

Panel on Administration of Justice and Legal Services

List of outstanding items for discussion by the Panel
(position as at 26 November 2012)

**Proposed
timing for
discussion**

1. Law Reform Commission's Consultation Paper on Rape and Other Non-consensual Sexual Offences

On 17 September 2012, the Law Reform Commission ("LRC")'s Review of Sexual Offences Sub-committee published a Consultation Paper on Rape and Other Non-consensual Sexual Offences making preliminary proposals for the reform of the sexual offences in the Crimes Ordinance (Cap. 200). These proposals included a newly-defined offence of rape and the creation of a range of other non-consensual sexual offences.

December 2012

LRC invites the views of Members of the Legislative Council ("LegCo") on the Consultation Paper. The consultation period runs till 31 December 2012.

2. Information technology infrastructure for West Kowloon Law Courts Building

According to the Judiciary, the new West Kowloon Law Courts Building will be equipped with information technology infrastructure to support the operation of the Magistrates' Courts, the Coroner's Court, the Obscene Articles Tribunal and the Small Claims Tribunal to be relocated there. The infrastructure for the Digital Audio Recording and Transcription Service System will also be included in this project.

December 2012

The Judiciary Administration proposes to consult the Panel before seeking funding approval from the Finance Committee ("FC") for the project.

**Proposed
timing for
discussion**

3. Proposed amendments to the Arbitration Ordinance (Cap. 609)

The Administration consulted the Panel in February 2011 on the proposed arrangement for reciprocal enforcement of arbitral awards between the Hong Kong Special Administrative Region ("HKSAR") and the Macao Special Administrative Region ("Macao SAR") ("the proposed Arrangement"). By an information note dated July 2011, the Administration reported to the Panel on the result of the consultation on the proposed Arrangement and the commencement of discussion with the Macao SAR. The discussion of the proposed Arrangement with the Macao SAR is at its final stage. The Administration proposes to introduce a Bill to implement the proposed Arrangement. Some technical amendments to the Arbitration Ordinance as proposed by the arbitration sector will also be included in the Bill.

December 2012

4. Report on Mediation

The Administration proposes to report on the implementation by the Mediation Task Force of the recommendations in the Working Report on Mediation published in February 2010.

January 2013

5. Proposed creation of a supernumerary post of Deputy Principal Government Counsel in the Civil Division of the Department of Justice

The Administration proposes to invite the Panel's views on the proposed creation of a supernumerary Deputy Principal Government Counsel post to provide support to the Secretary for Justice ("SJ") to promote and facilitate the use of mediation in Hong Kong. The Administration will then submit the proposal to the Establishment Subcommittee ("ESC") and FC for funding approval.

January 2013

**Proposed
timing for
discussion**

6. Relocation of the Court of Final Appeal ("CFA") to the site of the former LegCo Building

At the Panel meeting on 10 July 2012, the Judiciary Administration briefed the Panel on the Judiciary's project to relocate the CFA to the site of the former LegCo Building.

February 2013

The Judiciary Administration plans to consult the Panel before seeking funding approval from the Public Works Subcommittee ("PWSC") and FC for the project.

7. Implementation of Projects under the Information Systems Strategy Plan of the Judiciary

The Judiciary has conducted an Information Systems Strategy Study to formulate the long term Information Technology Strategy Plan of the Judiciary. The Judiciary proposes a six-year plan to implement a portfolio of the projects to replenish the existing computer systems that are due for replacement. The projects to be implemented include an Integrated Court Management System with an aim to streamline litigation processes and to introduce electronic services

February 2013

The Judiciary Administration plans to consult the Panel before seeking funding approval from FC for the project.

8. Professional Indemnity Scheme of the Law Society of Hong Kong

During the scrutiny of the Solicitors (Professional Indemnity) (Amendment) Rules 2001 which sought to increase the contributions by 150%, concern was raised by many solicitors firms, particularly the smaller firms operating with margin profits, about the marked increase in contributions to the Solicitors Professional Indemnity Scheme ("PIS"). They requested the Law Society of Hong Kong ("LS") to conduct a review of the existing PIS with a view to adjusting it or

March 2013

(To be confirmed with The Law Society of Hong Kong)

replacing it with other schemes. At the request of the Subcommittee formed to study the Amendment Rules, LS agreed to undertake a review of the insurance arrangements under the PIS.

LS commissioned Willis China (Hong Kong) Limited to review the current insurance arrangements and report on what arrangements were in the best interests of the legal profession and the public. LS presented the salient features and findings of the Willis Report to the Panel at its meeting on 18 December 2003. The Willis Report proposed two major schemes alternative to the existing PIS, i.e. a Master Policy Scheme and a Qualifying Insurers Scheme (QIS).

Although members of LS voted in favour of a QIS to replace the PIS in November 2004, the Panel was informed by LS in May 2006 that members of LS had voted by a large majority not to replace the PIS by a QIS at its Extraordinary General Meeting held on 27 April 2006. In this connection, the Council of LS at its meeting on 16 May 2006 resolved to set up a PIS Review Working Party to identify deficiencies in the existing scheme, consider how they might be remedied, and make appropriate recommendations to the Council. In the meantime, arrangements would be made to negotiate with insurers for renewal of the existing cover. LS would report further developments to the Panel in due course.

LS issued its first, second and third reports on the progress of work of the PIS Review Working Party to the Panel on 27 March 2006, 23 April 2008 and 27 October 2009 respectively.

The fourth report of the PIS Review Working Group was issued to members of the Panel on 16 July 2012.

9. 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

2nd quarter of
2013

**Proposed
timing for
discussion**

having 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.

(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.

10. 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.

May/June 2013
(tentative)

**Proposed
timing for
discussion**

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

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

The 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.

2nd quarter of
2013

13. Operation of the Resource Centre for Unrepresented Litigants

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.

2nd half of 2013

The Judiciary plans to brief members on the operation of the Resource Centre in the 2nd half of 2013.

**Proposed
timing for
discussion**

14. Proposed Contracts (Rights of Third Parties) Bill

The Department of Justice plans to seek members' views on the proposed Contracts (Rights of Third Parties) Bill in the 2nd half of 2013. The proposed Bill seeks to implement the recommendations made in the Report of Privy of Contract published by the 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.

2nd half of 2013

15. 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

16. Draft Arbitration (Appointment of Arbitrators and Mediators and Decision on Number of Arbitrators) Rules

At the special meeting on 24 October 2012, members noted a letter from the Hong Kong International Arbitration Centre ("HKIAC") seeking the Panel's views on the draft Arbitration (Appointment of Arbitrators and Mediators and Decision on Number of Arbitrators) Rules, before submitting the draft Rules to the Chief Justice for approval. Members further noted that in the course of preparing the draft Rules, HKIAC had sought and incorporated in the draft Rules the advice from the Department of Justice.

To be decided
by the Panel

**Proposed
timing for
discussion**

17. 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, the Panel 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.

18. Inclusion of the statutory Independent Police 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.

19. Extending the applicability of the Ordinances of HKSAR to the offices set up by the Central People's 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 were 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