

**Panel on Administration of Justice and Legal Services**

**List of outstanding items for discussion**  
(position as at 18 November 2015)

**Proposed  
timing for  
discussion**

**1. 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.

December 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.

December 2015

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

**3. 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

January 2016

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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 up by Department of Justice ("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 January 2016.

**4. 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 six-week public consultation during which a total of 74 written submissions were received. The Panel was also briefed on the proposal at its meeting held on 22 June 2015.

January 2016

Having considered the submissions received during the consultation, the Regulatory Framework Sub-committee of the Steering Committee prepared a report with recommendations for consideration by the Steering Committee. The Steering Committee will make its recommendations in a report on the proposed Apology Legislation with a view to commencing a second-round consultation as soon as possible.

DoJ plans to brief members on the recommendations of the Steering Committee when the report is expected to be published in early 2016.

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**5. 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.

**6. 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:

1<sup>st</sup> quarter of 2016

- (a) extending the definition of the term "witness in fear" under the Criminal Procedure Ordinance (Cap. 221) ("CPO") 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.

Security Bureau ("SB") has advised the Secretariat on 11 November 2015 that apart from providing training to Police officers for handling sexual offences cases, other items on extending the definition of the term "witness in fear" under the CPO and revising section 154(1) of the Crimes Ordinance to stipulate the criteria for granting of leave by the judge which relate to court procedure, as well as training for the legal sector, are outside SB's policy responsibilities.

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

At the Panel meeting on 26 January 2015, members discussed the following three options proposed by the Judiciary to provide screens for sexual offence victims:

1<sup>st</sup> quarter of 2016

- (a) whether the law should be changed to provide for automatic provision of screens for complainants in sexual offence cases upon the prosecution's applications;

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- (b) whether, within the existing framework, the current procedures could be improved for considering applications for use of screens for complainants in sexual offence cases by amending Practice Direction - 9.3 "Criminal Proceedings in the Court of First Instance" and Practice Direction - 9.4 "Criminal Proceedings in the District Court"; and
- (c) whether, within the existing framework, certain guidelines should be developed to set out in greater details the factors that should be taken into account when the court considered applications for use of screens for complainants in sexual offence cases.

At the Panel meeting on 15 October 2015, Dr Hon Elizabeth QUAT urged the Panel to actively follow up with the Administration on changing the law to provide for automatic provision of screens for complainants in sexual offence cases during court proceedings upon the prosecution's applications. Hon Dennis KWOK also said that the Judiciary Administration ("JA") should be invited to brief members on the progress of amending Practice Direction - 9.3 "Criminal Proceedings in the Court of First Instance" and Practice Direction - 9.4 "Criminal Proceedings in the District Court" to require, as a matter of standing procedure, the counsel to advise the presiding judge of the following during the Pre-trial Review of every sexual offence case, i.e. (i) whether the complainant had requested a screen; and (ii) whether the prosecution considered it appropriate to make such an application.

JA has advised the Secretariat on 4 November 2015 that the Judiciary has recently issued the following draft amended or new Practice Directions to the relevant parties for consultation:

- (a) Criminal Proceedings in the Court of First Instance;

- (b) Criminal Proceedings in the District Court; and
- (c) Use of Screens in Sexual Offence Cases in Magistrates' Courts.

Comments are expected to arrive by end December 2015. Having considered the comments, the Judiciary will consider promulgating the Practice Directions in early 2016 and would keep the Panel posted of developments.

As regards whether the law should be changed to provide for automatic provision of screens for complainants in sexual offence cases upon the prosecution's applications, SB has advised the Secretariat on 11 November 2015 that as such change involves amendments to the law in relation to court procedures, it is outside the policy purview of SB.

## **8. 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.

March 2016

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.

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At the Panel meeting on 15 October 2015, the Chairman was urged to follow up with JA on the timing for discussing the mechanism for handling complaints against judicial conduct as soon as possible.

**9. Review of criminal legal aid fees**

In March 2014, HAB formed a Working Group comprising representatives from the Bar Association and the Law Society, as well as Government representatives from the Legal Aid Department and DoJ, to review the rates of criminal legal aid fees payable to lawyers in private practice engaged to undertake litigation work.

2<sup>nd</sup> quarter of 2016

HAB will brief members on the results of the review in the 2<sup>nd</sup> quarter of 2016.

**10. 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 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 2<sup>nd</sup> to 3<sup>rd</sup> quarter of 2016 for funding approval.

2<sup>nd</sup>/3<sup>rd</sup> quarter of  
2016

**11. 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

2<sup>nd</sup>/3<sup>rd</sup> quarter of  
2016

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.

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 Legislative Council ("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.

## **12. Rule of law in Hong Kong**

At the Panel meeting on 18 May 2015, Dr Hon CHIANG Lai-wan proposed to discuss the issue of "rule of law in Hong Kong" at a future meeting of the Panel. Dr CHIANG pointed out that despite the fact that persons storming the Legislative Council Complex and causing severe damage to various parts of

2<sup>nd</sup>/3<sup>rd</sup> quarter of  
2016



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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.

**13. Prosecutorial decisions by law enforcement agencies**

At the Panel meeting on 15 October 2015, Hon Albert HO proposed to discuss the issue of prosecutorial decisions by law enforcement agencies such as the Police and the Securities and Futures Commission, and the role of DoJ on such decisions.

2<sup>nd</sup>/3<sup>rd</sup> quarter of  
2016

**14. 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 2<sup>nd</sup>/3<sup>rd</sup> quarter of 2016 for funding approval.

2<sup>nd</sup>/3<sup>rd</sup> quarter  
of 2016

**15. 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 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

2015-2016 session

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.

**16. 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.

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

At the Panel meeting on 10 July 2012, members agreed that the Panel should follow up with the Administration on proposals not supported for inclusion in SLAS in the past, 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)).

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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.

**18. 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 by  
HAB

As the suggestion to extend the Duty Lawyer Scheme for detainees at Police stations would entail substantial financial and operational implications, HAD advised the Secretariat on 16 November 2015 that the Government would need to carefully examine the feasibility in consultation with relevant bureaux and departments. Meanwhile, LASC has embarked on a study regarding the provision of legal assistance to detainees. HAB will take into account LASC's findings and brief the Panel on the issue in due course.

**Proposed  
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**19. Implementation of Land Titles Ordinance (Cap. 585)**

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 Land Titles Ordinance (Cap. 585) ("LTO") enacted in 2004.

To be advised by  
DEVB

Development Bureau ("DEVB") advised the Secretariat on 17 November 2015 that it plans to report the progress of the post-enactment review of the LTO to this Panel and the Panel on Development as suggested by the then Subcommittee on Amendments to Land Titles Ordinance formed by this Panel and the Panel on Development in 2009.

DEVB is still engaging with major stakeholders on various changes to the rectification, indemnity and conversion arrangements under the LTO for the new title registration system. DEVB is actively forging consensus amongst the key stakeholders, subject to which will DEVB be in a position to consider launching a public consultation. The full package of necessary legislative amendments would only be available after considering the views of the public.

In view of the complexity of the issues involved, it would be difficult for DEVB to commit to a definite timeframe for report to Members on the package of necessary legislative amendments at this stage.

**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

To be advised by  
the Law Society

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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.

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.

The Law Society has advised the Secretariat on 27 October 2015 that it is still considering the draft findings and recommendations on the Common Entrance Examination. The Law Society notes that the Standing Committee on Legal Education and Training has issued a consultation paper on the review on legal education and training in Hong Kong. The Law Society is considering that consultation paper.

**21. 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

**Proposed  
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**22. Implementation of the recommendations of the Report of the Independent Review Committee for the Prevention and Handling of Potential Conflicts of Interests on extending the application of sections 3 and 8 of the Prevention of Bribery Ordinance (Cap. 201) ("POBO") to the Chief Executive ("CE")**

At the Panel meeting on 15 October 2015, Hon Alan LEONG proposed that SJ be invited to attend a meeting of the Panel to discuss the implementation of the recommendations of the Report of the Independent Review Committee for the Prevention and Handling of Potential Conflicts of Interests, released in May 2012, on extending the application of sections 3 and 8 of the POBO to CE.

To be advised  
by D of Admin

As extending the application of sections 3 and 8 to CE also involved CE's constitutional position and compliance with the provisions of the Basic Law, members agreed that a joint meeting with the Panel on Constitutional Affairs should be held to discuss the progress of implementing such application.

A motion on "Extending the application of sections 3 and 8 of the Prevention of Bribery Ordinance to the Chief Executive" was moved by Dr Hon Helena WONG at the Council meeting of 11 November 2015. The motion was negated.

**23. Administration of the Estate of the late Mrs Nina WANG**

At the Panel meeting on 15 October 2015, Hon Albert HO proposed to follow up on the administration of the Estate of the late Mrs Nina WANG by SJ in his capacity as protector of charities.

To be advised by  
DoJ