

LegCo Panel on Administration of Justice and Legal Services 2006-07 Policy Initiatives of the Department of Justice

Introduction

The 2006-07 Policy Agenda lists the Government's new and ongoing initiatives of the Second Term Government of the Hong Kong Special Administrative Region for the period from July 2006 to June 2007. This paper describes the initiatives that relate to the Department of Justice.

Effective Governance

2. We have one new initiative and ten ongoing initiatives under the heading of "Effective Governance". The new initiative is to –

- Promote legislation to implement the arrangement for the reciprocal enforcement of judgments in specific commercial matters with the Mainland.

3. On 14 July 2006, the Secretary for Justice signed an Arrangement with the Vice President of the Supreme People's Court which paves the way for a limited form of reciprocal enforcement of judgments. When implemented, Hong Kong judgments at District Court level or higher will be enforceable in the Mainland if the following criteria are, among other things, satisfied –

- (1) the judgment is a money judgment arising from a commercial contract; and
- (2) the parties to the contract have expressly provided for a Mainland Court or a HKSAR court to have exclusive jurisdiction over disputes.

Under the Arrangement, judgments given by certain Mainland courts will be enforceable in Hong Kong if similar criteria are satisfied. The courts in question are those at the Intermediate People's Court level or higher, plus a small number of Basic Level People's Courts that are designated to handle

foreign-related commercial cases.

4. The Department of Justice proposes to introduce a Bill to implement the Arrangement during the second half of this session.

5. The ten ongoing initiatives under the heading of “Effective Governance” are as follows.

- Continuing to develop the standards of appellate advocacy and preparation in criminal cases through the compilation of a Criminal Appeals Manual, and through training in the preparation of appeals.
- Continuing to enhance the quality of criminal justice through regular reviews of the disclosure arrangements of the law enforcement agencies in relation to material which requires to be revealed to the defence to ensure the fair and proper conduct of criminal cases.
- Liaising with our justice partners to enhance the quality of criminal justice and taking of measures to secure a better deal for victims of crime and witnesses.
- Continuing to liaise with the International Association of Prosecutors in order to facilitate its work in the Asia/Pacific Region and promote co-operation amongst prosecutors at the global level in the combat of crime.
- Promoting understanding of the rule of law in and outside Hong Kong and considering reforms to improve the legal system.
- Promoting transparency in the area of public prosecutions and implementing practical steps to avoid miscarriages of justice.

- Continuing to enhance the law drafting skill of law draftsmen through an in-house mentorship programme and enrich their drafting experience through more cross-fertilisation with other common law jurisdictions.
- Continuing the Bilingual Law Information System (“BLIS”) to provide easy access to our bilingual laws of Hong Kong and improving the standard of government lawyers in respect of bilingualism in law.
- Continuing to facilitate the implementation of “One Country, Two Systems” and to demonstrate its success; and to facilitate the promotion of public awareness and understanding of the Basic Law.
- Continuing discussions with the Mainland and other jurisdictions on bilateral cooperation relating to Mutual Legal Assistance in Criminal Matters, Surrender of Fugitive Offenders, and Transfer of Sentenced Persons.

6. The Prosecutions Division will compile a Criminal Appeals Manual, which will cover the practice and procedure of appeals in criminal cases and provide proforma documents and precedents on common topics and issues. The standards of appellate advocacy and preparation in criminal cases will also be developed through practical training, in-house seminars and the provision of reference material for the preparation and presentation of criminal appeals.

7. The rules relating to the disclosure to a defendant of unused materials obtained by law enforcement agencies have developed in recent years. Prosecutions Division will advise the law enforcement agencies on the application of new guidelines for the disclosure to the defence of relevant material, and will keep disclosure arrangements under regular review in the interests of fair trials.

8. The Prosecutions Division will continue to take steps to ensure that victims of crime and witnesses receive the highest levels of service at all stages of criminal proceedings, and will implement measures to expedite the trial of cases involving vulnerable witnesses.

9. The Prosecutions Division will strengthen liaison with the International Association of Prosecutors by –

- liaising closely with prosecutors and law enforcers in other jurisdictions to develop effective strategies to prosecute all types of crime more effectively
- working closely with the Asia Crime Prevention Foundation in the formulation of regional anti-crime strategies
- co-operating with our counterparts to promote high standards and principles of criminal justice.
- hosting the annual conference of the International Association of Prosecutors in Hong Kong in September 2007.

10. The promotion of the rule of law will continue to be achieved in numerous ways – such as through articles, speaking engagements, conference attendances and briefings, both in Hong Kong and elsewhere. The department's ongoing work in considering ways to improve the legal system will include participating in the Chief Justice's Working Party on solicitors' rights of audience, and considering the implementation of Law Reform Commission proposals concerning privity of contract. The Commission published its report on that topic in September 2005.

11. As a responsible prosecuting authority, we recognise the importance of explaining our work to the community. Through the publications of the Prosecutions Division and a policy of openness, transparency will continue to be promoted in relation to the system of public prosecutions. We will also liaise with the law enforcement agencies to identify areas where

miscarriages of justice might arise, and will pursue initiatives to prevent these developing.

12. The Law Drafting Division will continue to enrich the drafting experience of legislative draftsmen through cross-fertilisation with overseas legislative draftsmen and will continue to implement the in-house Mentorship Programme to provide effective training to non-directorate legislative draftsmen.

13. The Law Drafting Division will continue to maintain BLIS in order to provide free and ready access to the statutes of Hong Kong, and will continue enhancing the linguistic competence of government lawyers in a bilingual legal environment.

14. The Department of Justice will continue to provide legal advice to all Government bureaux and departments to ensure that their policies and legislative initiatives comply with the Basic Law. It will also provide legal assistance whenever any of those policies or initiatives are challenged in court. This advice and assistance will help to ensure that the concept of “One Country, Two Systems” is faithfully implemented. The department will also continue to assist in promoting public awareness and understanding of the Basic Law by participating in the publication of the Basic Law Bulletin and in the work of the Basic Law Promotion Steering Committee, and through speeches, briefings and other activities.

15. The Department of Justice will continue its work in relation to bilateral cooperation on legal issues. The arrangement on transfer of sentenced persons which was signed with the Macau Special Administrative Region in May 2005, entered into force on 1 December 2005. Four bilateral agreements with other jurisdictions have been signed in 2006. A further seven agreements have been concluded and will shortly be signed by the parties. Implementing legislation will be prepared in due course.

Vibrant Economy

16. We have six ongoing initiatives under the heading of “Vibrant Economy”.

- Assisting in the development of Hong Kong as a regional centre for legal services and dispute resolution.
- Continuing to review the law of arbitration with a view to making it more user-friendly and thereby attracting more international arbitrations to Hong Kong.
- Overseeing socio-legal research being conducted by consultants into the supply of, and demand for, legal services in the community.
- Contributing to the development of a legal services information website.
- Facilitating further discussions with Mainland authorities on legal co-operation; implementing legal co-operation agreements with individual Mainland Justice Department or Justice Bureau; enhancing exchanges between Hong Kong legal profession and the Mainland counterparts; and promoting greater understanding among Hong Kong lawyers in business opportunities in the Mainland.
- Exploring with Hong Kong legal profession, and discussing and concluding with Mainland authorities, on further market access opportunities for legal services under the Closer Economic Partnership Arrangement (“CEPA”).

17. The development of Hong Kong as a regional centre for legal services and dispute resolution will continue to be promoted through speeches, articles and briefings of visiting delegations, as well as by the implementation of the Arrangement for the reciprocal enforcement of judgments in specific

commercial matters with the Mainland. We will also conduct a consultation exercise in respect of the Hague Convention on Choice of Court Agreements which, if applied to Hong Kong, will make similar provision for choice of courts and reciprocal enforcement of judgments with other parties to the Convention. We will also consider how mediation, which is a form of alternative dispute resolution rapidly developing in other jurisdictions, may be facilitated in Hong Kong.

18. The review of the law of arbitration is being undertaken with a view to making it more user-friendly and thereby attract more international arbitrations to Hong Kong. At present, the Arbitration Ordinance contains two regimes, one for international arbitrations (based on the UNCITRAL Model Law) and one for domestic arbitrations. An unofficial report, prepared by the Committee on Hong Kong Arbitration Law, has proposed that the law should be simplified by applying the UNCITRAL Model Law to all types of arbitration. Following consultation with the AJLS Panel, a working group was established by the Department of Justice in September 2005 to consider and take forward this reform proposal. Representatives of the legal profession, arbitration experts and others have been appointed to the working group and meet regularly to prepare a draft Bill and consultation paper.

19. In July 2004, the Department of Justice commissioned consultants to undertake a two-year study into the supply of, and demand for, legal services in the community. The results of this socio-legal research can help in shaping future policies in respect of legal services and dispute resolution. The department has established an advisory committee, consisting of members of the legal profession, legislators, academics and others, which will monitor the work of the consultants. The study is progressing well and a report is expected to be published early next year.

20. In March 2004, the Department of Justice commissioned experts at the University of Hong Kong to establish a bilingual legal information website. This will enable members of the community to have free access, via the Internet, to user-friendly information in respect of legal problems that commonly arise. It will also help them to find legal advisers, and to obtain information about

financial help and the costs of legal services. The website is now operational, although not yet fully completed. Its address is <www.hkcljc.org>. The department will continue to monitor the development of this website, which will be completed in the first half of 2007.

21. The department will continue to develop co-operation, mutual legal understanding and business opportunities in respect of the Mainland by implementing legal co-operation agreements between itself and justice departments and bureaux in various Mainland provinces and cities; by facilitating exchanges between members of the Hong Kong legal profession and their Mainland counterparts; and by promoting greater understanding among Hong Kong lawyers of the business opportunities in the Mainland.

22. With regard to legal services being provided in the Mainland, the Department of Justice will build upon the foundations laid by the three rounds of CEPA and will explore further opportunities in the Mainland for local legal professionals.

Caring and Just Society

23. We have one new initiative under the heading of “Caring and Just Society”, namely we will –

- Promote legislation to implement the Law Reform Commission’s Report on the Rules For Determining Domicile.

24. In April 2005, the Law Reform Commission published a report entitled “Rules for Determining Domicile”. The report notes that domicile is a complex and confusing area of the common law and recommends the introduction of several legislative amendments to simplify the ascertainment of a person’s domicile.

25. The Commission considers that, for practical purposes, the recommendations would not change the domicile of many people, with the

exception that a married woman's domicile would no longer depend on that of her husband. The report also recommends a major change in the domicile of children so that this will no longer be tied to the parents' domicile. There is also a recommendation that the concept of domicile of origin be abolished to make the domiciliary rules more in tune with modern conditions. In an age of greatly increased mobility, there is less justification for a special bias in favour of a person's first domicile.

26. The Department of Justice has assumed policy responsibility for implementing the report and circulated a consultation paper and draft bill in April 2006. The comments received are being taken into account in the further drafting of the Domicile Bill 2007.

Enlightened People with a Rich Culture

27. We have one ongoing initiative under the heading of "Enlightened People with a Rich Culture", which is participating in the work of the Standing Committee on Legal Education and Training. The Standing Committee is overseeing important changes in respect of legal education, including the development of Hong Kong's third law school and the establishment of conversion examinations for law graduates who have not passed all subjects that are required for entry to the PCLL. A representative of the Department of Justice is a member of the Standing Committee, which is determined to ensure that the momentum of reform continues in the years ahead.

Comments

28. The Department of Justice welcomes comments by members of the Panel on these initiatives and will continue to co-operate with the Panel as it takes the initiatives forward.

Department of Justice
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