

**For discussion on
22 January 2013**

**Legislative Council Panel on
Administration of Justice and Legal Services**

**2013 Policy Address
Policy Initiatives of
Department of Justice**

Our Vision

The rule of law is a vital element in Hong Kong's success and is an essential quality for any democratic society. The Basic Law has provided a solid platform for the development of the rule of law in Hong Kong. In accordance with the Basic Law, the Department of Justice ("DoJ") is committed to do our utmost to protect and preserve the rule of law, including the independence of the Judiciary, improve our legal system and enhance our legal infrastructure. This is achieved through, *inter alia* –

- providing legal advice to government bureaux and departments and representing Government in courts, in accordance with the provisions of the Basic Law (including its provisions safeguarding the rule of law and human rights);
- providing a modern first class prosecution service by seeking to achieve professional excellence in upholding the rule of law and ensuring that justice is done in an equal, fair and efficient manner;
- ensuring legislation that implements Government policy is completed on time and is readily accessible in terms of comprehensibility and publication; and
- enhancing the competitiveness of Hong Kong as a regional centre for legal services and dispute resolution in Asia-Pacific.

New Initiatives

2. In 2013, we will pursue a number of new initiatives.

(a) Actively liaise and work with Mainland Authorities and the legal profession and arbitration institutions in Hong Kong to facilitate Hong Kong legal and arbitration professionals to provide legal and arbitration services in (i) Qianhai, Shenzhen and (ii) Nansha, Guangdong

3. In September 2012, the State Council approved the Plan for the Development of Nansha New District of Guangzhou. The Plan contains provisions which seek to further develop co-operation with Hong Kong in legal and arbitration services and to improve the mode of association between Hong Kong and Mainland law firms.

4. As for Qianhai, the Approval of The State Council on “The Supporting Policies of the Development and Opening up of Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone of Shenzhen” promulgated in June 2012 stated clearly that pilot policies are adopted in Qianhai to step up closer co-operation between the Mainland and Hong Kong. The policies cover legal and arbitration affairs.

5. In 2012, the Shenzhen Court of International Arbitration was established. Its council consists of members from Hong Kong. Furthermore, one third of the arbitrators to be retained by the Court will be from other places including Hong Kong.

6. With these positive developments, there will be more opportunities available to the legal and arbitration professionals in Hong Kong. We will work with the relevant professional bodies and institutions to study and convey appropriate proposals to the Mainland authorities. The main objectives to be pursued include promoting the use of Hong Kong law in contracts concluded by enterprises conducting business in Qianhai and Nansha, the choice of Hong Kong as an ideal arbitration and dispute resolution venue for commercial disputes, and the implementation of the initiative to establish association in the form of partnership between Hong Kong and Mainland law firms.

7. Noting the differences between the legal systems and regulatory regimes of Hong Kong and Mainland, we will work closely with the relevant stakeholders in order to facilitate the implementation of liberalized measures in respect of legal and arbitration services by Hong Kong professionals and institutions in Qianhai and Nansha.

(b) Further foster the development of mediation services in Hong Kong

8. The DoJ has been promoting the development of mediation in Hong Kong. The Mediation Task Force set up in 2010 has satisfactorily completed its terms of reference, as marked by the organisation of a large scale mediation conference in May 2012, the enactment and coming into force of the Mediation Ordinance on 15 June 2012 and 1 January 2013 respectively, as well as the establishment of the Hong Kong Mediation Accreditation Association Limited (“HKMAAL”) in August 2012 as the single non-statutory industry-led body for accreditation and standard-setting for training in respect of mediators in Hong Kong.

9. To further foster the development of mediation in Hong Kong, the Secretary for Justice (“SJ”) has set up a new Steering Committee on Mediation (“Steering Committee”), which is chaired by himself and comprising members from different sectors of the community including legal professionals, medical practitioners, academics, administrators, social workers and insurers. The Steering Committee will be assisted by three Sub-committees (namely the Regulatory Framework Sub-committee, the Accreditation Sub-committee and the Public Education and Publicity Sub-committee) to deal with specific matters within their respective terms of reference.

10. With efforts of the Steering Committee, we will :

- (a) monitor the implementation of the Mediation Ordinance and keep in view its adequacy including the need for legislative provisions relating to the making of apologies for the purpose of enhancing settlement;
- (b) monitor the development of accreditation of mediators in Hong Kong and consider whether a statutory accreditation body should be set up;
- (c) take measures for the promotion and development of mediation, such as publicity measures and organisation of conferences and seminars; and
- (d) conduct relevant studies and researches relating to mediation.

(c) Create a favourable environment to facilitate legal, arbitration and mediation institutions to develop services in Hong Kong through the allocation of office space to them in the West Wing of the former Central Government Offices (“CGO”)

11. The Government will allocate some office space in the West Wing of the former CGO for use by law-related organisations to facilitate them to develop their services. The initiative is on top of the on-going measures set out in paragraphs 15 to 17 below. It will further enhance the competitiveness of Hong Kong as a regional centre for legal services and dispute resolution in Asia-Pacific.

(d) Enhance the capability and effectiveness of the prosecutions service in the conduct of criminal proceedings

12. We will implement or develop the following initiatives in the coming year to enhance the capability and effectiveness of our prosecutions service in the conduct of criminal proceedings :

- (a) reviewing and updating where necessary the “Statement of Prosecution Policy and Practice – Code for Prosecutors”, taking into account the latest developments of criminal jurisprudence and international trends, so that the code can better serve its function as the key document governing the conduct of prosecutions;
- (b) establishing coordinators or specific units for handling particular types of cases (e.g. human exploitation cases, legal costs cases, cybercrime cases) so as to enhance our attention and focus, and where necessary coordinate and develop policies, in handling such cases, and also allow for better development of expertise within the Division in such areas of laws, so that these cases can be handled more effectively and efficiently;
- (c) considering whether the criminal justice system should be reformed so that it can better meet the expectations of the community that it seeks to serve by identifying areas requiring further examination, and initiating discussions with members of the private legal profession and the Judiciary through the organization of conferences and discussions on various topics; and

- (d) enhancing and expanding our capability in the recovery of proceeds of crime, so that we can be more effective in disrupting the flow of illicit assets in and through the region, thereby deterring crime.

On-going Initiatives

13. In the coming year, we will continue to pursue various on-going initiatives in support of the Administration's overall agenda in various areas.

14. In relation to economic development, in the coming year, we will continue to –

- Strengthen Hong Kong's position as a regional centre for legal services and dispute resolution.
- Enhance legal co-operation in civil and commercial matters between Hong Kong and the Mainland, so as to facilitate the resolution of civil and commercial disputes in a more convenient and cost-effective manner.
- Enhance legal co-operation with Guangdong pursuant to the Framework Agreement on Hong Kong / Guangdong Co-operation.

15. In respect of the development of Hong Kong as a regional centre for legal services and dispute resolution, the new Asia Pacific Regional Office (Regional Office) of the Hague Conference on Private International Law ("Hague Conference"), a leading global intergovernmental organisation in the field of private international law which develops and services multilateral legal instruments on private international law responding to global needs¹, was established in Hong Kong in December 2012. The office is the Hague Conference's second regional office, in addition to its Latin American regional office in Buenos Aires. This constitutes a significant vote of confidence in Hong Kong's position both as a regional legal services centre and as a springboard for the Hague Conference to further develop its work and extend its influence in the region.

¹ There are now over 130 countries that are party to one or more of the Hague Conventions. China is a member of the Hague Conference and representatives from the Hong Kong Special Administrative Region participate in the work of the Hague Conference as members of the Chinese delegation.

16. On the arbitration front, the China International Economic and Trade Arbitration Commission (“CIETAC”), which handles a large number of international arbitration cases in the Mainland, established the CIETAC Hong Kong Arbitration Centre in Hong Kong in September 2012. The Centre is CIETAC’s first arbitration branch outside the Mainland. The Government has also made available substantial additional office space to the Hong Kong International Arbitration Centre to enhance its hearing capacity to cope with the increasing demand of arbitration services in Hong Kong.

17. In January 2013, an Arrangement was concluded with the Macao Special Administrative Region on reciprocal enforcement of arbitral awards. The Arrangement will give certainty to the enforceability of Macao arbitral awards in Hong Kong and *vice versa*. To implement the Arrangement, we will introduce amendments to the Arbitration Ordinance (Cap. 609) in the 2013 legislative session. We will also take the opportunity to work in collaboration with the arbitration sector to make further improvement to the Arbitration Ordinance.

18. As regards the further development of legal co-operation in civil and commercial matters with the Mainland, the Department continues to explore the possibility to conclude an arrangement on mutual recognition and enforcement of judgments in matrimonial matters. The Department is studying the international regime on co-operation on this subject and will continue to engage our Mainland counterparts to resolve legal issues. We will consult the Panel and the stakeholders on this subject in due course.

19. The Department also maintains regular contact with its counterparts under the Guangdong Framework Agreement on Hong Kong/Guangdong Co-operation. Both sides have been discussing the co-operation initiatives to be provided in Work Plan 2013. Such initiatives include the implementation of measures on legal services in Guangdong on a pilot basis under the framework of the Mainland and Hong Kong Closer Economic Partnership Agreement. We will also continue to encourage the development of closer co-operation between the stakeholders of both places pursuant to the Framework Agreement.

20. We showcased in September 2012 the strength of our legal and arbitration services in a Forum held in Guangzhou under the theme “Think Global, Think Hong Kong”. It was attended by about 700 participants from the legal and business sectors in the Mainland and legal and arbitration professionals of Hong Kong. The well-attended event served as a good platform where the legal and arbitration professionals of

both places could share experience and build up co-operation network. The Department will proceed to prepare a similar forum to further enhance the promotion of Hong Kong's legal and arbitration services in the Mainland.

21. In relation to mediation, apart from the new initiative to further foster the development of mediation services in Hong Kong as set out in paragraphs 8 to 10 above, we will continue to take forward the Pilot Project on Community Venue for Mediation ("Pilot Project") launched in 2009 to address the concerns over the availability of venues to conduct mediation at the community level. Starting from 1 July 2009 and 1 September 2009 respectively, designated time slots have been reserved in two community centres (i.e. Henry G Leong Yaumatei Community Centre and Leighton Hill Community Hall) with venue fees waived for pro bono mediators. To increase the usage rate, information on the available timeslots has been provided to the Joint Mediation Helpline Office. We will work together with the Steering Committee mentioned in paragraph 9 above and stakeholders to continue to identify how we can better address the need for venues for community mediation.

22. In respect of prosecutions work, we are :

- (a) Improving the quality and efficiency of legal services, including advisory work, the preparation and presentation of criminal cases and the standards of advocacy through comprehensive training programmes for prosecutors and making better use of resources.
- (b) Enhancing the quality of criminal justice by promoting transparency in public prosecutions and improving our accountability to the community we serve.
- (c) Promoting co-operation amongst prosecutors at regional and international levels by actively participating in the work of the various international prosecuting organisations.

23. In support of the foregoing initiatives, the Prosecutions Division has implemented various measures to modernise the Division and enhance its efficiency and effectiveness. Major initiatives include :

- (a) the continued operation of the quick advisory system known as "FAST" to promptly deal with relatively simple and straightforward cases. In 2012, around one quarter of the overall requests for legal advices had been processed through the system, and advices are normally provided on the same day. FAST proved to be extremely effective in improving the overall

efficiency of the advisory function of the Division whilst, at the same time, reducing the workload of counsel from advisory sections to free them up for more advocacy work;

- (b) the provision of continuous training for prosecutors, including the arrangement of a year-long series of structured seminars on criminal law and practice as well as additional seminars on such topics of relevance to the work of our prosecutors and on plain English for lawyers;
- (c) following up on the success of the previous runs of the programme, to regularise the arrangement of the Joint Training Programme with the Hong Kong Bar Association and the Law Society of Hong Kong for newly qualified lawyers on a six-monthly basis. The programme covers a one-day training course followed by a two-week supervised engagement to prosecute in the Magistrates' Courts, for new lawyers of less than 5 years' post qualification experience who are interested in prosecuting cases for the Department. These training courses enhance the professional standard of the younger members of the legal profession and the quality of the prosecution service overall; and
- (d) continuation of the practice to conduct "case review meetings" between prosecutors and relevant officers of the law enforcement agency for selected cases to see what lessons can be learned and how to improve things for the future.

24. Looking ahead, we will continue to pursue a policy of transparency and ensure that prosecution decisions are made fairly and properly in accordance with established prosecution policy and practice. In particular, with the success of the "Prosecutions Week" organised for the first time in July 2012, the Prosecutions Division will continue to hold similar events on an annual basis. Through such community relations and outreaching programmes, we will seek to enable the public to know more about the Prosecutions Division and how prosecutorial decisions are made within the framework of our criminal justice system.

25. As regards communications at a professional level, the Division has also enhanced the exchange of ideas on issues of common interest with other sectors of the legal community, both locally and also internationally, with a view to further improving our criminal justice system. To this end, the Prosecutions Division will continue to organise conferences and events, with participation not only by counsel of the Division, but also members of the private legal profession, members of the Judiciary and, for some of the events, prominent figures from the

criminal justice system in other jurisdictions as well. Prosecutors will also continue to participate actively in various international fora and events as well as experience-sharing with other jurisdictions by way of video conferencing. We will also seek to extend our training programme with other prosecuting services in other jurisdictions so that prosecutors from other common law jurisdictions can gain first-hand experience in working in the Prosecutions Division while our counsel can benefit in the same way through pupillage or placements with criminal advocates in other jurisdictions. Separately, efforts will continue to be taken to enhance the cooperation with other jurisdictions in particular to combat cross-border crimes and for the restraint and confiscation of proceeds of crime.

26. Regarding law drafting, we are –

- (a) Continuing to press ahead with the establishment of an electronic database of Hong Kong legislation with legal status and proceeding with the staged implementation of the Legislation Publication Ordinance (Cap. 614) (“LPO”).
- (b) Enhancing the accessibility of legislation through publishing guidelines on the drafting of legislation.

27. The contract for the electronic database of Hong Kong Legislation was awarded in December 2012. It is expected that the new system will be implemented in 2016-17 and legislation data will then be gradually migrated from the loose-leaf edition to the database in subsequent years. The new legislation database will be an important legal infrastructure for Hong Kong, which will facilitate the legal profession as well as the public in accessing verified legislation conveniently.

28. The editorial powers added to the loose-leaf edition regime by the LPO were exercised twice in 2012. The move has greatly enhanced the user-friendliness and presentation of Hong Kong statute book. Two Editorial Records were published in February and August 2012 respectively. Examples of editorial amendments made by the Editorial Records include correction of clerical and grammatical errors and making of presentational changes. Many loose-leaf pages have been updated to the modernized legislation format with larger font size and wider line spacing, etc..

29. Moreover, the Legislation Publication (Revision) Order 2012 was made in 2012 under the LPO. The Order “gender-neutralized” a few Ordinances with the support of the relevant government departments and the Legislative Council. Amendments were also made in the Revision Order to secure uniformity in expression across the statute book. We will continue to make use of the powers introduced by the LPO in the coming years to bring the statute book up to date and to prepare for the new legislation database.

30. We have also published two books in 2012 that relate to the drafting of legislation, i.e. “Drafting Legislation in Hong Kong – A Guide to Styles and Practices” (“the Guide”) and “How Legislation is Made in Hong Kong – A Drafter’s view of the Process”. The Guide sets out many stylistic and other standard practices used in legislative drafting, including those relating to plain language and gender-neutral drafting. By facilitating a clearer understanding of the law by statute users, it enhances the quality and accessibility of legislation (and thereby enhances the rule of law). It can also serve as a general reference book on legislative drafting techniques (for example, for drafters of non-Government legislation). “How Legislation is Made in Hong Kong – A Drafter’s view of the Process” is a companion publication of the Guide. It explains in general terms the process of drafting and making legislation for the legal professionals and general public.

Other Initiatives of the DoJ

(a) Legislative proposals

31. Further to the various legislative proposals taken forward by the Department in 2012 (details at **Annex**), the Department is working on a number of new legislative proposals. Apart from the amendments to the Arbitration Ordinance mentioned in paragraph 17 above, the following proposals are in the pipeline :

- (a) The Law Reform Commission (“LRC”) published its report on “Privity of Contract” in September 2005 recommending reform of the general rule that only parties to a contract may enforce rights under the contract. The LRC further recommends that the reform should be achieved by a comprehensive legislative scheme. The Department has prepared the Contracts (Rights of Third Parties) Bill (“Bill”) with a view to implementing the recommendations of the LRC in full. The Bill would enable a third party, i.e. a person not a party to a contract, to enforce the

contractual terms subject to the contracting parties' intention. We have conducted a consultation exercise on the Bill and are studying the comments in details. Our plan is to introduce the Bill to the Legislative Council in the second half of the 2013 legislative session.

- (b) The Department is working with the Hong Kong Society of Notaries on a legislative proposal to facilitate the admission in civil proceedings of notarial acts or instruments duly executed by notaries public registered in Hong Kong. In particular, the proposal will seek to enable such evidence be admitted as *prima facie* evidence in Hong Kong courts, subject to any proof to the contrary. We will consult the Panel on this legislative proposal in due course.

(b) Working Group on Class Action

32. The LRC published its report on "Class Actions" in May 2012 proposing that a mechanism for class actions should be adopted in Hong Kong. In view of the complexity of the issues, the Department has set up a cross-sector Working Group to study and consider the proposals of the LRC report and to make recommendations to the Administration on the way forward. The Working Group comprises members representing stakeholders in the private sector, relevant government bureaux and departments, the two legal professional bodies and the Consumer Council, as well as a representative from the Judiciary whose role is confined to providing input to the deliberations from the perspective of interface with court operations. The Working Group will hold its first meeting in the first quarter of 2013.

33. We welcome 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
16 January 2013

**Legislative Proposals taken forward by
the Department of Justice in 2012**

- The Mediation Ordinance was enacted in June 2012 and came into force on 1 January 2013. Its objects are to promote, encourage and facilitate the resolution of disputes by mediation, and to protect the confidential nature of mediation communications. It provides a regulatory framework for the conduct of mediation in Hong Kong without hampering the flexibility of the mediation process.
- The Legal Practitioners (Amendment) Ordinance 2010 came into force in June 2012. It allows eligible solicitors to apply for rights of audience in our higher courts. This improvement is expected to benefit the public by giving them a wider choice of capable advocates to represent them in the higher courts.
- The Legal Practitioners (Amendment) Ordinance 2012 was enacted in July 2012. It will, upon coming into effect, allow law firms in Hong Kong to operate in the form of a limited liability partnership. This is a business model which will allow the partners to practise with limited liability if they are not themselves at fault, in the relatively flexible and simple management structure of a partnership.
- The Statute Law (Miscellaneous Provisions) Ordinance 2012, enacted in July 2012, contains amendments, among others, to facilitate the introduction of solicitor corporations as a form of legal practice. Solicitors may soon choose a business model that best suits their practice.