

Panel on Administration of Justice and Legal Services

List of outstanding items for discussion

(position as at 19 May 2010)

**Proposed
timing for
discussion**

1. Applicability of Hong Kong Special Administrative Region ("HKSAR") laws to offices set up by the Central People's Government in HKSAR

The item was discussed at a number of meetings of the Panel since 1998. When the item was last discussed by the Panel on 28 April 2008, the Administration advised the Panel on the following -

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Constitutional and
Mainland Affairs
Bureau

- (a) 15 Ordinances which expressly bind the Government but are silent on their applicability to the Central People's Government ("CPG") offices - amendments would be introduced to four Ordinances in the 2008-2009 legislative session. The Administration would discuss further with CPG on the remaining 11 Ordinances;
- (b) Personal Data Privacy Ordinance ("PDPO") - the Administration and CPG was studying whether and if so how PDPO should apply to CPG offices set up in Hong Kong; and
- (c) 35 Ordinances which contain express references to the "Crown" - six of these Ordinances required no further action (viz. three had already been adapted, and three had been repealed). The Administration would continue to examine how the remaining 29 Ordinances should be adapted.

On behalf of the Panel, the Chairman wrote a letter to the Secretary for Justice ("SJ") in May 2008 conveying members' discontent with the little work progress achieved by the Administration after a lapse of 10 years and concerns about the applicability of PDPO to CPG offices in Hong Kong. SJ advised in July 2008 that more time was needed by the Administration.

In respect of (a) above, the Adaptation of Laws Ordinance was passed by the Legislative Council ("LegCo") in April 2009 and commenced operation on 8 May 2009. The Ordinance has extended the applicability of four Ordinances, namely the Legislative Council Commission Ordinance (Cap. 443), Plant Varieties Protection Ordinance (Cap. 490), Patents Ordinance (Cap. 514) and Registered Designs Ordinance (Cap. 522), to the three offices set up by CPG in HKSAR.

In addition, legislative amendments have been proposed in respect of the Arbitration Ordinance (Cap. 341). The Arbitration Bill, introduced into LegCo on 8 July 2009, provides that, aside from the being applicable to the Government, it will also apply to the offices set up by CPG in HKSAR.

2. Five-yearly review of the criteria for assessing the financial eligibility of legal aid applicants

The Administration reported to the Panel on its recommendations arising from the recently completed five-yearly review at the meeting on 29 March 2010. The Panel will receive views from relevant organizations on the Administration's proposals at the upcoming meeting on 24 May 2010.

May 2010
Home Affairs
Bureau ("HAB")

3. Criminal legal aid fees system

At the request of the two legal professions made in 2003, the Administration reviewed the criminal legal aid fees system and discussed the relevant issues with the Panel at six meetings held between December 2005 and June 2009. The Panel noted that while the Administration had reached broad consensus with the legal professional bodies on the proposed structure of the criminal legal aid fees system, the Administration was yet to resolve the divergence of views over the fee rates with the Law Society. The Panel also noted the Bar Association's suggestion that in view of the lack of progress of the discussion between the two parties, implementation of the revised criminal legal aid fees system for barristers should be de-linked from that for solicitors should the Administration and the Law Society fail to reach agreement on the fee rates.

To be advised by
HAB

When the Panel received a report from the Administration on the latest progress of its discussion with the Law Society on fee rates for solicitors in June 2009, members noted that the Administration had put forth a revised proposal on fee rates for the Law Society's consideration, but the fundamental difference between the two parties on the basis for determining fee rates had yet to be resolved. Members noted the Law Society's view that the revised rates did not properly reflect the professional responsibilities of solicitors in criminal legal aid work and were still far below the civil party-to-party taxation rates for remunerating civil legal aid cases. The Panel urged the two parties to iron out their differences as far as practicable and requested the Administration to report to the Panel when they were able to come to an agreement on the matter.

In its letter to the President of the Law Society dated 11 February 2010

(LC Paper No. CB(2)973/09-10(01)), the Administration advised that it was making preparation for the legislative process to put in place the revised criminal legal aid fees structure and rates.

4. Professional Indemnity Scheme of the Law Society

In its report to the House Committee on 26 October 2001, the former Subcommittee on Solicitors (Professional Indemnity) (Amendment) Rules 2001 recommended that this Panel should follow up the progress of the independent review of the insurance arrangement under the Professional Indemnity Scheme ("PIS") of the Law Society. Since then, the Panel has monitored the review of PIS and received progress reports from the Law Society.

To be decided
by the Panel
Law Society

In November 2004, members of the Law Society voted for a Qualifying Insurers Scheme ("QIS") to replace the existing scheme.

In May 2006, the Law Society informed the Panel that its members had voted by a large majority not to replace the existing PIS by a QIS at its Extraordinary General Meeting on 27 April 2006. The Law Society had set up a Professional Indemnity Scheme Review Working Party to identify any deficiencies in the existing scheme, consider how they might be remedied, and make appropriate recommendations.

At the Panel meeting in February 2007, the Law Society gave a report on the progress of work of the Review Working Party. The Working Party would proceed to consider a number of outstanding issues and submit a report with recommendations to the Council of the Law Society in due course.

The Law Society's second and third reports on the progress of work of the Review Working Party were issued to the Panel on 25 April 2008 (LC Paper No. CB(2)1722/07-08(01)) and 20 October 2009 (LC Paper No. CB(2)148/09-10(01)) respectively. According to the third progress report, the reinsurance contract had been extended from 1 October 2009 for a period of four years, with an option to terminate after two years should PIS be replaced by an alternative form of indemnity arrangement.

The Law Society advised in October 2009 that it had commissioned actuaries and brokers respectively to review the formula for calculating the contributions payable under PIS and to compare the costs of insurance to law firms under a Master Policy Scheme and PIS, and that it would be better able to advise on an appropriate time for discussion of the review of PIS when these findings are available.

5. Law Reform Commission Report on Conditional Fees

The Report on Conditional Fees was published by the Law Reform Commission in July 2007. At the meeting on 22 October 2007, the Panel agreed to discuss relevant issues at a future meeting.

HAB has addressed the issue concerning the Supplementary Legal Aid Scheme at the meeting on 29 March 2010 in the context of the review of criteria of assessing the financial eligibility of legal aid applicants.

Department of Justice ("DoJ") will revert to the Panel on the remainder of the Law Reform Commission's Conditional Fees Report in June 2010.

6. Pre-trial interviewing of witnesses by prosecutors

It had come to the attention of the Panel that the Director of Public Prosecutions ("DPP") had established a Working Group in 2007 to examine the feasibility of introducing a scheme of pre-trial witness interviews ("PTWI") by prosecutors in Hong Kong, and accepted its recommendation that before any decisions were taken, a nine-month monitoring exercise would be conducted to collect relevant statistics and information with effect from 1 April 2008. At the meeting in June 2008, the Panel discussed the existing policy and practice on PTWI, the objectives of the monitoring scheme, and the experience of, and the schemes adopted in, other major common law jurisdictions. According to the Administration, the Working Group would make recommendations in 2009 and all interested bodies would be consulted if it was decided that PTWI scheme should be taken forward. Members requested the Administration to report progress to the Panel in due course.

To be decided by the Panel
DoJ

In April 2009, DoJ advised that it had launched a six-month consultation exercise to seek the views of the two legal professional bodies, the law enforcement agencies, LRC, the Judiciary and the victim groups on the proposed scheme of pre-trial witness interviews. DoJ will revert to the

Panel on responses received in the consultation exercise.

7. Implementation of Civil Justice Reform ("CJR")

The Panel has been monitoring the progress on preparation made by the Judiciary and the two legal professional bodies for the implementation of CJR. The Panel noted that the Chief Justice ("CJ") had established a Committee to monitor the working of the reformed civil justice system after the implementation of CJR and to make suggestions to ensure its effective operation. The Panel requested the Judiciary Administration ("JA") to brief members on the effectiveness of the reformed system at an appropriate juncture after the implementation of CJR.

Third quarter of
2010
JA

8. Trial in the District Court

Mode of trial

To be decided by
the Panel
DoJ

At the Panel meeting on 13 January 2009, members noted the concern expressed by the Chairman of the Bar Association, in his speech delivered at the Ceremonial Opening of the Legal Year 2009, that many commercial fraud cases, including the substantial and complex ones, were heard before the District Court rather than in the Court of First Instance before a jury. The concern was that the current practice of resting the choice of Court solely with the Prosecution would deny the defendant the right to a jury trial.

On 2 February 2009, in response to the Panel's request, DoJ provided information on the factors to which the prosecution would have regard in selecting the venue for trial (LC Paper No. CB(2)756/08-09(01)). In its response, DoJ had also advised that although there were no plans to review the current practice, the question of whether any review was necessary or desirable would be examined in the light of the outcome of the judicial review proceedings concerning the decision of the prosecution to seek trials in the District Court rather than in the Court of First Instance in two separate cases of conspiracy to defraud, which were to be heard before Hon Justice Wright in the Court of First Instance from 2 to 4 February 2009.

In his judgment delivered on 9 February 2009 (HCAL 42/2008 and HCAL 107/2008), Hon Justice Wright has pointed out that there does not exist in Hong Kong any absolute right to a jury trial nor any mechanism by which a person to be tried of an indictable offence may elect to be so tried. The decision as to whether an indictable offence be tried in the Court of First Instance by a judge and jury or in the District Court by a judge alone is the prerogative of SJ. The learned judge found the reasons furnished by SJ for his decision to transfer the proceedings to the District Court sufficient on the factual situation of each case. Consequently both applications were dismissed.

At the Panel meeting on 23 February 2009, members agreed to include the issue of mode of trial on the Panel's list of outstanding items for discussion.

In September 2009, DoJ advised that the issue had been considered by the Court of Appeal, which had upheld the decision of Hon Justice Wright in the Court of First Instance (CACV 151 of 2009).

Trial by jury

There are recent calls from the legal profession for a review of the jury system in Hong Kong. Under the existing system, a District Court Judge sits alone without a jury. It has been suggested that, as Chinese is now commonly used in courts and the size of the jury pool has grown significantly, jury trials should be extended to the District Court. At the Panel meeting on 15 October 2009, members agreed to include the subject on the Panel's list of outstanding items for discussion.

Conviction rates

Concern has been raised about the high conviction rates in various levels of court. According to the data provided in the yearly review of the Prosecutions Divisions of DoJ, the conviction rates for 2008 were 94.8% in the Court of First Instance and 92.6% in the District Court. The Chairman proposed to include the subject on the Panel's list of outstanding items for discussion.

At the suggestion of DoJ and with the concurrence of the Chairman, the subjects of "mode of trial", "trial by jury" and "conviction rates", which are considered to be inter-related, have been combined under one discussion item of "Trial in the District Court".

9. Appointment of Temporary/Deputy Judges and Judicial Officers

In response to the Panel's request made at the meeting on 30 March 2009, JA had provided for members' reference an information paper on the engagement and deployment of temporary judicial resources (LC Paper No. CB(2)1375/08-09(01)). At the meeting on 27 April 2009, members agreed to include the subject on the Panel's list of outstanding items for discussion.

June 2010
JA

10. Inclusion of the statutory Independent Police Complaints Council ("IPCC") under the purview of The Ombudsman

During the discussion on the subject of "Review of jurisdiction of the Office of The Ombudsman" at the Panel meeting on 27 April 2009, To be decided by the Panel

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 noted that the issue had been considered during the scrutiny of the IPCC Bill, and the Administration's view then was that the statutory IPCC should not be brought under The Ombudsman's ambit for the time being. Members agreed to bring up the issue for discussion after the statutory IPCC had been in operation for some time.

Admin Wing

The Administration advised in September 2009 that it would continually monitor the situation and consider the issue when the statutory IPCC had been in operation for some time.

11. Arrangements of replacing Police Constable with security guards at Magistrates' Courts

On the basis of the outcome of a study conducted by the Administration in 2004 to identify opportunities for civilianization in the disciplined services departments with a view to enhancing efficiency and cost-effectiveness, a new arrangement of replacing part of the Police Constable establishment at Magistrates' Courts with security guards was implemented by phase in early 2009. The arrangement, worked out by the Security Bureau ("SB") and the Police in consultation with JA, involves the replacement of 58 Police Constable crowd control posts with contracted security personnel at seven Magistrates' Courts. SB and JA advised in June 2009 that the two parties would continue to monitor the new arrangement to ensure its effectiveness in maintaining the same level of crowd control and security at the Magistrates' Courts. The Chairman proposed that the Panel should monitor the operation of the new arrangement.

To be decided by
the Panel
JA/SB

12. The role of the Judiciary in the adjudication system under the Control of Obscene and Indecent Articles Ordinance ("COIAO")

The Commerce and Economic Development Bureau ("CEDB") has embarked on a review of COIAO with two rounds of public consultation. During the first round of public consultation conducted from 3 October 2008 to 31 January 2009, the Judiciary and some members of the legal profession proposed to remove the administrative classification function (i.e. making an interim classification and, upon appeal, a final classification on a submitted article) from the Obscene Articles Tribunal, leaving it to deal with judicial determinations only (i.e. determining whether an article is obscene or indecent upon referral by a court or a magistrate arising from a civil or criminal proceeding). According to CEDB, there was little deliberation of this issue among the public. It would discuss within the Government and with the relevant stakeholders and look for possible improvement measures in the second

To be advised by
JA/CEDB

round of public consultation to be commenced in the end of 2009. During the Panel's visit to the Judiciary on 13 July 2009, participating Members noted the strong view of the Judiciary about this issue and agreed that the Panel should follow it up at a future meeting.

CEDB advised in March 2010 upon the enquiry of the Secretariat that the timing for discussion of the item has yet to be decided.

13. Law Reform Commission Report on Hearsay in Criminal Proceedings

The Report on Hearsay in Criminal Proceedings was published by the Law Reform Commission in November 2009. At the meeting on 15 December 2009, the Panel agreed to discuss relevant issues at a future meeting.

To be decided by
the Panel
DoJ

14. Implementation of the scheme for granting higher rights of audience to solicitors

This item was referred to the Panel by the Bills Committee on Legal Practitioners (Amendment) Bill 2009.

To be decided by
the Panel
DoJ

The Bills Committee considered it necessary to review the scheme for granting higher rights of audience to solicitors at an appropriate junction, say around two years after its implementation, and had referred the issue to the Panel for follow-up.

The Bill was passed by LegCo on 20 January 2010.

15. Bailiff services

Concern was raised about the workload and manpower situation of bailiffs during the examination of the Estimates for Expenditure 2010-2011 at the special meeting of the Finance Committee on 24 March 2010. At the meeting on 29 March 2010, the Panel agreed to further discuss the relevant issues.

June 2010
JA

16. Consultation Paper on Double Jeopardy published by the Double Jeopardy Subcommittee of the Law Reform Commission

The Law Reform Commission's Double Jeopardy Subcommittee has published the above Consultation Paper for public consultation until 31 May 2010. The Panel agreed to discuss the Consultation Paper at a future meeting.

To be decided by
the Panel
Law Reform
Commission

17. Proposed amendments to the Solicitors (Professional Indemnity) Rules

In its letter dated 9 April 2010, the Law Society informed the Panel of the proposed amendments to the Solicitors (Professional Indemnity) Rules [LC Paper No. CB(2)1277/09-10(01)] which sought to provide flexibility in reducing the amount of Professional Indemnity contributions payable by solicitors. The Law Society aimed at bringing the amended rules into effect in September 2010.

To be decided by
the Panel
Law Society

At the meeting on 26 April 2010, the Panel agreed to invite the Law Society to brief members on the proposed amendments to the Rules at a future meeting.

18. Drafting of Chinese text of legislation

During the discussions on the proposed changes to the document design of Hong Kong legislation at the Panel meeting on 26 April 2010, some members had expressed concern about the readability of Chinese text of legislation. Members noted that following the Panel's discussion on law drafting at the meeting in December 2009, the Legal Service Division of the LegCo Secretariat and the Law Drafting Division had held regular working meetings to discuss views expressed by Members on law drafting in the course of examination of bills. Members agreed that the issue of readability of Chinese text of legislation be discussed at a future Panel meeting with reference to concrete examples raised during the scrutiny of bills.

To be decided by
the Panel
DoJ

19. Membership of the Secretary for Justice in the Judicial Officers Recommendation Commission

The item was referred to the Panel by the Subcommittee on Proposed Senior Judicial Appointments.

To be decided by
the Panel
DoJ/JA

During the deliberations of the Subcommittee, some members have expressed reservation about the membership of the Secretary for Justice, being a Principal Official under the Political Appointment System, on the Judicial Officers Recommendation Commission. The Subcommittee has agreed to refer the issue to the Panel for follow-up.

20. Appointment of serving Justices of Appeal as non-permanent judges of the Court of Final Appeal ("CFA") and judicial manpower situation in CFA and other levels of courts

The item was referred to the Panel by the Subcommittee on Proposed Senior Judicial Appointments.

To be decided by
the Panel
JA

During the deliberations of the Subcommittee, some members have expressed grave concern that serving Justices of Appeal to the Court of Appeal of the High Court are being made non-permanent judges of CFA. They consider that the arrangement of allowing the same pool of judges to sit in both courts could give the public the impression that they are denied a real appeal in CFA and would erode public confidence in the administration of justice even though these non-permanent Hong Kong judges would not hear appeals from cases in which they have sat. Members are of the view that the crux of the problem is the relatively small number of permanent judges in CFA, and more resources should be provided to the Judiciary to allow more judges to be appointed.

The Subcommittee has agreed to refer the policy issues of appointing serving Justices of Appeal as non-permanent judges of CFA and of judicial manpower situation in CFA and other levels of courts to the Panel for follow up.