

Panel on Administration of Justice and Legal Services

List of outstanding items for discussion
(position as at 19 November 2004)

**Proposed
timing for
discussion**

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

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

To be advised by
the Administration

The Director of Administration (D of Adm) advised on 30 September 2004 that the Constitutional Affairs Bureau, the subject policy bureau, would introduce legislative amendments into LegCo in due course, having regard to competing legislative priorities. The Administration will consult LegCo when concrete legislative proposals have been formulated.

The Secretariat has written to the Secretary for Constitutional Affairs on 4 November 2004 to request for an update on the item and advice on the timing for reverting to the Panel.

2. 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 D of Adm for consideration on 1 August 2002.

At the meetings on 23 June, 29 July and 27 October 2003, D of Adm briefed the Panel on –

- (a) the proposed revisions of the financial eligibility limits for the Ordinary Legal Aid Scheme and the Supplementary Legal Aid Scheme as a result of the annual and biennial reviews;
- (b) the outcome of the five-yearly review of the criteria used for

assessing the financial eligibility of legal aid applicants; and

- (c) its response to the issues identified by the Panel for review by the Administration.

The Panel considered the written submissions from the Bar Association (LC Paper No. CB(2)644/03-04(01)), the Law Society (LC Paper No. CB(2)1094/03-04(02)) and LASC (LC Paper No. CB(2)1094/03-04(03)) at the meeting on 29 January 2004.

D of Adm's response to the Bar Association's submission was issued vide LC Paper No. CB(2)1094/03-04(01) on 27 January 2004. D of Adm's responses to the submissions made by LASC and Law Society were issued vide LC Paper Nos. CB(2)58/04-05(01) and (02) respectively on 19 October 2004.

D of Adm advised on 30 September 2004 that the Administration was preparing the necessary amendment regulations to give effect to the recommendations arising from the five-yearly review of the criteria used for assessing the financial eligibility of legal aid applicants. The Administration hopes to put in place the improvement measures in the 2004-2005 legislative session.

2004-05 session

At the meeting of the Chairman with the Administration on 3 November 2004, D of Adm advised that the Administration would brief the Panel on the outcome of the 2004 annual and biennial review of financial eligibility limits of legal aid applicants and the proposed way forward at the Panel meeting on 14 December 2004.

14 December 2004

3. Criminal legal aid fees system

The issue of criminal legal aid fees system was raised by the Bar Association and Law Society at the Panel meetings on 23 June and 29 July 2003 when the item on "Review of provision of legal aid services" was discussed. The two legal professional bodies were of the view that the existing system was outdated and should be reviewed in the context of the Legal Aid in Criminal Cases Rules by the Rules Committee set up under the Criminal Procedure Ordinance.

28 February 2005

The Panel was subsequently informed that the two legal professional bodies had formed a joint working party to consider the matter and the Administration would respond to the views and recommendations of the joint working party. The Panel agreed to follow up the matter when the joint working party had completed the study.

D of Adm advised on 30 September 2004 that pending the recommendations of the joint working party of the two legal

professional bodies on criminal legal aid fees system, the Administration had commenced the 2004 biennial review of criminal legal aid fees, prosecution fees and duty lawyer fees. The Administration was considering the views of the two legal professional bodies, LASC and the Duty Lawyer Service. The Administration hopes to conclude the review soon and to brief the Panel on the review outcome and the proposed way forward in early 2005.

A letter dated 30 August 2004 from the Law Society to the Administration opposing to the Administration's proposal of a 4.4% reduction in criminal legal aid fees, prosecution fees and duty lawyer fees was issued vide LC Paper No. CB(2)59/04-05(01) on 18 October 2004.

At the meeting of the Chairman with the Administration on 3 November 2004, it was agreed that the matter should be discussed at the Panel meeting on 28 February 2005.

4. Reciprocal enforcement of judgments (REJ) in commercial matters between the HKSAR and the Mainland

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

22 November 2004

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, D of Adm briefed the Panel on the outcome of the consultation exercise, and sought the Panel's views on the Administration's proposal to establish a mechanism for REJ between the Mainland and the HKSAR.

At the meeting on 22 March 2004 when the Panel discussed the issue of development of Hong Kong as a legal services centre, the Solicitor General advised the Panel that informal meetings with the Mainland authorities had been held to discuss the scope of the arrangement and the technicalities in the recognition and enforcement of judgments in both jurisdictions.

The Panel would discuss the progress of the REJ arrangements at its meeting on 22 November 2004.

5. Government's policy on subsidiary legislation

The Bills Committee on Boilers and Pressure Vessels (Amendment)

24 January 2005

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. Relevant extracts from minutes of meeting and report of the Bills Committee were issued to members vide LC Paper No. CB(2)2177/01-02 on 5 June 2002.

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

At the meeting of the Chairman with the Administration on 3 November 2004, the Chairman suggested that the item should be discussed at the Panel meeting on 24 January 2005.

6. Review of sexual offences in Part XII of the Crimes Ordinance

This item was referred by the Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2001. 23 May 2005

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 at a later stage. The Bills Committee requested the Panel to follow up the progress of the review.

At the meeting on 26 April 2004, the Panel noted the background brief prepared by the Legislative Council Secretariat on "Review of sexual offences in Part XII of the Crimes Ordinance and related issues", and the Department of Justice (DoJ)'s response that it was prepared to continue reviewing the provisions related to sexual offences in the Crimes Ordinance which it originally proposed to amend in the previous legislative exercise (LC Paper Nos. CB(2)2008/03-04(01) and (02)). DoJ was requested to revert to the Panel on the outcome of the review in due course.

At the meeting of the Chairman with the Administration on 3 November 2004, DoJ advised that a draft consultation paper was under preparation. It was agreed that the matter should be discussed at the Panel meeting on 23 May 2005.

7. 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.

23 May 2005

At the Panel meetings on 29 January and 24 May 2004, the Judiciary Administration briefed the Panel on the measures introduced within the jurisdiction of the Judiciary to streamline the court procedure for repossession of premises. At the meeting on 24 May 2004, the Panel agreed to follow up the matter after a year's time.

8. Issues 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 issues relating to the imposition of criminal liabilities on the Government or any public officers for contravening legislative provisions binding on the Government while performing official duties (LC Paper No. CB(1)2576/01-02 refers).

To be advised by
the Administration

Pursuant to the decision of the Panel at the meeting on 28 October 2002, a Working Group was formed to study the relevant issues and to report to the Panel with recommendations where appropriate.

The report of the Working Group was considered and endorsed by the Panel at its meeting on 28 June 2004 (LC Paper No. CB(2)2917/03-04(01)). On the continuing operation of Crown immunity in Hong Kong, the Working Group recommended that the Administration should consider -

- (a) in respect of regulatory offences, that Crown immunity should be removed as a matter of policy on a case-by-case basis and when legislative opportunities arose; and
- (b) the development of alternative approaches taken in the United Kingdom and New Zealand in removing Crown immunity.

In considering the way forward at the meeting on 9 November 2004, the Panel agreed that as the subject matter involved general Government policy issues, the Chief Secretary for Administration's Office should be requested to follow up the matter and advise on the Administration's position on the recommendation of the Working Group. The Director of Administration was requested in writing on 12 November 2004 to propose a timing for the Administration to revert to the Panel on the matter.

9. Operation of the Labour Tribunal

Three joint meetings were held by this Panel and the Panel on Manpower on 6 May 2003, 19 June 2003 and 24 May 2004 respectively to discuss review of the operation of the Labour Tribunal. The Panels also considered the Research Report on "The Operation of the Labour Tribunals and other Mechanisms for Resolving Labour Disputes in Hong Kong and Selected Places" prepared by the Research and Library Services Division (RLSD) of the Secretariat at the joint meeting on 24 May 2004 (RP06/03-04).

2 December 2004

The Chief Justice had appointed an internal Working Party to conduct a review on the operation of the Labour Tribunal. The Report of the Working Party on the Review of the Labour Tribunal was published in June 2004 and issued to members of the two Panels (English version was issued on 2 July 2004 vide LC Paper No. CB(2)3003/03-04 and Chinese version on 23 July 2004 vide LC Paper No. CB(2)3149/03-04).

The Panels discussed the Working Party's Report at a joint meeting on 9 November 2004. The Panels agreed to hold another joint meeting on 2 December 2004 to meet with the Administration and receive views from deputations on the Report.

10. Budgetary arrangements for the Judiciary

At its meeting on 24 February 2003, the Panel was briefed on the approaches adopted by the Judiciary in promoting efficiency initiatives for achieving the target of saving of 1.8% in recurrent expenditure in 2003 - 2004, which was roughly \$18 million. The Judiciary expected that more substantial savings might be required in the years 2004-07. No conclusion, however, had been reached at this stage in respect of efficiency initiatives for 2004 - 2007.

25 April 2005

At the meeting, Hon Martin LEE moved a motion urging the Judiciary not to introduce, for the purpose of implementing the Government's austerity programme, any cost saving measures which would

adversely affect the quality of judicial services. The motion was passed.

The Research Report on "Budgetary arrangements for overseas judiciaries" prepared by RLSD and the Administration's paper explaining the budgetary arrangements for the Judiciary were discussed at the meeting on 24 November 2003.

In response to the Panel, the Financial Services and the Treasury Bureau advised the Panel in writing in February 2004 that in respect of Judiciary's fees and charges, it would in collaboration with the Judiciary Administration, examine the feasibility of replacing the global costing methodology with the more conventional approach of costing on the basis of individual services. It would endeavour to complete the review and to work out the costs recovery rate for each major item as soon as possible (LC Paper No. CB(2)1288/03-04(01) issued on 10 February 2004).

At the meeting of the Chairman with the Administration on 3 November 2004, the Judiciary Administration advised that it would revert to the Panel on the item at the meeting on 25 April 2005.

11. Professional Indemnity Scheme of the Law Society

In response to the request of the Subcommittee on Solicitors (Professional Indemnity) (Amendment) Rules 2001, the Law Society has agreed to conduct an independent review of the insurance arrangement under its Professional Indemnity Scheme. The purpose of the review is to consider whether at the end of the five-year reinsurance contract (expiring on 30 September 2005) the Law Society should maintain the existing mutual scheme with or without amendment, or to demutualise the scheme and put into effect such other options as might be proposed as a result of the review. In its report to the House Committee on 26 October 2001, the Subcommittee recommended that this Panel should follow up the progress of the review.

22 November 2004

At the meeting on 18 December 2003, the Law Society briefed the Panel on the "Review Report on Insurance Arrangements of the Hong Kong Solicitors Indemnity Scheme" prepared by Willis. The Law Society would put forward the recommendations in the Willis Report to its members for discussion.

The Panel discussed the matter at two subsequent meetings on 26 April and 14 June 2004 respectively. The Panel had requested the Secretary for Justice to -

- (a) respond without delay to any decision reached by members of the Law Society; and
- (b) seriously consider whether it was essential for any proposed scheme to be backed up by the Policyholders' Protection Fund or "insurance on insurance".

The Panel would further discuss the item at its meeting on 22 November 2004.

12. Review of legislative provisions containing the drafting formula "to the satisfaction" of an enforcement agency

The item was referred by the Subcommittee on proposed resolution under section 7 of the Factories and Industrial Undertakings Ordinance and discussed by the Panel on 18 December 2003.

27 June 2005

The Panel requested DoJ to undertake an analysis of the judgment of the Court of First Instance on the Lam Geotechnics case with a view to assessing the extent of its impact on existing legislative provisions containing similar drafting formula, before deciding whether it should proceed to conduct a comprehensive review on the legislative provisions.

At the meeting of the Chairman with the Administration on 3 November 2004, DoJ proposed to revert to the Panel on the item at the meeting on 27 June 2005.

13. Development of Hong Kong as a legal services centre

The item was discussed by the Panel at its meeting on 22 March 2004. At the meeting, DoJ briefed the Panel on, among other things, the undertaking of a consultancy study on the demand for and supply of legal and related services in Hong Kong. DoJ provided supplementary information on the cost of the consultancy study, the consultant selected to conduct the study and other relevant details after the meeting (LC Paper No. CB(2)3139/03-04(01)).

2005-2006 session

At the meeting of the Chairman with the Administration on 3 November 2004, DoJ advised that the consultancy study had begun, and the first report by the Consultants was expected to be available after July 2005. It was agreed that the matter should be followed up in the 2005-2006 session.

14. Transcript fees

Issues relating to the fee charging mechanism for production of transcripts of court proceedings and the impact of transcript fees on litigants' ability to pursue appeals were first discussed at the Panel meeting on 23 June 2003, and followed up at the meeting on 28 June 2004. The Panel had requested the Judiciary Administration to consider, inter alia, standardizing the fee charging mechanism for both criminal and civil appeal cases, and specifying clear policy guidelines on the circumstances under which the court might exercise discretion to waive the transcript fees in appeal cases.

27 June 2005

At the meeting of the Chairman with the Administration on 3 November 2004, the Judiciary Administration advised that it would revert to the Panel on the item at its meeting on 27 June 2005.

15. Development of a new juvenile justice system

On the recommendation of this Panel and the Panel on Security, a Subcommittee was formed by the House Committee on 7 November 2003 to follow up the policy issues arising from the review on juvenile justice system, and also discussed the Consultancy Report released by the Administration on "Measures Alternative to Prosecution for Handling Unruly Children and Young Persons : Overseas Experiences and Options for Hong Kong". The Subcommittee's report was endorsed by the House Committee at its meeting on 25 June 2004 (LC Paper No. CB(2)2895/03-04).

To be advised by
the Administration

The Subcommittee recommended that the Administration should report to the relevant Panels on the following issues in the new legislative term -

- (a) the effectiveness of the enhanced support measures introduced by the Administration since October 2003; and
- (b) the outcome of the review on the development of a new juvenile justice system incorporating the principles and practices of restorative justice.

Where appropriate, the Panel(s) may recommend to the House Committee the setting up of a subcommittee to follow up the relevant issues.

The Secretariat has written to the Security Bureau on 5 November 2004 to request for an update on its review.

16. Statute Law (Miscellaneous Provisions) Bill 2005

DoJ advised on 7 October 2004 that the above Bill had been allocated a slot for introduction into LegCo on 9 March 2005. The object of the Bill is to make minor, non-controversial amendments to various Ordinances.

14 December 2004

DoJ would brief the Panel on the Bill at the meeting on 14 December 2004.

17. Limited liability for professional practices

The item was proposed by the Chairman.

22 November 2004

At its meeting on 9 November 2004, the Panel agreed to request RLSD to conduct a research study on the experience in selected overseas places in relation to limited liability for professional practices, with major focus on limited liability partnership for legal practitioners. A proposed outline of the research study would be considered by the Panel at the meeting on 22 November 2004.

18. Appointment of “Special Advocates”

The item was proposed by the Chairman.

28 February 2005

In a High Court case heard in July 2004, as a consequence of the order of non-disclosure made by Judge Hartmann, the applicant’s counsel was unable to advocate the applicant’s case with any knowledge of the material which had caused the applicant to be detained. Judge Hartmann decided to appoint a special advocate for the first time in Hong Kong.

At its meeting on 9 November 2004, the Panel agreed to discuss issues relating to the policy and procedure for appointing a special advocate and the criteria for selecting a special advocate at the meeting on 28 February 2005.

19. Solicitors’ rights of audience

The item was proposed by the Law Society.

To be decided by
the Panel

In response to the Panel’s enquiry about the progress of work of the Law Reform Commission’s Working Party on Solicitors’ Rights of Audience, the Working Party advised that it intended to complete a consultation paper by the latter half of 2005 to evaluate the

arguments for and against extending higher rights of audience to solicitors. It would then identify the issues which need to be addressed if it is decided that such higher rights of audience should be granted. The Working Party considers it premature at this stage to predict when it would complete its work and come up with its final conclusions and recommendations.

The Working Party's written replies dated 25 October and 2 November 2004 were issued to the Panel on 8 November 2004 (LC paper Nos. CB(2)165/04-05(03) and (04)).

At its meeting on 9 November 2004, the Panel agreed that the item should be followed up at a future meeting.

20. Reform of the law of arbitration

This item was proposed by the Administration.

22 March 2005

The Hong Kong Institute of Arbitrators has referred to the Department of Justice a recommendation for a reform of the law of arbitration. In place of the current two regimes for domestic and international arbitration, it has recommended a single regime based on the international model. Since this would have significant implications for those who enter into domestic arbitration agreements, the Department of Justice proposes to consult the Panel at the meeting scheduled for 22 March 2005 before deciding on the way forward.

21. Maximum sentence for offence of perverting the course of justice

This item was proposed by the Administration.

To be advised by
the Administration

The Administration is considering the issue of revising the sentencing limit in section 101I of the Criminal Procedure Ordinance. It will prepare and circulate a public consultation paper seeking the views of interested parties including the legal profession, the law schools and the Judiciary Administration. After collating the responses, the Administration will formulate proposals for discussion by the Panel.

The Department of Justice estimates that the consultation process will be completed in mid-2005 and considers that the item could possibly be discussed at an early meeting in the 2005-06 session.

19 November 2004