

For Information

LegCo Panel on Administration of Justice and Legal Services 2010-11 Policy Initiatives of the Department of Justice

Introduction

This paper describes the policy initiatives of the Department of Justice in the year 2010-11.

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 carries policy responsibility, handle legal cooperation with other jurisdictions, and seek to implement recommendations put forward by the Working Group on Mediation, amongst other matters.

New Initiatives

3. In 2010-11, we will pursue the following two new initiatives –
- Enhance legal cooperation with Guangdong pursuant to the Framework Agreement on Hong Kong /Guangdong Co-operation.

We will reinforce the existing communication mechanism in legal matters with and have commenced initial discussion with the Guangdong side in this regard. The Guangdong authorities have reaffirmed their intention to strengthen communication mechanism with the DoJ by enhancing cooperation on legislative affairs which would cover exchange of information of laws and regulations as well as conducting meetings and /or seminars to discuss specific legal

issues. We will explore the possibility of securing new opportunities for our lawyers such as introducing pilot schemes to enable Hong Kong lawyers to have better access to the legal services market in Guangdong. Furthermore, we support the co-operation between China appointed attesting officers in Hong Kong and Mainland notaries. In relation to Guangdong, we will maintain regular contacts with the Association of China Appointed Attesting Officers and the proper authorities in Guangdong with a view to providing the necessary assistance for the purpose of facilitating the service of notarised documents between the two sides.

- Introduce a Bill to provide for the establishment of an electronic database of Hong Kong legislation and provide for the publication of laws in a consolidated form with a legal status in both electronic and hard copies.

Following the obtaining of this Panel's support for the proposed electronic database in April 2010, the Finance Committee of the Legislative Council granted funding approval for its development in May 2010. Both the Bar Association and the Law Society have provided positive feedback on this proposal. The Bill will be gazetted on 15 October 2010.

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. In pursuance of developing the infrastructure for Economic Growth, we are –

- Actively promoting Hong Kong legal services in the Mainland 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

- Enhancing legal co-operation in civil and commercial matters, including family law matters, between Hong Kong and the Mainland, to facilitate the resolution of civil and commercial disputes in a more convenient and cost-effective manner.

We will also be promoting the new Arbitration Ordinance to users and practitioners of arbitration.

6. Steady progress has been made on the above fronts. In respect of strengthening the co-operation between the legal professions in Hong Kong and the Mainland, we work closely with the legal professional bodies in Hong Kong, namely the Law Society of Hong Kong and the Hong Kong Bar Association in promoting Hong Kong's legal services in the Mainland. These professional bodies are also encouraged to strengthen their ties and cooperation with their Mainland counterparts. In this connection, the DoJ and the legal professional bodies have participated in events organized by the Shenzhen Justice Bureau annually to promote the concept of laws as well as law among the general public (collectively referred to as the “普法活動”). The Department and the professional bodies took part regularly in the Lawyers Forum (律師論壇) held by the All China Lawyers Association which serves as a platform for lawyers from the Mainland as well as those from Hong Kong, Macao and Taiwan to share experience and discuss new development and cooperation initiatives.

7. The Department also takes proactive measures to promote legal cooperation between Hong Kong and the Mainland. In July 2010, the department and the two legal Professional bodies jointly co-organized the “Hong Kong Legal Services Forum” in Shanghai, a thematic event held as part of Hong Kong's participation in the Shanghai Expo 2010. Other co-organizers included the Hong Kong Trade Development Council, the Hong Kong International Arbitration Centre and the Asia Office of the International Court of Arbitration of the International Chamber of Commerce. The Forum showcased the strengths and the latest development of the Hong Kong legal and dispute resolution services to the corporate and legal sectors of the Mainland.

8. The successful holding of the Forum has been instrumental in helping the legal professional bodies to establish, renew and strengthen their contact with the Mainland counterparts and enterprises, particularly those in the Changjiang River Delta and to explore ways for further cooperation. In the coming year, the Department will continue to promote Hong Kong as a legal services and dispute resolution centre in conjunction with legal and arbitration bodies in Hong Kong. More efforts may be given to promote the legal services among legal professionals and enterprises in Guangdong where there is a high concentration of Hong Kong businesses.

9. The Department of Justice has been making vigorous efforts to promote Hong Kong as a regional centre for legal services and dispute resolution. Insofar as arbitration is concerned, we continue to see a rise in the number of cases conducted in Hong Kong. In 2009, HKIAC handled a total of 429 arbitration cases, representing an increase of 15% on top of the record number achieved in 2008. As at June 2009, the Asian Office of the ICCICA has already handled more than 150 cases since its opening in Hong Kong in November 2008.

10. In respect of enhancing legal cooperation with the Mainland on Civil and Commercial matters, in the coming year, we will continue our efforts and we hope to discuss with the Supreme People's Court in the Mainland on a possible arrangement for mutual recognition and enforcement of matrimonial judgments. We acknowledge that the differences in the two legal systems will present challenges to both bodies. The Department will work through these challenges and consult the Panel and the stakeholders as and when necessary.

11. On the legislative front, the Bills Committee has made very good progress in scrutinising the Arbitration Bill which was introduced into the Legislative Council in July 2009. We anticipate that the Bill will be enacted within the current legislative session. Following the enactment of the Bill, promotional activities will be organised and the Department of Justice will work closely with arbitration institutions in Hong Kong to promote the Bill.

12. Since the new regime is based upon the Model Law of the United Nations Commission on International Trade Law which is familiar to the international business community, we believe that the new Ordinance will make Hong Kong a more attractive place to conduct arbitration.

13. Apart from the above, the Legal Practitioners (Amendment) Bill 2010 was introduced into the Legislative Council in June 2010 and it is now being scrutinised by the Bills Committee. The Bill seeks to offer limited liability partnership (LLP) as an alternative business model for solicitors' firms and to provide protection for innocent partners of the firm. LLP provides positive incentive for small solicitors' firms to merge their practices into bigger firms in the form of LLP, which will enable them to offer more comprehensive and quality services to their clients. In addition, the introduction of LLP is expected to attract more foreign law firms to establish practice in Hong Kong in the form of LLP, which will enhance Hong Kong's status as a regional centre for legal services.

14. The Matrimonial Proceedings and Property (Amendment) Bill 2010 introduced into the Legislative Council in July 2010 is now being scrutinised by the Bills Committee. The Bill sets out, among other things, the provisions for applications for financial and ancillary relief by parties to divorce proceedings. The local court's existing power to make an order for financial relief is conditioned on the grant of a decree absolute by a Hong Kong court. This effectively prevents a party who has obtained his/her divorce from a jurisdiction outside Hong Kong to apply to a Hong Kong court for financial relief as the court can no longer grant any decree absolute. In some cases, this may cause hardship to a party who has not been awarded with any financial provisions or insufficient provisions have been made for the party concerned and/ or the children of the family by a foreign court. The Bill seeks to address the above problems and if enacted will alleviate some of the adverse consequences in the event of inadequate financial provisions having been made by a foreign court to a party who has a close connection with Hong Kong. We look forward to the early enactment of the Bill.

Investing for a Caring Society

15. On mediation, the Working Group on Mediation chaired by the Secretary for Justice published its Report containing 48 recommendations for public consultation in February this year. Over 80 submissions were received. Subject to modifications in the light of the public feedback, we will seek to implement the recommendations to promote the wider use of mediation in Hong Kong.

Optimising Our Demographic Structure and Attracting Talent

16. 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

17. We are –

- Improving the quality and efficiency of legal advice, the preparation in criminal cases and the standards of advocacy through comprehensive training programmes for prosecutors and making better use of resources
- Enhancing the quality of criminal justice by promoting transparency in public prosecutions and improving our accountability to the community we serve,
- Promoting co-operation amongst prosecutors at the regional and global level by actively participating in the work of the various international prosecutors organisations

18. In the early part of 2010, the Prosecutions Division developed and implemented an initiative designed to enhance the Division's ability to provide legal advice. This new advisory system, known as FAST,

improved the Division's response time to the needs of its clients and achieves a more efficient use of staff resources in the processing of advices. We will strengthen the training and development programme for new prosecutors, and organise workshops on essential skills in trial advocacy and the criminal law and practice generally for prosecutors at all levels. We will continue to organise an induction seminar for new fiat counsel and work with the profession to train young lawyers to conduct cases more effectively.

19. The Prosecutions Division is also enhancing the complaints handling system to deal with complaints and enquiries from victims and the general public in relation to prosecution decisions and results. We will continue to pursue a policy of transparency and ensure that prosecution decisions are made fairly and in accordance with established prosecution policy.

20. In relation to co-operation amongst prosecutors, we will continue to strengthen our links with our counterparts both at the regional and international level. Counsel in the Prosecutions Division will actively participate both as speakers and participants in a whole range of international conferences and workshops.

Other Initiatives

21. Apart from the above, we intend to introduce legislative amendments to abolish the existing requirement under the Enduring Powers of Attorney Ordinance (Cap 501) that an enduring power of attorney must be signed before a medical practitioner. We are now working on a draft bill and expect to consult the Panel on the proposals in the current legislative session.

22. 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 forward the Department's initiatives.

Department of Justice
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