

**THE HONG KONG BAR ASSOCIATION’S COMMENTS ON THE
CONSULTATION PAPER ON THE PROPOSED IMPLEMENTATION
OF PHASE III OF A FIVE-DAY WEEK FOR THE JUDICIARY**

1. In April 2013, the Judiciary Administrator issued a ‘Consultation Paper on the Proposed Implementation of Phase III of a Five-day Week or the Judiciary’ (“**the Consultation Paper**”) for the purpose of inviting comments on the proposed implementation of Phase III of a five-day week for the Judiciary from the legal profession and other court users.
2. Phase I covered court sittings and back offices without any public interface and it commenced on 1 July 2006.¹
3. Phase II covered services with a public interface e.g. Resource Centre for Unrepresented Litigants (“**the Resource Centre**”), Press and Public Relations Office, Libraries in the Court of Final Appeal and the District Court and it commenced on 1 January 2007. The switch to a 5-day week entailed administrative arrangements rather than legislative amendments.²
4. Phase III covers services with a public interface where the implementation of a five-day week will require legislative amendments to primary and/or subsidiary legislation. These include Court Registries and general offices of Magistrates’ Courts, Accounts Offices, Bailiffs’ Offices, Probate Registry, and Oaths and Declarations Office.³
5. On 19 April 2013, the Hong Kong Bar Association (“**the Bar**”) was asked by the Judiciary Administrator for its comments on the Consultation Paper.

The Bar’s general comments

6. The Bar disagrees with the proposals to close Court Registries and general offices of Magistrates’ Courts; Accounts Offices; Bailiffs’ Offices; Probate Registry; and Oaths and Declarations Office (“**Offices**”) on Saturdays.
7. The Bar disagrees with the proposal to close the High Court Library on Saturdays.

¹ See §3(a) at page 2 of the Consultation Paper.

² See §3(b) at page 2 of the Consultation Paper.

³ See §3(c) at page 2 of the Consultation Paper.

The Bar's comments on the 'Policy Implications'

8. The Bar agrees that a five-day week for the Judiciary should not affect the services listed in paragraphs 7(a) to (e) (at page 3) of the Consultation Paper

The Bar's comments on the proposals in the 'Operations Implications' relating to the Offices

9. The proposal is to revise the opening hours of the Offices from 08:45 to 13:00 and 14:00 to 17:30 from Mondays to Fridays.⁴ Such revision will result in an increase of the aggregate opening hours by 45 minutes.
10. The Bar disagrees with the proposals to close the Offices on Saturdays because there are no proposals to prevent a disparity or unequal treatment⁵ in the provision of services to court users and members of the public. An example of such disparity and unequal treatment is given in §8(a) of the Bar's comments on the "Consultation Paper on the Proposed Implementation of a Five-day Week for the Judiciary" dated 19 May 2006 ("**the Bar's 2006 Comments**") viz.

".....Often when bail conditions are imposed or varied by the requiring additional cash bail, the defendant is given time to raise the money and deposit it with the court's accounts office the following day. Closing the accounts offices on Saturday mornings means that defendants whose cash bail are increased on Fridays have 2 extra days to raise the money than those whose cash bail are increased on other week days. This disparity is, with respect, unacceptable."

11. The Consultation Paper does not contain any proposals to prevent a disparity or unequal treatment in the provision of services to court users and members of the

⁴ See §§10 and 11 at page 4 of the Consultation Paper.

⁵ The constitutional right to equality of treatment is enshrined in Article 25 of the Basic Law: "All Hong Kong residents shall be equal before the law." See also Article 22 of the Hong Kong Bill of Rights: "Equality before and equal protection of law. All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." A five day week does not pass the "the justification test".

public. An increase of the aggregate opening hours by 45 minutes⁶ does not address the problem.

12. In addition, closing the Registries and Account Offices of the Magistrates' Courts,⁷ when such courts are open to deal with fresh remand cases which have to be brought before the court in order to satisfy the 48-hour requirement in section 52 of the Police Force Ordinance, Cap. 232,⁸ may create problems which should be addressed.

The Bar's comments on the proposals in the 'Operations Implications' relating to the High Court Library

13. The proposal is to change the opening hours of the High Court Library to 08:45 - 18:00 from Mondays to Fridays (the aggregate opening hours to be changed from 46.5 hours per week to 46.25 hours per week) and to close the High Court Library on Saturdays.⁹
14. The Bar has no objection to changing the opening hours of the High Court Library to 09:00 - 18:00 from Mondays to Fridays because this would be consistent and is easier for library users to remember than the current opening hours from 09:00 to 17:30 on Mondays, Wednesdays and Fridays and from 09:00 to 18:00 on Tuesdays and Thursdays.
15. The Bar disagrees with the proposal to close the High Court Library on Saturdays (which is open from 09:00 – 12:00) notwithstanding the decrease in the attendance rates of library card holders from about 36 (including 27 lawyers in 2006) to 15 (including 11 lawyers) in 2011¹⁰ because:-
 - (a) the High Court Library is only open for 3 hours on Saturdays;
 - (b) the High Court would be open on Saturdays to deal with urgent applications and court sittings¹¹ and so members of the legal profession may need to use the High Court Library for legal research;

⁶ See §11 at page 4 of the Consultation Paper.

⁷ See §10(m) at page 4 of the Consultation Paper.

⁸ See §7(a) at page 3 of the Consultation Paper.

⁹ See §12 at page 5 of the Consultation Paper.

¹⁰ See §12 at page 5 of the Consultation Paper.

¹¹ See §§7(b), (c) and (d) at page 3 of the Consultation Paper.

- (c) as stated in §8(b) of the Bar's 2006 comments *viz*

"Members of the legal profession do not work 5-day weeks. If the need arises, they can work round the clock. But often they do not have the means or access to textbooks, old law reports, the Gazette, and the historical records in the court libraries. Saturday mornings are a few hours in each week where members of the legal profession and indeed members of the working public who are litigants in person have outside normal court hours to conduct concentrated research The Bar suggests that the High Court Library should remain open on Saturday mornings at the present hours. It is not an exaggeration to regard the High Court Library as an essential counter service."

- (d) the libraries in the Court of Final Appeal and the District Court have been closed on Saturdays since 1 January 2007 when Phase II was implemented. The High Court Library is therefore the only library available to the legal profession and members of the working public on Saturdays; and
- (e) the Resource Centre has been closed on Saturdays since 1 January 2007 when Phase II was implemented.¹² The effect of the closure is that facilities such as the four computer terminals with access to the Judiciary website, interlinked with the websites of the Legal Aid Department and of other agencies offering free legal advice, a writing area and self-service photo-copying machines, are not available to unrepresented litigants on Saturdays. Closing the High Court Library on Saturdays is unacceptable because these facilities are also available there.

The Bar's comments on the 'Legal Implications'

16. The Bar agrees that to implement Phase III, it is necessary to amend the primary and subsidiary legislation to allow those offices of the Judiciary with a public interface (such as the court registries, general offices of magistrates' courts and accounts offices) to switch to a five-day week.¹³

¹² The Bar disagreed with the proposal to close the Resource Centre on the ground that it was either essential or desirable to remain accessible to the public on Saturday mornings: see §8(2) of the Bar's 2006 Comments.

¹³ See §§14 (at page 5) to 22 (at page 8) of the Consultation Paper.

Miscellaneous

17. Although not stated in the Consultation Paper, the Bar would welcome some assurance that the High Court Building will continue to be accessible on Saturday mornings for the Bar Association and its members for training purposes and the universities for meeting, examinations and other training purposes.¹⁴

Hong Kong Bar Association

Dated: 17th June 2013

¹⁴ See the letter dated 5 June 2006 from the Judiciary Administrator to Mr Philip Dykes SC



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Your Ref. 來函檔號：

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By Fax & By Post

5 June 2006

Mr Philip Dykes, SC
Chairman
Hong Kong Bar Association
LG2 Floor, High Court
38 Queensway, Hong Kong



Dear Chairman,

Implementation of a Five-Day Week for the Judiciary

Thank you for your letter of 19 May 2006, enclosing the Bar Association's comments on the "Consultation Paper on Proposed Implementation of a Five-day Week for the Judiciary".

2. Having considered all the comments received, the Judiciary has decided on a three-phase implementation of a five-day week. Phase I, covering court sittings and back offices without any public interface, will commence on 1 July 2006. Details are set out in the attached paper.

3. As regards the specific comments in paragraphs 12 and 13 of the Bar's paper, please rest assured that, upon the implementation of Phase I on 1.7.2006, there will be continued accessibility of the High Court Building on Saturday mornings for the following purposes -

- (a) the Bar Association and its members for training purposes; and
- (b) the universities for mooting, examinations and other training purposes.

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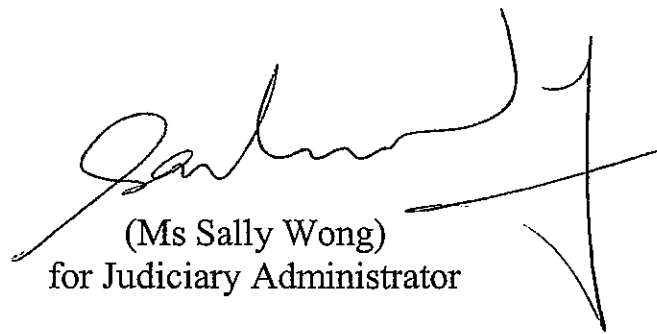
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4. The Judiciary will continue to maintain close liaison with the legal profession, other court users and the public through available channels on the implementation of the five-day week and keep all concerned parties informed of the progress.

With best regards,

Yours sincerely,



(Ms Sally Wong)
for Judiciary Administrator

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Implementation of a Five-day Week for the Judiciary

Purpose

This paper sets out the phased implementation of a five-day week for the Judiciary.

Background

2. In April 2006, having regard to the policy initiative proposed by the Administration and that Judiciary Administration staff are essentially civil servants, the Chief Justice decided in principle to adopt a five-day working week for the Judiciary. On 19.4.2006, the Judiciary issued the "Consultation Paper on the Proposed Implementation of a Five-Day Week for the Judiciary" to Judges and Judicial Officers, staff in the Judiciary Administration, the legal profession and other court users. By 22.5.2006, a total of 41 responses were received. The major views received are summarised at the **Annex**.

Annex

Three-Phase Implementation of a Five-Day Week

3. Having considered the views received, the Judiciary has decided on a three-phase implementation of a five-day week. The services to be covered in each phase are set out in the following paragraphs.

Phase I : 1.7.2006

4. Phase I will commence on 1.7.2006. Under this phase, a five-day week will apply to -

- (a) **Court sittings:** no sittings will be listed on Saturdays, except for admission ceremonies for senior counsel, barristers and solicitors in the High Court, hearings fixed by individual Judges or where statute provides for Saturday hearings, for example, under the Judicial Proceedings (Adjournment During Gale Warnings) Ordinance (Cap. 62). A new Saturday sitting roster arrangement would be introduced in the Magistrates' Courts to deal with fresh remand cases; and

- (b) **Back offices** without any interface with members of the public.

Phase II - 1.1.2007

5. Phase II will commence on 1.1.2007. The services to be covered are essentially those which have a public interface. The implementation of a five-day week here would require administrative preparations, e.g. promulgation of revised opening hours, re-printing of publications, etc, but no need for legislative amendments. The offices which are likely to be covered are -

- (a) Information counters and public enquiry services;
- (b) Press and Public Relations Office;
- (c) Libraries; and
- (d) Resource Centre for Unrepresented Litigants.

6. In respect of libraries and the Resource Centre, starting from June 2006, the Judiciary will monitor their usage rates on Saturdays as compared to weekdays, before taking a final decision as to whether they should be covered in Phase II.

Phase III – As Soon as Practicable after the Enactment of Necessary Legislative Amendments

7. Phase III would cover services with a public interface where the implementation of a five-day week will require legislative amendments to primary and / or subsidiary legislation. These include -

- (a) Court Registries and general offices of Magistrates' Courts;
- (b) Accounts Offices;
- (c) Bailiffs' Offices;
- (d) Probate Registry; and
- (e) Oaths and Declarations Office.

8. The Bar Association, the Law Society and the Department of Justice have each indicated in their responses that for a five-day week to be implemented in these offices, legislative amendments, including amendments to section 71 of the Interpretation and General Clauses Ordinance (Cap. 1), are likely to be required. The Judiciary is now

undertaking a comprehensive study on all necessary amendments to legislation (both primary and subsidiary) as well as Practice Directions. It is expected that the study will be completed by summer 2006. The Judiciary will forward the relevant results of its study, particularly those relating to amendments to primary legislation, to the Administration for consideration and liaise with the Administration on how to take the proposed amendments forward.

9. The implementation of Phase III and its timing would depend on the completion of the necessary amendments to legislation (both primary and subsidiary).

Liaison with the Legal Profession, Other Court Users and the Public

10. The Judiciary will continue to maintain close liaison with the legal profession, other court users and the public through available channels on the implementation of the five-day week. For example, specific working meetings on the implementation of a new Saturday sitting roster arrangement for fresh remand cases in the Magistrates' Courts will be convened with all concerned to work out the detailed arrangements.

11. The Judiciary will continue to keep all concerned parties informed of the progress of the implementation of the five-day week.

Judiciary Administration
June 2006

Consultation Paper on the Proposed Implementation of a Five-Day Week for the Judiciary

Summary of Views Received

Legislative Amendments Required

1. Paragraph 28 of the Consultation Paper raised the matter concerning the impact of section 71 of the Interpretation and General Clauses Ordinance (Cap. 1). The Bar Association, the Law Society, the Department of Justice (DoJ) and Legal Aid Department (LAD) have all commented that section 71 of Cap. 1 has to be amended for the implementation of a five-day week. The Bar Association has also questioned whether any amendments to subsidiary legislation (such as Rules of the High Court) to exclude Saturday in the computation of time would be effective, if all relevant primary legislation and in particular Section 71 of Cap. 1 is not so amended. The DoJ has suggested that Section 71 of Cap. 1 be amended, but only to the extent that it concerns judicial proceedings.

2. Some respondents have pointed out specific areas which may require amendments to legislation upon the implementation of a five-day week in the Judiciary.

Admission Ceremonies for Barristers and Solicitors

3. The Bar Association and the Law Society have commented that the admission ceremonies should continue to be held on Saturdays, this day being the most convenient for the applicants, their family and friends, and the legal profession.

Libraries and Resource Centre for Unrepresented Litigants

4. There were some comments that the libraries and the Resource Centre should continue service on Saturdays, as the suggested extension of 45 minutes on Mondays to Thursdays may not be convenient to members of the public, particularly to people who have to travel to Admiralty after office hours. The Judiciary will start monitoring the usage of these services on Saturdays in June 2006 before deciding the way forward.

Working Hours/Flexi-hours

5. There were comments that some flexibility should be allowed for the working hours of staff of the Judiciary Administration.

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