

For Information

LegCo Panel on Administration of Justice and Legal Services 2009-10 Policy Initiatives of the Department of Justice

Introduction

This paper describes the policy initiatives of the Department of Justice in the year 2009-10.

Work of the Department of Justice

2. The Department of Justice's duties and responsibilities cover a wide range of activities and we expect the breadth and weight of the Department's workload to continue in the coming year. We will continue to provide legal services in respect of prosecutions and civil litigation, give legal advice to government bureaux and departments, draft legislation, promote Bills for which the Secretary for Justice has policy responsibility, handle legal cooperation with other jurisdictions, promote the understanding of the rule of law, amongst other matters.

New Initiatives

3. In 2009-10, we will pursue the following two new initiatives –
- (a) Enhance legal cooperation in civil and commercial matters between Hong Kong and the Mainland, to facilitate the resolution of civil and commercial disputes in a more convenient and cost-effective manner. Taking advantage of our status as one of the leading arbitration centres in Asia, we will seek to improve our capacity to serve as a venue for resolution of Mainland-related commercial disputes, in particular disputes involving foreign investment enterprises and other Mainland legal persons. We will monitor the three existing Arrangements on mutual legal assistance with the Mainland with a view to improving the enforcement mechanism where so requires. We will also review the scope of these legal arrangements in order to

address issues that affect the public at large such as the legal problems arising from the breakdown of cross-border marriages.

- (b) Enhance the accessibility of legislation through improved design and greater clarity: We are committed to making the law as accessible as possible to those who are subject to it. This involves not only ensuring that the text of the law is publicly available but also that the text is so presented as to give the reader the greatest possible opportunity of understanding it. We will do this not only by continuing to use short sentences and simplified language but also by adopting best practices in document design. To this end we will make changes to the format and visual design of legislation to render it more user-friendly. By this means we aim to assist readers to navigate their way through legislation and arrive at an understanding of it.

On-going Initiatives

4. In the coming year, we will continue to pursue the following on-going initiatives.

Developing the Infrastructure for Economic Growth

5. We have three on-going initiatives in pursuance of developing the infrastructure for Economic Growth. We are –

- Exploring further opportunities for the legal profession to tap into the Mainland legal services under CEPA and strengthening co-operation between the legal professions in Hong Kong and the Mainland.
- Promoting the development of Hong Kong as a regional centre for legal services and dispute resolution
- Promoting legislation to reform the law of Arbitration to provide the unification of legal regimes for domestic and international arbitration and make both the law and the process more user-friendly.

6. Steady progress have been made on the above fronts. In respect of strengthening the co-operation between the legal professions in Hong Kong and the Mainland, we have secured new commitments under the CEPA to facilitate Hong Kong lawyers who have passed the National Judicial Examination to practise in the Mainland and for Hong Kong law firms to enter into association with law firms in Guangdong under relaxed conditions. These concessions have been implemented from the beginning of this month. We have also discussed with the legal profession on the Implementation of the Plan for the Reform and Development of the Pearl River Delta (2008-2020) to identify ways to strengthen their presence and development in the Region.

7. The department of Justice is determined to pursue the policy of promoting Hong Kong as a regional centre for legal services and dispute resolution. We are also working closely with arbitration and mediation institutions to promote the use of, and develop our capability in, alternative dispute resolution. In this connection, the Hong Kong International Arbitration Centre has reported a record number of arbitration cases handled in 2008. At the same time, the Asia Office of the Secretariat of the International Court of Arbitration of the International Chamber of Commerce has seen gradual increase in its cases since its establishment in Hong Kong in late 2008.

8. The Arbitration Bill introduced into the Legislative Council on 8 July 2009 seeks to update our arbitration legislation and make it more user-friendly; the new arbitration law will make Hong Kong an even more attractive place to conduct arbitration. A Bills Committee has been set up to scrutinise the Bill. The Department of Justice will do its best to assist the work of the Committee in the hope that the new law on arbitration may be enacted within the current legislative session.

Investing for a Caring Society

9. On mediation, the Working Group on Mediation, a cross-sector group established by the Secretary for Justice in 2008 following the 2007 Policy Address, is mapping out how mediation can be more effectively and extensively applied in both commercial disputes and at the community level. In the past year, the Working Group worked closely

with its three Sub-groups and considered issues that included the availability of suitable venues for mediation in the community, mediation courses offered by law schools, promotion of mediation to the commercial sector, a draft Hong Kong Mediation Code, options for enforcement of the Code, standards for accrediting mediators and the need for legislation on mediation. A “Mediate First” briefing reception to promote awareness and use of mediation in the commerce sector was held in May this year with the launch of the mediate first website, and the distribution of a mediation booklet. On venue for community mediation, a pilot project is in progress by which venues at the Henry G. Leong Yaumatei Community Centre and the Leighton Hill Community Hall are available for mediation during specified periods. Mediators who conduct mediation on pro bono basis may use the venues free of charge. A draft code of conduct for mediators called the Hong Kong Mediation Code was prepared. Mediation service providers were consulted in June on the draft code which was well received. We briefed the AJLS Panel meeting in June this year on the latest developments in the work by the Working Group and we expect the Working Group to complete its report this December for public consultation in early 2010.

Optimising Our Demographic Structure and Attracting Talent

10. The Department of Justice’s on-going initiative under this heading relates to the work of the Standing Committee on Legal Education and Training. We continue to participate in the work of the Standing Committee to keep under review and make recommendations on the system and provision of vocational training of prospective legal practitioners.

Developing Democracy and Enhancing Governance

11. We are –

- Furthering the standards of advocacy and preparation in criminal cases through the provision of comprehensive training arrangements for prosecutors: The Prosecutions Division will train its new recruits in all aspects of prosecutorial responsibility, and ensure that current prosecutors are kept abreast of latest

developments and techniques through a comprehensive in-house training agenda which, where practicable, will be shared with the legal profession. Measures by the profession to train fiat counsel to conduct cases more effectively will be supported, and a seminar for new fiat counsel will be arranged to explain what is expected of those who wish to prosecute at the summary level.

- Enhancing the quality of criminal justice by promoting transparency in public prosecutions, liaising closely with justice partners (including the Police, the Independent Commission Against Corruption and the departmental prosecutors) and reviewing the disclosure arrangements of law enforcement agencies: Apart from applying best practice in the combat of traditional crime, every effort will be made to enhance the capacity to prosecute the new and more sophisticated types of offending. Close liaison will be maintained with local law enforcers at all levels, and prosecutors will give their full support to global initiatives to counter transnational organised crime. Every effort will be made to promote public confidence through decision-making which is principled and transparent, through the proper treatment of victims and witnesses, and through the conduct of effective prosecutions. The pursuit of high standards of criminal justice will remain a priority for all of those engaged in public prosecutions
- Promoting co-operation amongst prosecutors at the global level by actively participating in the work of the International Association of Prosecutors
- Continuing to enhance the skills of law drafting counsel and assist them in carrying out their work by continuing the in-house mentorship programme, conducting in-house workshops and seminars, up-dating in-house drafting guidelines, developing standard provisions, consolidating professional and operational advice and strengthening the level of editorial support.

Other Initiatives

12. Apart from the above, we are helping the legal profession to adapt to the changing legal landscape by promoting relevant legislation. The Legal Practitioners (Amendment) Bill 2009 was introduced into the Legislative Council on 24 June 2009 and is now being scrutinised by the Bills Committee. The Bill seeks to grant higher rights of audience to solicitors who meet the requirements stipulated in the Bill. We are also working on the draft legislation in respect of limited liability partnerships for solicitors' practices and we expect to introduce the relevant Bill into the Legislative Council in this legislative session.

13. The Department of Justice welcomes comments by members of the Panel on the above initiatives. We will continue to work with the Panel and the relevant Bills Committees to take our initiatives forward.

Department of Justice
October 2009