

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

1. On 13 May 2014, the Hong Kong Bar Association (the “**HKBA**”) was asked by the Judiciary Administrator for comments on a paper entitled “Proposed Implementation of Phase III of Five-day Week for the Judiciary” (the “**Paper**”).

**The HKBA’s general comments**

2. The HKBA is of the view that the proposals relating to the handling of bail payments and related matters is seriously flawed and is therefore not acceptable.

**The proposals**

3. The proposal on the handling of bail payments in the High Court and the District Court is that “upon granting of a bail application, a written notice will be given to the bail applicant notifying him that they could contact the registry not later than 5:00 pm on a Friday if he/she wants to make bail payment (including other steps) on the following Saturday morning. Upon receiving such a request, the respective registry will make arrangement for relevant staff to report duty on the Saturday morning concerned to handle the application(s) concerned.”: see §8 (at p. 4) of the Paper.
4. The proposal on the handling of bail payments in the Magistrates’ Courts is to follow similar arrangements in the High Court and the District Court save that the “bail applicant is required to contact the Magistrates’ Courts staff in advance so that he/she can be told which Magistrates’ Court to approach for making payment because only three Magistrates’ Courts will be open on Saturday mornings after full implementation of the five-day week and the Magistrates Court originally granting him/her bail may not be open on that Saturday morning.... Upon receiving the request, the relevant registry staff will make arrangement for one of three Magistrates’ Courts to deal with the request concerned. When there is surety which needs to be approved, the Magistrate of the duty Magistrate’s Court can approve surety accordingly”: see §10 (at p. 5) of the Paper.

**The Bar’s specific comments**

5. The HKBA is of the view the proposals in paragraph 4 and 5 above are seriously flawed because it will not apply to those who are only able to raise bail money after 5:00 p.m. on a Friday. These persons will not contact the registry before 5:00 p.m. and so would have to wait until Monday to be released from custody even

though they are able and willing to pay bail money on Saturday morning. They are also most likely to be the ones who would want to contact the registry because those who are able to raise bail before 5:00 p.m. on a Friday are likely to pay the bail money before such time so as to be released from custody over the weekend (and so will not contact the registry) and those who are not so able will not contact the registry in any event.

6. The HKBA notes that it is unclear whether those who make requests to the High Court and District Court registries and to the Magistrates' Courts staff but who do not pay bail money the following Saturday morning would face any sanction. The HKBA opposes the imposition of any sanction because it would be discriminatory in that those who make bail payments on Saturdays would be treated differently and unequally from those who make bail payments from Monday to Friday.
7. If there is no sanction, those who are not able to raise bail before 5:00 p.m. on a Friday may well make requests before 5:00 p.m. anyway in the hope that they would be able to raise the bail money by Saturday morning since they have nothing to lose by doing so. The result is that in the course of time, staff would be reporting for duty on Saturdays.

#### **The Bar's comments on the handling of related matters**

8. The HKBA supports the making of arrangements for a Master of the High Court and/or the District Court to attend urgent matters related to the approval of surety in case this becomes necessary on a Saturday morning (see §8 (at p. 4) of the Paper) provided such arrangements do not depend on requests made to the High Court, District Court registries before 5.00 p.m. on the Friday for the reason stated in §5 above.

#### **The Bar's comments on the "additional improvement measure"**

9. The HKBA supports the "additional improvement measure" (in §9 (at p. 5) of the Paper) of moving the plea day from every Friday to Thursday in the District Court to give a defendant more time to make arrangements if he or she is granted bail but does not support limiting the making of such arrangements to one full working day on Friday if the registry is not contacted before 5:00 p.m. that day for the reason stated in §5 above. Although "the defendant will not be detained in custody unnecessarily because of insufficient time", he will be so detained because of his failure to contact the registry in time i.e. before 5:00 p.m. on Friday, even though he is able and willing to pay bail money on Saturday morning.

**The Bar's comments on the resumption of "Magistrates' Court after lowering of Gale and Rainstorm Warnings"**

10. The HKBA finds the proposed arrangements for the Magistrates' Courts in §14 (at p. 6) of the Paper acceptable, as they will not prejudice defendants on bail.

Dated 13<sup>th</sup> June 2014

Hong Kong Bar Association