

Panel on Administration of Justice and Legal Services

List of outstanding items for discussion

(position as at 12 October 2015)

**Proposed
timing for
discussion**

1. 2015-2016 Judicial Service Pay Adjustment

The Director of Administration proposes to consult the Panel on its proposal to increase the pay for judges and judicial officers by 4.41% with effect from 1 April 2015 before seeking funding approval from the Finance Committee ("FC").

November 2015

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

November 2015

DoJ plans to brief members on the subject in the 4th quarter of 2015.

3. Proposed Apology Legislation

The Steering Committee on Mediation ("Steering Committee") published the Consultation Paper: Enactment of Apology Legislation in Hong Kong on 22 June 2015 for a 6-week public consultation. Two consultation forums were held during the period. A total of 74 written submissions were received. The Panel was also briefed on the proposal at its meeting held on 22 June 2015.

December 2015
(tentative)

A report on the submissions received has been prepared and considered by the Regulatory Framework Sub-committee of the

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Steering Committee. The Steering Committee will make its recommendations in a report on the proposed Apology Legislation and consider whether a second-round consultation is to be recommended.

Department of Justice ("DoJ") plans to brief members on the submissions received during the first-round consultation period and the recommendations of the Steering Committee when the report is to be published probably in late 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/
1st quarter of 2016

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/
1st quarter of 2016

The Panel was briefed by 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 ("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

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inform the Panel of the outcome of the review which is expected to be completed in the latter part of 2015.

6. Renovation works for the West Wing of the former Central Government Offices for office use by the Department of Justice and law-related organizations

The Administration proposes to brief the Panel on the renovation project for the West Wing of the former Central Government Offices for office use by the DoJ and law-related organizations. The plan is to submit the proposal to the Public Works Subcommittee ("PWSC") and the Finance Committee ("FC") in around the 1st to 2nd quarter of 2016 for funding approval.

4th quarter of 2015/
1st quarter of 2016

7. 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.

Early 2016

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. During the two-year pilot period from 18 March 2013 to 31 March 2015, the LIPs Scheme had conducted some 3 600 advice sessions, assisting a total of 1 236 individual LIPs. According to HAB, feedback from clients is positive as over 90% of them are satisfied with the services provided. The Judiciary also considers that the LIPs Scheme has rendered a useful and constructive service to LIPs who are in need of assistance on procedural matters in respect of civil cases that are covered by the Pilot Scheme. In the light of the positive feedback from LIPs clients and the Judiciary, the

Steering Committee on the Provision of Legal Advice for Litigants in Person has recommended that the LIPs Scheme be regularized. Whilst the two-year pilot has ended in March 2015, the LIPs Scheme continues to be funded by HAB for the time being. HAB will provide an information paper on the way forward of the LIPs Scheme to the Panel in early 2016.

8. 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.

2nd / 3rd quarter of
2016

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.

9. Rule of law in Hong Kong

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.

2nd / 3rd quarter of
2016

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.

10. Conversion of the former French Mission Building for accommodation use by law-related organization(s) and related purposes

The Administration proposes to brief the Panel on the conversion project for the former French Mission Building for accommodation use by law-related organization(s) and related purposes. The plan is to submit the proposal to PWSC and FC in around the 3rd to 4th quarter of 2016 for funding approval.

2nd / 3rd quarter
of 2016

11. Abolition of the common law offence of champerty

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

2015-2016 session

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.

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.

12. 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.

13. Arbitrability of Intellectual Property ("IP") rights

In March 2015, the Working Group on Intellectual Property Trading (chaired by the Secretary for Commerce and Economic Development) issued a report ("the Report") setting out its recommendations on promoting Hong Kong as an intellectual property trading hub as well as an international IP arbitration and mediation centre. The Report recommends, amongst other things, that the Government should study the need for legislative amendments to clarify any doubts on arbitrability of IP disputes. At present, there is no legislative guidance on whether IP disputes are arbitrable in Hong Kong. In light of the above recommendation, a Working Group on Arbitrability of IP Rights chaired by the Solicitor General ("the Working Group") was set

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up by DoJ in May 2015. The proposal to have the Arbitration Ordinance (Cap. 609) suitably amended was generally agreed to by members of the Working Group. DoJ plans to consult Members on the subject in the 2015-2016 legislative session.

14. 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:

To be advised by
JA, DoJ and
Security Bureau

- (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.

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

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

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

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discussion**

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. As advised by HAB, the Working Group on Expansion of SLAS would conduct a further review on SLAS with a view to presenting a new round of recommendations to the Government. In the course of the review, the Working Group will take into account comments expressed by stakeholders including the two legal professional bodies. According to HAB's understanding, LASC had shared the preliminary proposals with the Hong Kong Bar Association and the Law Society of Hong Kong in mid July 2015. LASC will duly consider the views of the two legal professional bodies on the review of SLAS before finalizing its recommendations to the Government.

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

As requested by the Bills Committee upon enactment of the Land Titles Ordinance (Cap. 585) ("LTO") in 2004, the Administration is conducting with major stakeholders a post-enactment review of the LTO before its coming into force. The Joint Subcommittee on Amendments to LTO requested the Administration to report progress when the latter was able to come up with a full package of necessary amendments to the LTO. During the discussion of the item on "Law Reform

To be advised by
Development
Bureau

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discussion**

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.

18. 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

19. 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

20. 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

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recommendations, which will in due course be considered by the various Committees with recommendations to the Council of the Law Society.

21. 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.

22. 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.

23. 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 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.

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

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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

25. 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.