th quarter of 2015

The Panel was briefed by 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 ("CJ") has set up an internal working group (involving the Court Leaders) to review the mechanism, to see what improvements could be made. JA will inform the Panel of the outcome of the review which is expected to be completed in the latter part of 2015.

6. Abolition of the common law offence of champerty

**Proposed
timing for
discussion**

At the Panel meeting on 25 March 2014, members were briefed by DoJ 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. DoJ 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.

2015-2016 session

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.

7. Recovery of costs in pro bono cases

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

2015-2016 session

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

DoJ plans to brief members on the subject in the 2015-2016 legislative session.

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,

To be advised by
the Judiciary
Administration
("JA") and HAB

thereby expediting the court process and lowering legal costs.

Separately, the LIPs Scheme was launched by the Home Affairs Bureau ("HAB") in March 2013. 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 to members on 18 June 2014 (LC Paper No. CB(4)822/13-14(06)). HAB will provide another information paper on the operation of the LIPs Scheme to the Panel in June 2015.

9. Measures for handling sexual offences cases

At the Panel meeting on 22 December 2014, members agreed to discuss the following measures for handling sexual offences cases proposed by Dr Hon Elizabeth QUAT:

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JA, DoJ and
Security Bureau
("SB")

- (a) extending the definition of the term "witness in fear" under the Criminal Procedure Ordinance (Cap. 221) to allow a witness falling within the expanded 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;
- (b) revising section 154(1) of the Crimes Ordinance (Cap. 200) to stipulate the criteria for granting of leave by the judge; and
- (c) enhancing training for the legal sector and the Police on the handling of sexual offence cases.

10. Provision of screens for complainants in sexual offence cases during court proceedings

**Proposed
timing for
discussion**

At the Panel meeting on 26 January 2015 to discuss the provision of screens for complainants in sexual offence cases during court proceedings, members agreed that deputations should be invited to give views on the three options proposed by the Judiciary to provide screens for sexual offence victims.

To be decided by
the Panel

11. 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.

To be advised by
HAB

HAB submitted an information paper to the Panel on the progress of the review of SLAS which was issued on 18 June 2014 (LC Paper No. CB(4)822/13-14(06)).

At the Panel meeting on 23 March 2015, members requested the Working Group on Expansion of SLAS of the Legal Aid Services Council ("LASC") to provide a report on the progress of its review to the Panel. The Government had conveyed the request to LASC and would coordinate a response to the Panel in consultation with LASC.

12. 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

To be advised by
Development
Bureau

**Proposed
timing for
discussion**

progress of the LTO.

13. Sentencing policy

At the Panel meeting on 23 March 2015, Dr Hon CHIANG Lai-wan proposed to discuss the issue of "Sentencing policy"

To be advised by
DoJ

14. Provision of legal advice services for persons detained in police stations

Hon Dennis KWOK proposed to discuss the issue of "Provision of legal advice services for persons detained in police stations" in his letter dated 31 March 2015 to the Chairman of the Panel.

To be advised

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

At the Panel meeting on 16 December 2013, members received a briefing from The Law Society of Hong Kong ("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 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.

To be advised by
the Law Society

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.

**Proposed
timing for
discussion**

16. Duty lawyer service for non-refoulement claims under the unified screening mechanism

Hon Dennis KWOK proposed to discuss the issue of "Duty lawyer service for non-refoulement claims under the unified screening mechanism" in his letter dated 9 July 2013 to the Chairman of the Panel.

To be advised

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.

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

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

Noting that the CJ had asked that the Law Society should first consult the Panel on the proposals before seeking his final approval, members agreed at the Panel meeting on 23 July 2013 that the Law Society be invited to brief members on the legislative proposals.

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

**Proposed
timing for
discussion**

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 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.

19. 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

To be advised by
DoJ

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.

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.

The Hong Kong Bar Association advised in its letter dated 18 May 2015 to the Panel that the Bar did not see the need for a paper on the topic because they supported the vital need for prosecutorial decisions to be taken independently of political considerations and they did not see the need for any change in the statutory position.

20. Legal issues relating to the co-location arrangements at the Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link

At the Panel meeting on 18 May 2015, Hon Alice MAK proposed and members agreed to discuss the issue of "Legal issues relating to the co-location arrangements at the Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link" as soon as practicable.

To be advised by
DoJ

21. Follow-up actions that would be taken by Secretary for Justice pursuant to the Court of Final Appeal's judgement

**Proposed
timing for
discussion**

on the case of *Chinachem Charitable Foundation Limited v The Secretary for Justice & Others*

At the Panel meeting on 18 May 2015, Hon Paul TSE proposed and members agreed to discuss the issue of "Follow-up actions that would be taken by SJ pursuant to the Court of Final Appeal's judgement on the case of *Chinachem Charitable Foundation Limited v The Secretary for Justice & Others [FACV9/2014]*" at a future meeting of the Panel.

To be advised by
DoJ

Mr TSE said that SJ should apprise members of matters, such as the implementation of a scheme to supervise the Foundation and the funding of a Chinese prize of worldwide significance to that of the Nobel Prize and whether DoJ would investigate whether the trustee of the Estate in question ("the Estate") had exercised due diligence to protect the assets of the Estate.

DoJ has suggested that members may consider removing this item unless members would like to have further information on SJ's reply to a written question raised by Hon Paul TSE at the Council meeting on 3 June 2015 regarding the monitoring of the administration by the trustee of an estate for charitable purposes.

22. Granting and refusal of bail

At the Panel meeting on 18 May 2015, Hon Paul TSE proposed and members agreed to discuss the issue of "Granting and refusal of bail" at a future meeting of the Panel.

To be advised

Mr TSE referred members to a judgement made by the Court of First Instance of the High Court on the case of *HKSAR v Leung Ka Kit [2014] HKCFI 1285* on 18 July 2014 where the judge mentioned that the Magistrate concerned had brought disgrace on the Judiciary for refusing a bail request without giving any reason and the prosecution had at no stage objected to bail.

23. Rule of law in Hong Kong

**Proposed
timing for
discussion**

At the Panel meeting on 18 May 2015, Dr Hon CHIANG Lai-wan proposed and members agreed to discuss the issue of "rule of law in Hong Kong" at a future meeting of the Panel.

To be advised by
DoJ

Dr CHIANG pointed out that despite the fact that persons storming the Legislative Council Complex and causing severe damage to various parts of the Complex were caught by the CCTV cameras, no prosecution action had been brought against these persons.

DoJ has suggested explaining to members its standard practice and policy in handling prosecution, after a case is submitted to DoJ by the law enforcement agencies after investigation.

Council Business Division 4
Legislative Council Secretariat
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