

Panel on Administration of Justice and Legal Services

List of outstanding items for discussion by the Panel
(position as at 19 April 2013)

**Proposed
timing for
discussion**

1. Right of abode issues of children born in Hong Kong to Mainland parents both of whom are not Hong Kong permanent residents

At the media stand-up session on 25 March 2013 on the Court of Final Appeal ("CFA") judgment on the foreign domestic helpers' right of abode case, the Government stated that, regarding the right of abode issue of those children born in Hong Kong to Mainland parents both of whom were not Hong Kong permanent residents, the Government will further study the CFA judgment and consider options available within the local legal system. In the meantime, the Government will continue to adopt robust administrative measures to implement the zero delivery quota policy for expectant Mainland mothers.

May 2013

At the meeting on 26 March 2013, members agreed to follow up on the matter.

2. Judicial manpower situation at various levels of court and long court waiting times

At the special meeting on 30 October 2012 to discuss the 2012-2013 judicial service pay adjustment, members agreed to follow up with the Judiciary Administration on long court waiting times and related issues, including judicial manpower situation and whether the increasing number of cases involving unrepresented litigants had attributed to long court waiting times.

June 2013

3. Handling of sexual offences cases

**Proposed
timing for
discussion**

Dr Hon Elizabeth QUAT wrote to the Panel Chairman on 22 January 2013 [LC Paper No. CB(4)354/12-13(02)] proposing that the Panel should discuss the procedures and measures of the Administration and the Judiciary on the handling of sexual offences cases. June/July 2013 (tentative)

4. Implementation of the recommendations made by the Law Reform Commission

The Law Reform Commission ("LRC") will provide a written report to the Panel on the progress of the Administration's implementation of LRC's recommendations in the 2nd quarter of 2013. June 2013

5. Proposed Contracts (Rights of Third Parties) Bill

The proposed Contracts (Rights of Third Parties) Bill seeks to implement the recommendations made in the Report of Privity of Contract published by LRC in 2005 to enable a person who is not a party to a contract (i.e. a third party) to enforce a term of the contract. July 2013

The Department of Justice ("DoJ") plans to seek members' views on the proposed Contracts (Rights of Third Parties) Bill before introducing it to the Legislative Council ("LegCo") in 2013.

6. Establishment of an independent legal aid authority

On 26 September 2012, the Hong Kong Bar Association issued a Statement on the Desirability of an Independent Legal Aid Authority – the current situation is an Impediment to Access to Justice for Persons of Limited Means and "the Sandwich Class". 2nd quarter of 2013

At the special meeting on 24 October 2012, members

**Proposed
timing for
discussion**

agreed to follow up the proposal of establishing an independent legal aid authority with the Administration at a future meeting.

7. 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.

2nd quarter of
2013

(Pending
submission from
the Hong Kong
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 Hong Kong Bar Association was available.

8. Adjustment to scale rates

**Proposed
timing for
discussion**

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

3rd quarter / 4th
quarter of 2013

The Law Society of Hong Kong 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.

9. Operation of the Resource Centre for Unrepresented Litigants and the Two-year Pilot Scheme to Provide Legal Advice for Litigants in Person

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.

End of 2013/
early 2014

Separately, the Home Affairs Bureau launched in March 2013 a two-year pilot scheme 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.

The Panel may consider inviting the Home Affairs Bureau and/or the Judiciary to brief members on the operation of the pilot scheme and/or the Resource Centre in late 2013/early 2014.

**Proposed
timing for
discussion**

10. 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 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.

To be confirmed by the Home Affairs Bureau

11. Review of the "as of right" provision in section 22(1)(a) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484)

According to section 22(1)(a) of the Hong Kong Court of Final Appeal Ordinance, a civil appeal lies as of right from any final judgment of the CFA where the matter in dispute amounts to or is worth \$1 million or more. In two CFA judgments (FAMV No. 20 of 2011 and FACV No. 2 of 2011), the Court had expressed the view that this "as of right" ground of appeal should be re-considered/abolished. At its meeting on 20 December 2011, members agreed to take up the issue with the Administration.

The Director of Administration has consulted the Judiciary on the issue. The Judiciary is considering this matter in consultation with the Bar Association and the Law Society and would consult the Panel on this matter at an appropriate time.

12. Inclusion of the statutory Independent Police

**Proposed
timing for
discussion**

Complaints Council ("IPCC") under the purview of The Ombudsman

During the scrutiny of the IPCC Bill introduced into 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.

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.

- 13. Extending the applicability of the Ordinances of HKSAR to the offices set up by the Central People's**

**Proposed
timing for
discussion**

Government ("CPG") in HKSAR

The Panel has been monitoring the progress of extending the applicability of the Ordinances of HKSAR to CPG offices set up in the HKSAR since 2001. In April 2008, the Administration advised the Panel that it was studying and discussing with the relevant authorities of CPG on whether and how 16 Ordinances which expressly bind the Government could be made applicable to the CPG offices. Extension of applicability to five of the above Ordinances was made in 2009 and 2010. The Administration also advised that it would continue to examine how the remaining 29 Ordinances which contain express references to the "Crown" should be adapted.

To be confirmed
by the
Constitutional
and Mainland
Affairs Bureau

14. Enactment of archive law and code on access to information

Dr Hon Kenneth CHAN wrote to the Panel Chairman on 8 April 2013 [LC Paper No. CB(4)552/12-13(01)] proposing that the Panel should invite deputations/interested parties to attend a future meeting of the Panel and give views on the issue of "Enactment of archive law and code on access to information".

To be decided
by the Panel

The DoJ advised that the LRC has decided to establish two sub-committees to consider the topics of archive law and access to information. It would be desirable to defer discussion of this item to a later time.

The Panel on Constitutional Affairs had previously discussed the issue of the Code on access to information and management of government records.