

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

**List of outstanding items for discussion**  
(*position as at 7 October 2002* )

**Administration's  
response on  
proposed  
timing for  
discussion**  

---

**1. Applicability of Ordinances to the offices set up by the Central People's Government in the HKSAR**

The item was discussed at a number of meetings of the Panel since 1998, and last discussed on 26 June 2001.

The Administration advised on 23 January 2002 that the relevant policy Bureaux and departments were examining the Ordinances concerned and would accord priority to the legislative work with a view to introducing the legislative amendments into the LegCo as early as possible. The Administration would consult LegCo when concrete legislative proposals have been formulated.

The relevant Policy Bureaux and departments are examining the Ordinances concerned and will, where appropriate, accord priority to the legislative work with a view to introducing the legislative amendments into the LegCo as early as possible. The Administration would consult LegCo when concrete legislative proposals have been formulated.  
(CAB)

## 2. **Committee on Bilingual Legal System**

The item was proposed by Hon Margaret NG in November 1998.

The Committee chaired by the Secretary for Justice was established on 1 April 1998 to advise the Government on measures to further develop Hong Kong's bilingual legal system in line with the Basic Law and common law traditions.

The Committee has not held any meeting for more than two years and there is no outstanding item for discussion at present.  
(DoJ)

## 3. **Refined immigration appeal mechanism in Hong Kong**

Arising from the incident in July 1999 in which two Mainland residents were removed just before the issuance of legal aid certificate for application to the court for leave for judicial review and for an injunction order, the Panel held two meetings to discuss related issues.

In connection with the problems created by the Lin Qiao Ying case, the Law Society prepared a paper entitled "Toward a Refined Immigration Appeal Mechanism in Hong Kong" for the consideration of the Administration, this Panel and the Panel on Security. The Law Society's paper (English version) was circulated on 16 October 2000 vide LC Paper No. CB(2)62/00-01(08) (Chinese translation of the paper was circulated on 9 November 2000 under LC Paper No. CB(2)209/00-01).

A refined immigration appeal mechanism is a matter for the Security Bureau and should more conveniently be considered by the Security Panel.  
(DoJ)

## 4. **Administration of the Judiciary**

The Director of Audit's Report No. 34 examined, among others, the adequacy of the Judiciary's measures to reduce court waiting time and the utilization of judicial time and courtrooms. The Public Accounts Committee requested the Research and Library Services Division (RLSD) to conduct a research study on certain relevant aspects in overseas judiciaries for follow-up by the Panel.

A progress report prepared by RLSD (LC Paper No. CB(2)62/00-01(04)) was discussed at the Panel meeting on 17 October 2000. The preliminary findings of the research revealed that the utilization of judicial time or court sitting hours did not seem to be a standard measurement of the efficiency of the administration of the Judiciary in the foreign jurisdictions under study, nor was monitoring of judicial time a popular practice. In view of the scarcity of

The Judiciary Administration will deal with the subject in the Controlling Officer's Report in the context of the Estimates.  
(JA)

information available, the Panel advised that the research study should not proceed further. An information note prepared by RLSD on the findings of the research study was circulated vide LC Paper No. CB(2)267/00-01 on 16 November 2000.

The Panel decided that the issue should be discussed with the Judiciary Administration at a future meeting in the light of the viability of introducing quantitative performance measures for the Judiciary.

The Administration advised on 23 January 2002 that the Judiciary Administrator would report the performance in the Controlling Officer's Report in the context of the 2002-03 Estimates.

At the special Finance Committee meeting on 26 March 2002, the Administration was requested to review the target average waiting time for the various levels of courts to ensure that they were realistic, and provide this Panel information on any improvement measures implemented for shortening the actual waiting time.

## **5. Enforcement of arbitral awards between Hong Kong and Macao**

The Bills Committee on Arbitration (Amendment) Bill 1999 raised concern as to how arbitral awards between Hong Kong and Macao would be mutually enforced following resumption of sovereignty of Macao by China on 20 December 1999, and requested this Panel and the Panel on Security, as appropriate, to follow up the issue in due course.

Pending advice from Macao on their legal position.  
(DoJ, Adm Wing)

The Administration advised that the matter was discussed when the Secretary for Justice visited the Secretary for Administration and Justice of Macao in July 2000 (LC Paper No. CB(2)350/00-01(03) circulated on 27 November 2000 refers).

The Administration advised on 23 January 2002 that it was waiting for advice from Macao on their legal position.

## **6. Solicitor corporation**

The issue was first raised at the Panel meeting on 19 December 2000. At the meeting on 27 May 2002, the Administration pointed out that under the draft rules prepared by the Law Society, there was no requirement for a company to have insurance coverage before it could be approved as a solicitor corporation. However, it was the initial view of the Law Society that the cover provided by the existing Hong Kong Solicitors Professional Indemnity Scheme was

To be advised.  
(DoJ)

sufficient protection for the public. Members requested the Administration and the Law Society to continue discussion and revert to the Panel in due course.

**7. "Public interest" consideration in prosecution policy**

At the meeting on 16 January 2001, the Panel discussed general prosecution policy, with particular reference to public interest factors, and the use of the bind over procedure where the decision was taken not to pursue a prosecution which was in train. Members agreed that the Panel should discuss jointly with the Panel on Security the use of the bind over procedure in cases involving less serious offences committed by young first-time offenders.

November or December 2002.

The Panel is requested to advise more precise parameters of the proposed discussion item prior to the meeting.  
(DoJ)

**8. Review of jury system in Hong Kong**

Resulting from the deliberation of the Jury (Amendment) Bill 1997 by the Bills Committee, the Administration agreed to conduct a comprehensive review of the jury service 12 months after jury trials conducted in Chinese had been introduced in the High Court. At the meeting on 20 February 2001, the Chairman suggested that the Administration should be requested to advise the Panel of the outcome of the review at a future meeting.

The Administration aims to complete the review and report the findings to the Panel in the first quarter of 2003.  
(Adm Wing, JA)

The Administration advised on 23 January 2002 that it might be able to provide a progress report in the second quarter of 2002.

**9. Transcription charges for notes of proceedings**

In a letter dated 4 April 2001 addressed to the Chairman (circulated vide LC Paper No. CB(2)1383/00-01), the Law Society raised query on the method used by the Judiciary in charging for transcribed notes of proceedings.

April/May 2003  
(JA)

**10. Operation of Legal Aid Services Council (LASC)**

The proposals of LASC to make certain amendments to the Legal Aid Services Council Ordinance, the Legal Aid Ordinance and the Personal Data (Privacy) Ordinance to enhance the powers of LASC

The Administration has replied to the

and address the operational difficulties encountered by LASC were discussed at the meeting on 26 June 2001. Members agreed that the matter should be followed up by the Panel, depending on the process of deliberation between LASC and the Administration regarding the legislative proposals.

LASC in February 2002.  
(Adm Wing)

The Administration advised on 23 January 2002 that it was considering the proposals and would revert to LASC within the first quarter of 2002.

## **11. Court Prosecutor grade**

This item was raised by the Chairman at the meeting on 18 September 2001.

A paper provided by the Administration was circulated vide LC Paper No. CB(2)1360/01-02(03) on 15 March 2002.

The Administration's response to questions raised at the Special Finance Committee meeting on 26 March 2002 concerning the workload, criteria for promotion and legal qualifications of the grade was issued to Members vide LC Paper No. FC66/01-02.

The Department of Justice has provided the relevant information to Members. If it is ultimately decided that a meeting is still required, a meeting date in November would be preferred.  
(DoJ)

## **12. Review of provision of legal aid services**

In October 2001, the Panel formed a Working Group to examine the relevant ordinances and subsidiary legislation concerning the provision of legal aid services in order to identify issues for the purpose of review and to make recommendations where appropriate.

A list of issues for review (LC Paper No. CB(2)2646/01-02) was endorsed by the Panel and sent to the Administration for consideration on 1 August 2002. Members agreed that the Administration should be requested to report progress of the review to the Panel in October 2002.

The Administration is studying the list of issues endorsed by the Panel.  
(Adm Wing)

## **13. Payment of compensation to persons wrongfully imprisoned**

This item was proposed by Hon Audrey EU at the meeting on 26 November 2001. The Administration's paper on the subject was

To be advised.  
(DoJ)

circulated vide LC Paper No. CB(2)1090/01-02(01) on 7 February 2002.

#### **14. Review of the process of appointment of judges**

The Panel issued the Consultation Paper on Process of Appointment of Judges in December 2001. The consultation period expired on 15 March 2002.

Having considered the views received during the consultation period and at the meeting on 22 April 2002, the Panel published the Report on Process of Appointment of Judges in September 2002.

The Administration and the Judiciary have been requested to consider the recommendations and revert to the Panel in due course.

The Judiciary aims to complete the review and inform the Panel of the outcome by the end of 2002.  
(JA)

#### **15. Mechanism for handling complaints against judges and Judiciary staff**

The Panel agreed that this item, one of the issues included in the Consultation Paper on Process of Appointment of Judges, should be dealt with separately.

The Judiciary Administrator provided an information paper on the existing practices and procedures for dealing with complaints against judges in Hong Kong (LC Paper No. CB(2)1388/01-02(02) circulated on 19 March 2002).

At the meeting on 22 July 2002, the Panel discussed the Research Report on "Mechanism for Handling Complaints Against Judges in Overseas Places" (RP07/01-02 issued under LC Paper Nos. CB(2)2528 and 2547/01-02) prepared by the Research and Library Services Division. Members invited the Judiciary to consider the issues identified in the research report and the views expressed by members on ways to improve the mechanism for handling complaints against judges and staff of the Judiciary Administration.

The Judiciary Administration intends to inform the Panel of the Judiciary's position in October/November 2002.  
(JA)

**16. Reciprocal enforcement of judgments (REJ) in commercial disputes between the HKSAR and the Mainland**

The issue was first discussed at the meeting on 20 December 2001.

The Administration conducted a consultation exercise on the proposed arrangement for REJ in commercial matters between the HKSAR and the Mainland in March 2002. At the meeting on 27 May 2002, the Administration briefed the Panel on the outcome of the consultation exercise, and also sought the Panel's views on the Administration's proposal to establish a mechanism for REJ between the Mainland and the HKSAR.

The Panel requested the Administration to keep members posted of further developments.

The Administration approached the Mainland authorities with a view to taking the matter forward.  
(Adm Wing, DoJ)

**17. Directorate posts in the Department of Justice**

This item was raised at the meeting on 25 February 2002. At the meeting on 20 March 2002, the Panel noted the Administration's paper circulated vide LC Paper No. CB(2)1391/01-02(02) on 19 March 2002.

To be advised.  
(DoJ)

**18. Granting tax relief for divorced persons paying maintenance to ex-spouses**

The item was proposed by Ms Audrey EU at the meeting on 24 June 2002. In ruling a recent case, the Court of Appeal commented that it seemed unfair that an ex-husband paying monthly maintenance to his ex-wife was not entitled to the Married Person's Allowance because "ex-wife/husband" did not fall within the definition of "spouse" under the Inland Revenue Ordinance.

The Chairman raised an oral question on the subject at the Council meeting on 10 July 2002.

Tax relief for divorced persons should be a matter for the Financial Services and the Treasury Bureau, and should more appropriately be dealt with by the Financial Affairs Panel.  
(DoJ)

**19. Government's policy on subsidiary legislation**

The Bills Committee on Boilers and Pressure Vessels (Amendment) Bill 2001 requested that the issue of Government's policy on determining what kind of statutory instrument should be subsidiary legislation be considered by the Panel.

For the Panel to consider.  
(Adm Wing)

At the meeting on 24 June 2002, the Panel agreed to follow up the matter.

**20. Power of court to order repayment of deposit to purchaser of property**

At the meeting on 24 June 2002, the Panel agreed to follow up the item which was referred by the Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2001.

To be advised.  
(DoJ)

As a result of the deliberations of the Bills Committee, the Administration moved a Committee Stage amendment to delete Part VII of the Bill on the power of the court to order repayment of deposit to the purchaser. The Bills Committee accepted the amendment, but considered that the Administration should study the possibility of introducing measures to minimise unnecessary litigation between vendors and purchasers, for example, to improve the process of execution of vendor and purchaser summons to enable a dispute to be settled before the completion date of the transaction.

**21. Review of sexual offences in Part XII of the Crimes Ordinance**

At the meeting on 24 June 2002, the Panel agreed to follow up the item which was referred by the Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2001.

In scrutinising Part V of the Bill, the Administration accepted the Bills Committee's proposal to first deal with the offence of marital rape, leaving the other non-rape sexual offences in Part XII of the Crimes Ordinance to a full scale review in the context of a law reform at a later stage. The Bills Committee requested the Panel to follow up the progress of the review.

Secretary for Justice has made it clear in her speech at the resumption of the Second Reading debate on the Bill that no full-scale review of sexual offences would be undertaken (copy attached). The Administration would address identified



inadequacies as they arise. Under the circumstances, it is submitted that there is no requirement to propose a time for discussion.

The item is related to criminal law and could also be considered by the Security Panel. (DoJ)

**22. Amendments to Domestic Violence Ordinance**

Harmony House proposed to amend the Domestic Violence Ordinance with a view to providing better protection to victims of domestic violence. A copy of Harmony House's proposal to the Administration was also sent to this Panel and the Panel on Welfare Services for comments (LC Paper No. CB(2)2539/01-02(01) circulated on 9 July 2002).

At the meeting on 22 July 2002, the Chairman suggested and members agreed that the Panel should decide at a later stage whether the subject matter should be followed up.

This item should more appropriately be considered by the Welfare Services Panel which has discussed related issues in the past. (DoJ)

**23. Court procedure for repossession of premises**

At the meeting on 22 July 2002, the Panel agreed to follow up the item referred by the Bills Committee on Landlord and Tenant (Consolidation) (Amendment) Bill 2001. The Bills Committee considered that a fast-track procedure might have to be worked out for landlords to claim repossession of premises, particularly in the event of repeated defaults in payment of rent by tenants. Additional manpower and financial resources might be required to facilitate the courts in handling these claims.

For the Panel to consider. (JA)

**24. Promotion of mediation service in communities and districts**

At the meeting with LegCo members on 9 May 2002, members of

Eastern District Council (EDC) appealed from members' support for promotion of mediation, service in communities and districts particularly in connection with building management. Members attending the meeting agreed to refer their view to this Panel and the Panel on Home Affairs for consideration.

The Panel agreed by circulation that the item should be included in this list (LC Paper No. CB(2)2766/01-02 dated 10 September 2002 refers).

**25. Matters relating to the imposition of criminal liabilities on the Government**

At the House Committee meeting on 4 October 2002, members agreed that this Panel should follow up on matters relating to the imposition of criminal liabilities on the Government or any public officers in respect of their contravention of legislative provisions while performing official duties (LC Paper No. CB(1)2576/01-02 refers).

**New items proposed by the Administration**

**26. Law Amendment and Reform (Miscellaneous Provisions) Bill**

The Department of Justice proposes to brief the Panel on an omnibus Bill which comprises three parts -

November 2002

Part I - Legal Practitioners Ordinance (Cap. 159)

To establish a standing committee to review legal education and training; and to make miscellaneous amendments.

Part II - Conveyancing and Property Ordinance (Cap. 219)

To facilitate the proof of due executive of documents by corporations in conveyancing transactions.

Part III - Costs in Criminal Cases Ordinance (Cap. 492)

To empower magistrates to award costs to defendants when applications by the prosecution for review of magistrates' decisions are dismissed.

**27. Review of the financial limits of the civil jurisdiction of the District Court**

The Judiciary is conducting a review of the civil jurisdictional limits

First quarter of

of the District Court in light of operational experience in implementing the District Court (Amendment) Ordinance. It intends to consult the Panel of the Judiciary's proposal in the first quarter of 2003.

2003

Council Business Division 2  
Legislative Council Secretariat  
7 October 2002

