

Panel on Administration of Justice and Legal Services

List of outstanding items for discussion

(position as at 19 May 2016)

**Proposed
timing for
discussion**

1. Measures for handling sexual offences cases and provision of screens for complainants in sexual offence cases during court proceedings

The Department of Justice ("DoJ") proposes that the two items for discussion by the Panel, namely, "Measures for handling sexual offences cases" and "Provision of screens for complainants in sexual offence cases during court proceedings" be combined as one item as "Measures for handling sexual offences cases and provision of screens for complainants in sexual offence cases during court proceedings". This is the considered view of both DoJ and the Judiciary Administration ("JA") taking into account the fact that the issues relevant to the two items are interconnected, if not overlapped. Nevertheless, DoJ and JA will submit separate papers under the combined discussion item, and will introduce their respective paper at the meeting.

June 2016

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:

- (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") 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.

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:

- (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;
- (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 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 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 Q2, 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.

2. Reciprocal recognition and enforcement of judgments on matrimonial and related matters with the Mainland

DoJ briefed the Panel on 23 May 2011 on "Reciprocal recognition and enforcement of judgments on matrimonial and related matters with the Mainland" and concluded that it would continue to discuss with the Mainland side on the relevant issues concerning the arrangement.

June 2016

DoJ proposes to brief and update the Panel on the prospect of entering into an arrangement with the Mainland on reciprocal recognition and enforcement of judgments on matrimonial and related matters.

3. 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.

4th 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

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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.

4. 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 the Complex were caught by the CCTV cameras, no prosecution action had been brought against these persons.

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2016

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.

5. 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.

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2016

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6. 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 2nd/3rd quarter of 2016 for funding approval.

4th quarter
of 2016

7. 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 middle-income group.

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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.

8. Recovery of costs in pro bono cases

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

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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 2016-2017

legislative session.

9. 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)).

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 consider the views of the two legal professional bodies on the review of SLAS before finalizing its recommendations.

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10. 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, HAB 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 completed a study regarding the provision of legal assistance to detainees. The Government will take into account LASC's findings and brief the Panel on the issue in due course.

11. 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 when the full package of necessary legislative proposed amendments to LTO is available.

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

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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; but DEVB and the Panel Clerk will keep in touch with each other should there be any update to such timeframe.

12. 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

13. 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
Administration
Wing, Chief
Secretary for
Administration's
Office

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.

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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.

14. 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

15. Manpower and other support for the Judiciary

At the Panel meeting on 23 November 2015, Dr CHIANG Lai-wan suggested and members agreed to invite the Judiciary to update members on judicial manpower situation and support for judges and judicial officers at a future meeting of the Panel.

To be advised
by JA

16. Judicial review mechanism and its implementation

At the Panel meeting on 21 December 2015, Dr Hon CHIANG Lai-wan suggested and members agreed to discuss the issue of "Judicial review mechanism and its implementation" as soon as possible. Members further agreed to invite representatives from DoJ to respond to members' concerns/questions on the judicial review mechanism and to invite representatives from HAB and the Legal Aid Department ("LAD") to respond to members' concerns/questions on the provision of legal aid to apply for judicial review.

To be advised
by DoJ, HAB
and LAD

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17. Operation of the Resource Centre for Unrepresented Litigants

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.

To be confirmed
by JA

At the request of members, JA agreed to brief members on the operation of the Resource Centre for Unrepresented Litigants.

18. Decision of the Department of Justice not to initiate criminal proceedings against the former ICAC Commissioner, Mr Timothy TONG Hin-ming

In her letter dated 29 January 2016, Hon Emily LAU requested to discuss DoJ's decision of not initiating criminal proceedings against the former ICAC Commissioner, Mr Timothy TONG Hin-ming. In her letter, Ms LAU also urged DoJ to make public the legal advice given by Mr Jonathan Caplan QC, who was engaged by DoJ to provide an independent legal opinion as to whether it is appropriate to commence criminal prosecution against Mr TONG.

To be advised by
DoJ

At the Panel meeting on 22 February 2016, members agreed to include the issue of the DoJ's decision not to initiate criminal proceedings against the former ICAC Commissioner, Mr Timothy TONG Hin-ming in the list of outstanding items for discussion by the Panel.