

**Secretary for Justice's Briefing Note for the
Administration of Justice and Legal Services Panel Meeting
on Monday, 16 October 2000**

Good afternoon, ladies and gentlemen. It gives me great pleasure to brief you this afternoon on the Department of Justice's Policy Objective; on the progress made in the past twelve months in respect of previous pledges; and on the new initiatives set out in our Policy Objective Booklet released last week.

Policy Objective

2. The Policy Objective of the Department of Justice is to uphold the rule of law, provide efficient and effective legal services to the Hong Kong Special Administrative Region Government, and to maintain and improve the present legal system.

3. In the past year, we had three targets at the policy objective level.

4. Our first target related to the rule of law. The rule of law has been the overriding contributory factor for the success of Hong Kong and the bedrock of our community, both before and after reunification. My department is committed to upholding the rule of law.

5. The Basic Law has been in force for more than three years. It is clear that the Basic Law safeguards the rights, freedoms and lifestyle of the people of Hong Kong. Since Reunification, there have been numerous constitutional issues brought before our courts. Large numbers of litigants continue to have recourse to the courts to have their causes examined, adjudicated and determined. This is a striking demonstration of the rule of law and of confidence in the independence of the Judiciary.

6. The determination of constitutional issues helps to clarify relevant provisions of the Basic Law so that the courts, lawyers, and their clients will

know how to deal with similar issues in future. The interpretation of two provisions of the Basic Law by the Standing Committee of the National People's Congress, given in June last year, has been held by the Court of Final Appeal to be binding on Hong Kong courts. The courts are now applying that interpretation in the cases that come before them. Those claiming the right of abode in Hong Kong are being dealt with in strict accordance with the rule of law.

7. In the Flag case, the CFA upheld the freedom of expression granted to the people of Hong Kong as enshrined in the Basic Law but re-affirmed that the freedom is not an absolute right but may be subject to limited restrictions. This is another example of a potentially divisive issue being resolved in accordance with the rule of law.

8. The second target was to ensure that our legal services met the reasonable expectations of our clients, namely the Government bureaux and departments. I am pleased to report that we have been able to meet over 98% of our performance pledges in the past year.

9. Our third target was to ensure that there is continuous improvement to the legal system. As Honourable Members will appreciate, the education of future members of the legal profession is of crucial importance to the success of our legal system. The Department of Justice have actively participated in the establishment and work of the Steering Committee on the Review of Legal Education and Training, which is chaired by the Acting Solicitor General. I would like to take this opportunity to thank the Bar Association, the Law Society, the two law faculties and other members of the Steering Committee for their invaluable assistance in this project. I would also welcome further discussion of the project by members of this Panel. Copies of the Consultation Paper have been supplied to the Chairman and Secretary of the Panel.

10. Other initiatives to improve the legal system included introducing six relevant bills into this Council during the last session. Of these, five were passed and the remaining one lapsed. The first edition of the Chinese-English Glossary of Legal Terms was published last December. The legal profession and members of the public should find this, and the English-Chinese Glossary published earlier, helpful tools in legal research and education.

Key Results Areas

11. I now turn to my Department's six Key Results Areas. I am glad to say that in the past year, we have continued to produce good results in all six areas:

- mutual understanding of the two legal systems was further fostered: a second mock trial was staged and a Pilot Scheme to provide common law training to Mainland officials was successfully launched;
- Hong Kong's status as an international business and arbitration centre has been strengthened: legislation to provide for the enforcement in Hong Kong of arbitral awards made in the Mainland and Taiwan was enacted;
- we have strengthened our ability to fight computer crime and other white collar crimes by developing specialist teams of prosecutors;
- we continued to advise on human rights reports for United Nations treaty monitoring bodies, and to attend the related hearings;
- bilingualism in the law has been further developed through the publication of a Chinese-English Glossary of Legal Terms; through the work of the Committee on Bilingual Legal System which is chaired by me; and through the production of bilingual court documents, government franchises, contracts and tender documents;
- we have assisted in the negotiation of international agreements, including air services agreements, visa abolition agreements, and mutual legal assistance agreements; and
- we have provided legal advice for major government projects, including Disneyland, the sale of shares in MTRC, and the Securities and Futures White Bill.

12. In the context of the 1999 Policy Objective, my Department announced 13 new commitments. Adding the 12 outstanding pledges made since 1994, the Department of Justice is accountable for 25 pledges. Of these:

- we have completed 15;
- we are on schedule on 4;
- 4 are under review; and
- we are endeavouring to speed up the progress on the 2 pledges that have fallen behind schedule.

13. The 15 pledges that we have fulfilled are as follows –

- to establish a cross-divisional specialist team (the Basic Law Litigation Committee) and to conduct comparative constitutional studies on various topics under the Basic Law;
- to develop expertise in respect of legislative powers, procedures and practices under the Basic Law by appointing the Legal Advisor (Legislative Affairs) in September 1999;
- to present reports to and attend the relevant hearings of the United Nations human rights treaties monitoring bodies under the International Covenant on Civil and Political Rights (in November 1999) and the Convention Against Torture (in May 2000);
- to conduct the second mock trial in Guangzhou in May 2000;
- to launch the first round of training 12 Mainland officials common law;
- to arrange Hong Kong's participation in the Hague Conference on Private International Law;
- to identify and pursue three areas of civil law, namely, recognition of grants of probate, enforcement of maintenance orders and child

adoption, in which Hong Kong may benefit from international co-operation;

- to negotiate new bilateral agreements (10 in total) on mutual legal assistance, surrender of fugitive offenders, and transfer of sentenced persons;
- to publish the first edition of the Chinese-English Glossary of Legal Terms;
- to review the setting up of a specialised team for inquiries into market misconduct following the demutualisation of the Stock Exchange and Futures Exchange;
- to set up the Computer Crime Team;
- to strengthen the existing specialist teams for prosecution of white collar crime;
- to produce and screen new series of 12-episode legal docu-dramas (in April till July 2000), and to publish a booklet “Victim of Crime Charter” setting out the rights and duties of victims of crime; and
- to prepare a report of the Committee on Bilingual Legal System.

14. The 4 pledges that are on schedule are our pledges –

- to develop general awareness of the Basic Law issues by preparing Information Notes on the multifarious aspects of the Basic Law;
- to provide the second round of the training in the Common Law for Mainland lawyers;
- to present report to and attend hearing of the United Nations human rights treaties monitoring body under the International Covenant on Economic, Social and Cultural Rights (in April/May 2001);

- to draft, vet and advise on the Chinese versions of contracts, undertakings, tender documents, public franchises and other legal documents for the Government.

15. The 4 targets that are under review are –

- to identify suitable ordinances with a view to re-drafting them in plain and user-friendly legal language;
- to assess the scope of the work involved in a review of the existing legislation and to draw up a work plan to identify outdated and unclear provisions;
- to set up a special team to redraft the provisions in plain and modern language; and
- to complete the drafting of adaptation bills.

16. We are behind schedule on 2 pledges. The first one concerns the obtaining of the necessary authorisation from the Central People's Government for the negotiation of bilateral agreements on reciprocal enforcement of judgments. However, I am still optimistic that progress will soon be made in this respect. The other relates to the production of an educational video on the law-making process. I am pleased to say that the production is likely to be completed by the end of this year.

Looking Ahead

17. In the next 12 months, we will continue to press ahead with our work in all six Key Results Areas.

New Initiatives

18. In addition, we will implement nine initiatives.

19. In relation to the work of the Legal Policy Division, we will:

- consider how to take forward the comprehensive review of legal education;
- promote knowledge within the Civil Service on the application of the Basic Law and the new constitutional order; and
- provide further reports under international human rights treaties.

20. In relation to the work of the International Law Division, we will increase Hong Kong's capacity to receive and render legal co-operation in criminal matters relating to the surrender of fugitive offenders, criminal mutual legal assistance and the transfer of sentenced persons.

21. In relation to the work of the Civil Division, we will, following the enactment of the proposed Securities and Futures Bill, develop a specialised team for inquiries into market misconduct.

22. In relation to the work of the Prosecutions Division, we will:

- put in place six measures aimed at enhancing the performance of departmental prosecutors;
- prepare a set of standard forms and precedents for proceedings in the Court of Final Appeals in criminal matters; and
- produce a new Prosecutions Manual to assist prosecutors and law enforcement personnel in the discharge of their duties.

23. In relation to the work of the Administration and Development Division, we will enhance the Work Management System in order to improve efficiency.

Impact of China's accession to WTO

24. Madam Chairman, before I conclude, I wish to say a few words about the impact of China's imminent accession to the WTO on legal services in Hong Kong.

25. Given Hong Kong's competitive edge in service industries, we should benefit considerably from the Mainland's liberalisation of its huge services market. Market liberalisation will bring about, amongst other things, immense business and trade opportunities. We can benefit from Hong Kong's proximity to the Mainland, our knowledge and experience of the Mainland market, our historical and cultural ties, our world-class business and financial services as well as our excellent infrastructure. Legal practitioners in Hong Kong, in particular, will have great opportunities to participate directly in the economic development of the Mainland.

26. My Department has not been slow in assisting the legal profession to identify relevant issues, and in liaising with the authorities concerned, with a view to working out satisfactory practical arrangements. With this objective in mind, a special working group was formed in January this year. This group includes representatives of the Law Society and the Bar Association. They meet regularly and their views and recommendations are related to the relevant authorities. I am pleased to report that the Ministry of Justice has recently announced four items of good news:

- the restrictions on the number and locality of foreign law offices that may be established on the Mainland will be lifted;
- Hong Kong lawyers will be allowed to be employed by Mainland law firms to practise Hong Kong law and, upon receiving appropriate training, will be permitted to enter into partnership with their Mainland counterparts;
- Hong Kong residents will be eligible to sit for the PRC lawyers qualification examinations after completing recognised law courses; and

- the Bar Association will be permitted to set up liaison offices in Beijing, Shanghai and Guangzhou to provide services on the laws of Hong Kong.

27. These new developments are beneficial both to Hong Kong lawyers, and to the two legal systems, which will benefit from increased interaction. My Department will continue to work closely with the legal professions in Hong Kong and on the Mainland to work out how best these policies can be implemented.

Conclusion

28. In the year to come, my Department will continue to be extremely busy. The issues that I have highlighted today form only a small part of our work. The vast bulk of our work consists of the daily advice work, prosecutions, civil litigation and drafting. Our legal services will need to keep pace with ever changing demands and to conform with the new constitutional order. We remain committed to upholding the rule of law and ensuring that the Basic Law is fully implemented under the principle of “one country, two systems”. My colleagues in the Department of Justice and I will continue to strive our utmost to provide our services to the government in the best interests of the people of Hong Kong.

29. I am now happy to answer questions that Honourable Members may wish to raise.

- end -

#25301v5