

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

**List of outstanding items for discussion**  
(position as at 6 October 2014)

**Proposed  
timing for  
discussion**

**1. Proposed Arbitration (Amendment) Bill 2015**

The proposed Arbitration (Amendment) Bill 2015 seeks to amend the relevant provisions to make it clear that parties opting for domestic arbitration and specifying the number of arbitrators in the arbitration agreement may still retain their rights by virtue of section 100 of Cap. 609 to seek the Court's assistance for matters set out in sections 2 to 7 of Schedule 2 of Cap. 609; and update the list of state parties to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) ("New York Convention") as set out in the Arbitration (Parties to New York Convention) Order (Cap. 609A).

November 2014

The Administration plans to seek members' views on the proposed Arbitration (Amendment) Bill 2015 before introducing it to the Legislative Council ("LegCo") in the first quarter of 2015.

**2. Draft Live Television Link (Witnesses outside Hong Kong) Rules and Draft Rules of the High Court (Amendment) Rules" (collectively known as the "Draft Rules")**

An information paper on the Draft Rules prepared by the Department of Justice ("DoJ") was issued to members in June 2014 (LC Paper No. CB(4)853/13-14(01)). The Administration intends to invite the Chief Judge of the High Court and the Rules Committee of the High Court to make the Draft Rules as soon as possible, and table the Rules at LegCo for negative vetting within 2014. Members requested for a briefing.

November 2014

**Proposed  
timing for  
discussion**

**3. 2014-2015 Judicial Service Pay Adjustment**

The Director of Administration proposes to consult the Panel on its proposal to increase the pay for judges and judicial officers by 6.77% with effect from 1 April 2014 before seeking funding approval from the Finance Committee ("FC").

November 2014

**4. Law Reform Commission Report on Excepted Offences under Schedule 3 to the Criminal Procedure Ordinance (Cap. 221)**

The Law Reform Commission ("LRC") briefed members on its second annual report flagging up the progress of LRC reports on 27 May 2014. Members raised concerns on the proposed repeal of the list of excepted offences in Schedule 3 to the Criminal Procedure Ordinance (Cap. 221) to enable the Court to have full discretion to impose an appropriate and adequate sentence, having regard to the gravity of the offence and the circumstances of the convicted person. The Panel on Administration of Justice and Legal Services ("the Panel") will be briefed as soon as practicable in July 2014 or soon after on the relevant LRC report to discuss issues relating to the subject.

4th Quarter of  
2014

**5. Reform of the current system to determine whether an offence is to be tried by judge and jury or by judge alone**

At the Panel meeting on 22 April 2014, DoJ briefed members on the relevant background and latest developments regarding the captioned subject. Representative of the Hong Kong Bar Association ("the Bar Association") suggested and members agreed that relevant parties should prepare more detailed submissions, including the communications between the Bar Association and DoJ, and the latest developments in the law regarding the issue in the last four years for the Panel's consideration at a meeting in Fall 2014.

To be advised by  
DoJ (4th Quarter  
of 2014)

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

At the meeting on 10 July 2012, members agreed that the Panel should follow up with the Administration on proposals not

To be advised by  
the Home Affairs

**Proposed  
timing for  
discussion**

supported for inclusion in SLAS, 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.

Bureau ("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)).

**7. Abolition of the common law offence of champerty**

At the meeting on 25 March 2014, the Panel was briefed 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. The Administration 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.

To be decided by  
the Panel

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. 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 ("Resource Centre") 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 advised by  
HAB

Separately, HAB launched in March 2013 a two-year pilot scheme

**Proposed  
timing for  
discussion**

to provide free legal advice for litigants in person ("LIPs") to assist LIPs who have commenced or are parties to legal proceedings in the District Court or higher courts and have not been granted legal aid. The pilot scheme seeks to provide procedural advice to facilitate access to justice by LIPs and other parties involved.

HAB has submitted a paper to account for the first year of operation of the LIPs Scheme which was issued on 18 June 2014 (LC Paper No. CB(4)822/13-14(06)).

**9. The Law Society of Hong Kong's proposal to introduce a common entrance examination in Hong Kong**

At the meeting on 16 December 2013, members received a briefing on a consultation on the feasibility of implementing a common entrance examination by The Law Society of Hong Kong ("the Law Society") as a means of admitting individuals to practice as solicitors in Hong Kong. The consultation period ran from 1 December 2013 to 14 February 2014. Members agreed to arrange a meeting of the Panel to receive views from the relevant stakeholders and members of the public, such as those who could not get admitted to the Postgraduate Certificate in Laws.

To be advised by  
the Law Society

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.

**10. Adjustment to scale rates**

Hon Dennis KWOK proposed to discuss the issue of "Adjustment to scale rates".

To be advised by  
the Judiciary  
Administration

The Law Society has recently commissioned a review of the rates for calculating legal costs on party and party taxation ("scale rates") which were last revised by the Registrar of the High Court in 1997. The Law Society has formally endorsed the recommendations of the

review report, including that the solicitors' hourly rates be raised to better reflect the current market conditions and that the scale rates should be adjusted annually according to an inflation-linked index.

The Judiciary considers that there are many important issues relating to the Solicitors' Hourly Rates for taxation on a party and party basis. They would not only affect the work and interests of the solicitors but would also have a much broader impact on many stakeholders in the community at large in the overall context of access to justice. The Chief Justice has appointed a working party to review the matter and make recommendations.

An information paper on "Review of solicitors' hourly rates" provided by the Judiciary Administration had been issued to the Panel in December 2013.

## **11. Mechanism for handling complaints against judicial conduct**

In their 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.

To be advised by  
the Judiciary  
Administration

The existing mechanism for handling complaints against judicial conduct had been working for some time. The Chief Justice considers that it may be time for an internal review to be conducted, and has recently set up an internal working group to review the mechanism to see what improvements could be made.

At the Panel meeting on 25 February 2014, members received views from deputations on the mechanism for handling complaints against judicial conduct. Whilst noting the internal working group of the Judiciary had yet to complete its review, the Judiciary Administration was requested to provide information regarding the number of complaint cases against judicial conduct received in the past three years, broken down by the nature of complaints, the level of courts and the rank of judges involved, as well as how these complaint cases had been dealt with. Members also requested information on the current mechanism for handling complaints against judicial conduct in other jurisdictions.

**Proposed  
timing for  
discussion**

The requested information provided by the Judiciary which it obtained and collated so far was issued vide LC Paper No. CB(4)840/13-14(01) on 18 June 2014. The Judiciary will also inform the Panel of the outcome of the review which is expected to be completed by end-2014.

**12. Manpower and other support for the Judiciary**

Whilst deliberating on the judicial manpower situation at various levels of court and long court waiting times at the Panel meeting on 16 December 2013, members expressed concern on the long court waiting times, the shortage of judicial manpower and the under-provision of courtrooms and office accommodation for the Judiciary.

2nd Quarter of  
2015

Members agreed to follow up with the Administration on issues relating to judicial manpower and courtroom facilities/office accommodation for the Judiciary at a future meeting.

**13. Procedure for the making of subsidiary legislation relating to the legal professional bodies**

The Subcommittee on Solicitors (General) Costs (Amendment) Rules 2013 agreed that the Panel be requested to follow up with the Administration and related parties on the proper procedure for the making of subsidiary legislation relating to the legal professional bodies.

To be advised by  
DoJ

**14. 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 regarding the suggestion of the setting up of a panel of advisory language specialists to help ensure no discrepancies between the English and Chinese defined terms in the drafting of the legislation.

To be advised by  
DoJ

**15. Duty Lawyer Service for non-refoulement claims under the**

**Proposed  
timing for  
discussion**

**unified screening mechanism**

Hon Dennis KWOK proposed to discuss the issue of the "Duty Lawyer Service for non-refoulement claims under the unified screening mechanism".

To be advised by  
the Security  
Bureau and HAB

At the Panel meeting on 23 July 2013, members agreed that the issue be included in the list of items for discussion by the Panel.

**16. Proposed amendments to Rule 4B(2) of the Solicitors' Practice Rules and Rule 8(4) of the Foreign Lawyers Practice Rules**

The Law Society invites the Panel's views on its proposed amendments to Rule 4B(2) of the Solicitors' Practice Rules and Rule 8(4) of the Foreign Lawyers Practice Rules.

To be advised by  
the Law Society

At the Panel meeting on 23 July 2013, members agreed that the Law Society be invited to brief members on the proposed amendments to Rule 4B(2) of the Solicitors' Practice Rules and Rule 8(4) of the Foreign Lawyers Practice Rules.

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

During the scrutiny of the IPCC Bill introduced into the Legislative Council ("LegCo") in July 2007, the relevant Bills Committee discussed the question of whether the statutory IPCC to be established under the Bill should be subject to the jurisdiction of The Ombudsman. The relevant Bills Committee had sought the views of The Ombudsman on the matter, who indicated that she had no objection in principle to having the statutory IPCC under her purview though it was recognized that the decision was ultimately one of policy.

To be decided by  
the Panel

At the Panel meeting held on 27 April 2009, 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 agreed to bring up the issue after IPCC had been in operation for some time.

**Proposed  
timing for  
discussion**

The Administration informed the Panel in writing on 23 September 2011 that it had consulted the Security Bureau on including the statutory IPCC under the purview of The Ombudsman. The Security Bureau advised that IPCC had discussed the proposal in May 2011. IPCC members raised unanimous concern that the proposal, if implemented, would undermine the image and public perception of IPCC being an independent oversight body established under the IPCC Ordinance (Cap. 604) if IPCC were subjected to the scrutiny of another statutory authority.

At the meeting on 28 November 2011, members agreed that the Panel should review the issue in future.

**18. Extending the applicability of the Ordinances of the Hong Kong Special Administrative Region ("HKSAR") to the offices set up by the Central People's Government ("CPG") in HKSAR**

The following five Ordinances have been adapted –

1. The Legislative Council Commission Ordinance (Cap. 443)
2. Plant Varieties Protection Ordinance (Cap. 490)
3. Patents Ordinance (Cap. 514)
4. Registered Designs Ordinance (Cap. 522)
5. Arbitration Ordinance (Cap. 341)<sup>1</sup>.

Relevant policy bureaux and departments are studying the remaining 10 Ordinances under their respective purview to examine the extension of applicability of the Ordinances to the CPG Offices.

Relevant bureaux and departments will consult their relevant LegCo Panels on the proposed amendments to the 10 remaining Ordinances according to their respective work programmes.

**19. Prosecutorial independence**

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<sup>1</sup> Arbitration Ordinance (Cap. 341) was repealed and replaced by Arbitration Ordinance (Cap. 609), which was enacted in 2010. Section 6 of the Arbitration Ordinance (Cap. 609) provides that the Ordinance applies to the Government and the offices set up by the CPG in the HKSAR.



**Proposed  
timing for  
discussion**

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.

To be decided by the Panel (Pending submission from the Bar Association)

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 LegCo should be invited to consider as to how the issue should be followed up when the written submission of the Bar Association was available.

**20. Review on the implementation of Civil Justice Reform**

Hon Dennis KWOK proposed and members agreed to discuss the issue of "Review on the implementation of Civil Justice Reform" as the legal profession has identified problems and deficiencies since the Civil Justice Reform came into operation in April 2009. (LC Paper No. CB(4)784/13-14(01))

To be advised by the Judiciary Administration

**21. Draft Court Procedural Rules for the Competition Tribunal**

Since the enactment of the Competition Ordinance, the Judiciary has been making preparations for the setting up of the Competition

To be advised by the Judiciary

**Proposed  
timing for  
discussion**

Tribunal. The Tribunal is a superior court of record established under the Competition Ordinance having primary jurisdiction to hear and adjudicate on enforcement cases brought by the Competition Commission, follow-on private actions, alleged contravention of a conduct rule as a defence raised in proceedings before the Court of First Instance, as well as reviews of certain determinations of the Commission.

Administration

The Judiciary is preparing the procedural and other related rules for the Tribunal. These are subsidiary legislation. It will consult the Panel when ready.

Council Business Division 4  
Legislative Council Secretariat  
6 October 2014