

**For discussion on
26 January 2015**

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

2015 Policy Initiatives of the Department of Justice

Introduction

This paper describes the policy initiatives of the Department of Justice (“DoJ”) in 2015.

Our Vision

2. The rule of law is one of the vital factors which contribute to Hong Kong’s success and is an essential attribute of a modern democratic society. The Basic Law has provided a solid basis for upholding the rule of law in Hong Kong. Fundamental rights of residents, including the rights to freedom of speech, freedom of assembly, freedom of demonstration and access to the courts are guaranteed by the relevant provisions of the Basic Law. The courts of the Hong Kong Special Administrative Region (“HKSAR”) are authorised to exercise judicial power independently, free from any interference.

3. The DoJ is committed to doing its utmost to protect the rule of law including the independence of the Judiciary, and to progressively enhance Hong Kong’s legal system and 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 the provisions which safeguard the rule of law and human rights);
- providing a modern first-class prosecution service by seeking to ensure that prosecutions are conducted fairly with professionalism and integrity, and within the framework of defined and clear prosecution policy guidelines, as well as in accordance with Article 63 of the Basic Law;

- 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 centre for international legal and dispute resolution services in the Asia Pacific region.

Policy Initiatives of DoJ

(I) Economic Development

4. Hong Kong's economic success is built on our adherence to and respect for the rule of law. We will continue with the development of Hong Kong as an international legal and dispute resolution services centre in the Asia Pacific region, in seeking to enhance our position in the international legal, dispute resolution and business arenas.

New Initiatives

5. In 2015, we will pursue a number of initiatives.

Continue with our efforts in facilitating the establishment and growth of world-class legal, arbitration and mediation institutions in Hong Kong. In this regard, the Central People's Government and the Permanent Court of Arbitration ("PCA") have recently signed a host country agreement on the conduct of PCA arbitrations and other forms of dispute settlement proceedings in Hong Kong. To implement this agreement, the HKSAR Government and the PCA have entered into a memorandum of administrative arrangements.

6. The Central People's Government and the PCA signed on 4 January 2015 a host country agreement ("HCA") on the conduct of PCA arbitrations and other forms of dispute settlement proceedings in the HKSAR. The HKSAR Government also signed with PCA on the same day a memorandum of administrative arrangements ("MAA") to give effect to certain administrative and practical aspects of the HCA.

7. The HCA and the MAA will facilitate the conduct of dispute settlement proceedings by PCA in the HKSAR, as well as secure the provision of the requisite supporting services, thereby attracting more parties, particularly those in the region, to choose the HKSAR as the venue for

hearing of PCA-administered cases (especially international investment arbitrations).

8. PCA is an intergovernmental organisation with over 100 member States. It is a renowned global arbitration institution established in 1899 and has been providing services for the resolution of disputes involving various combinations of States, State entities, intergovernmental organisations, and private parties for almost 120 years.

9. The signing of the HCA and the MAA by PCA for the conduct of dispute settlement proceedings in the HKSAR is a vote of confidence in the HKSAR including our legal system and infrastructure for arbitration, which will further enhance our role as an international and regional dispute resolution centre.

Conduct a “Mediate First” Pledge reception and relevant activities to promote the use of mediation as a means of dispute resolution among small and medium enterprises before resorting to other means.

10. Upon the advice of the Public Education and Publicity Sub-committee of the Steering Committee on Mediation, DoJ is organising a “Mediate First” reception targeting Small and Medium Enterprises (“SMEs”) to be held in early 2015. The objective of the reception is to encourage SMEs to consider using mediation to resolve disputes before resorting to litigation. Mediation is a flexible process whereby disputes are likely to be resolved with less cost and time. The use of mediation is thus particularly suitable for SMEs to resolve disputes.

11. Other activities to promote mediation as a means to resolve sector-specific disputes, including community (essentially building management) disputes, medical and health disputes and intellectual property disputes, will also be organised.

On-going Initiatives

12. We will also take forward a number of on-going initiatives in this area. In respect of *economic and trade relations with the Mainland and regional co-operation*, we are –

(a) ***Enhancing 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 cost-effective manner.***

(b) ***Enhancing legal co-operation with Guangdong pursuant to the***

Framework Agreement on Hong Kong/Guangdong Co-operation.

13. Regarding legal co-operation in civil and commercial matters with the Mainland, the DoJ will continue to monitor the implementation of the existing legal arrangements with the Mainland. In addition, the DoJ is exploring the possibility of concluding an arrangement on mutual recognition and enforcement of judgments in matrimonial matters. The DoJ is studying the legal issues involved and will continue to engage our Mainland counterparts to resolve the same. We will consult the Panel on Administration of Justice and Legal Services (“AJLS Panel”) after seeking the views of stakeholders on this subject.

14. The DoJ also maintains regular contact with our counterparts under the Framework Agreement on Hong Kong/Guangdong Co-operation. Both sides have been discussing co-operation initiatives which 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 (“CEPA”).

15. The “Agreement between the Mainland and Hong Kong on Achieving Basic Liberalisation of Trade in Services in Guangdong” was signed on 18 December 2014 under the CEPA framework. One salient feature of the Agreement is that it provides pre-establishment national treatment in the form of a negative list. As regards legal services, the Agreement in gist formalises the following measures –

- Hong Kong and Guangdong law firms are allowed to enter into agreement under which Guangdong law firms may second Mainland lawyers to work as consultants on Mainland law in representative offices set up by Hong Kong law firms in Guangdong Province;
- Hong Kong law firms may second Hong Kong lawyers to work in Mainland law firms in Guangdong as consultants on Hong Kong law or cross-border laws;
- Hong Kong and Mainland law firms may operate in association in the form of partnership in three pilot areas in Guangdong Province, namely: Qianhai in Shenzhen, Nansha in Guangzhou, and Hengqin in Zhuhai; and
- Hong Kong residents who have acquired Mainland lawyer qualification are allowed to act as agents in civil litigation cases relating to Hong Kong residents and juridical persons, according to the “Notice of the Ministry of Justice of the People’s Republic of

China (No. 136)”.

As at November 2014, three Associations in the form of partnership between Hong Kong and Mainland law firms have been approved to be set up in Qianhai.

16. As regards the continued development of Hong Kong as a *centre for international legal and dispute resolution services in the Asia Pacific Region*, Hong Kong’s legal system and members of our legal profession are highly regarded in the Asia Pacific region. Hong Kong is thus a natural venue for resolution of commercial and investment disputes. The DoJ will work closely with the legal professional bodies and the arbitration sector to enhance our promotional efforts in the Mainland and around the world, particularly in emerging economies in Asia Pacific. In this regard, we are taking forward the following on-going initiatives.

Working with the Mainland authorities and the legal profession, arbitration and mediation institutions in Hong Kong to facilitate the provision of legal and dispute resolution services in the Mainland by Hong Kong professionals.

17. The legal and dispute resolution services sectors of Hong Kong are interested in exploring further co-operation with their counterparts and providing professional services in the Mainland.

18. The DoJ will continue to work with the relevant professional bodies and institutions as well as the relevant Mainland authorities on ways to take forward the introduction of Hong Kong’s legal and dispute resolution services in the Mainland. The main objectives to be pursued include promoting the use of Hong Kong law as the applicable law in commercial contracts concluded by enterprises conducting business in the Mainland such as Qianhai (except in obviously inappropriate situations, such as the sale and purchase of real estate in the Mainland), and the designation of Hong Kong as the seat of arbitration should disputes arise, or allowing Hong Kong arbitration bodies to provide services directly in the Mainland.

19. In addition, the DoJ actively promotes Hong Kong’s legal and dispute resolution services in the Mainland. Building on the success of the Hong Kong Legal Services Forum held in Shanghai in 2010 and in Guangzhou in 2012, the third legal services forum was held in Qingdao on 16 September 2014 under the theme “Hong Kong Legal Services – Think Global, Think Hong Kong”. The forum highlighted the vital role of Hong Kong as an international legal and dispute resolution services centre, as well

as the expertise that the Hong Kong legal professionals and dispute resolution practitioners may offer to mainland enterprises that are “going global”. The forum brought together 800 participants from Hong Kong and the Mainland, including practising solicitors, barristers and arbitrators from Hong Kong who shared their international experience with their Mainland counterparts and enterprises on various practical legal issues.

20. On the day after the Forum, the DoJ also organised with the Hong Kong Trade Development Council and the Qingdao Japanese Association another seminar in Qingdao on “Hong Kong – An International Hub for Legal & Arbitration Services”. The seminar aimed to facilitate the management personnel of Japanese companies based in Qingdao to explore more options on dispute resolution when negotiating agreements with Mainland companies.

21. We will continue to work closely with relevant stakeholders and seek to encourage the legal, arbitration and other relevant sectors to enhance co-operation with their Mainland counterparts so as to capitalise on each other’s strengths, with a view to deepening the development of Hong Kong’s legal and arbitration services in the Mainland, thereby enhancing its investment environment.

Further fostering the development of mediation services in Hong Kong with the efforts of the Steering Committee on Mediation chaired by the Secretary for Justice. To this end, we will continue to monitor the implementation of the Mediation Ordinance and its effectiveness. We will also monitor the operation of the Hong Kong Mediation Accreditation Association Limited (HKMAAL) as a regulatory body, review the Mediation Code and consider the need to introduce apology legislation. Moreover, we will enhance the promotion of mediation within government departments, and we plan to develop suitable mediation schemes for specific trades or fields.

22. The Steering Committee on Mediation (“Steering Committee”) chaired by the Secretary for Justice and comprising a cross-sector membership has played an active role to further promote and develop the wider use of mediation to resolve disputes in Hong Kong. The Steering Committee, assisted by its three Sub-committees (namely: the Regulatory Framework Sub-committee, the Accreditation Sub-committee and the Public Education and Publicity Sub-committee), has undertaken various tasks with the key ones set out below.

Regulatory Framework Sub-committee

23. The Regulatory Framework Sub-committee assists the Steering Committee in monitoring the implementation of the Mediation Ordinance (Cap. 620) and advising on the promulgation and promotion of a set of guidelines on the disclosure of mediation communication under section 8(2) of the Ordinance. In addition, the Sub-committee is tasked to consider the need for an apology legislation in Hong Kong for the purpose of facilitating settlement of disputes. Subject to the advice of the Steering Committee, the DoJ will publish a report for public consultation.

Accreditation Sub-committee

24. The Accreditation Sub-committee assists the Steering Committee in monitoring matters concerning the accreditation and regulation of mediators in Hong Kong and the monitoring of the operation of HKMAAL and its future development, including whether the power to appoint mediators in default should be given to HKMAAL and whether and when a statutory accreditation body should be set up. The Sub-committee will also consider HKMAAL's review of the Mediation Code, a code of conduct which has been adopted by HKMAAL and a number of mediation service providers.

Public Education and Publicity Sub-committee

25. Apart from the new publicity initiatives which target at specific sectors including the SMEs, the business, the building management, the medical and health and the intellectual property, the Public Education and Publicity Sub-committee continues to implement, in collaboration with stakeholders, on-going publicity initiatives at the community level to enhance the public awareness of mediation as a means to resolve disputes.

Mediation Training within Government

26. In 2014, the DoJ provided mediation training for government lawyers to enhance their skills in mediation.

27. A mediation seminar and an experience sharing session on mediation were organised by the DoJ for civil servants in conjunction with the Civil Service Bureau in 2014. Tailor-made mediation training programmes were conducted for the Government Logistics Department and the Environmental Protection Department. Further tailor-made mediation training will be organised for the Food and Environmental Hygiene Department and Social Welfare Department. The DoJ will continue to work

with government departments that require tailor-made mediation training courses to address their particular requirements.

28. With a view to facilitating the use of mediation by civil servants, the DoJ has prepared a Mediation Handbook to provide practical guidance on the use of mediation for reference by administrators.

Creating a favourable environment and infrastructure to make it easier for legal and dispute resolution institutions to develop services and set up presence in Hong Kong. Relevant measures include providing such institutions with certain office space in the West Wing of the former Central Government Offices and the former French Mission Building upon the relocation of the Court of Final Appeal.

29. We are pressing ahead with the preparation for the conversion works required for the West Wing (WW) of the former Central Government Offices (CGO) and the former French Mission Building (FMB) with a view to providing office space for DoJ as well as law-related organisations (LROs). Moreover, the DoJ set up a “Committee on Provision of Space in the Legal Hub” in December 2014, chaired by the Secretary for Justice and comprising members from the legal, business and other relevant sectors, as well as representatives from DoJ and other relevant departments, to consider the mechanism for providing space to LROs in CGO WW and FMB. The application exercise for the provision of space to eligible LROs in the legal hub was launched on 19 December 2014 and the application deadline is 28 February 2015. The Committee will consider the applications and advise on the selection of LROs based on assessment of the relative merits of prospective organisations.

30. We will also continue our efforts in facilitating the establishment and growth of world-class arbitration and LROs in Hong Kong. Further to the successful establishment of office in Hong Kong by the International Court of Arbitration of the International Chamber of Commerce (in November 2008), the China International Economic and Trade Arbitration Commission (“CIETAC”) (in September 2012) and the Hague Conference on Private International Law (in December 2012), we are seeking to facilitate other major international or regional LROs to establish offices in Hong Kong.

31. In this regard, the China Maritime Arbitration Commission (“CMAC”) Hong Kong Arbitration Center was recently inaugurated in Hong Kong in November 2014. As in the case of CIETAC, the Hong Kong arbitration centre is CMAC’s first arbitration centre outside the Mainland. Being the key professional maritime arbitration institution in the Mainland,

CMAC's presence in Hong Kong would further enhance Hong Kong's role in the resolution of maritime disputes, thereby reinforcing our position as a leading international arbitration centre in the Asia Pacific region.

32. The DoJ has also been constantly reviewing the Hong Kong arbitration regime in consultation with the arbitration sector and will consider necessary improvement to the Arbitration Ordinance (Cap. 609) as and when appropriate.

33. Having consulted the AJLS Panel in November 2014, we plan to introduce in the first quarter of 2015 a bill to amend the Arbitration Ordinance to remove some legal uncertainties relating to the opt-in mechanism under Part 11 of the Ordinance, so that parties opting for domestic arbitration could decide on the number of arbitrators, whilst retaining their right to seek the Court's assistance on the matters set out in sections 2 to 7 of Schedule 2 to the Ordinance. The Bill will also update, for the purposes of the Ordinance, the list of parties to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.

Conducting a study in conjunction with the Hong Kong Trade Development Council on the development of arbitration in Hong Kong and the challenges and opportunities faced by Hong Kong as a centre for international arbitration in the Asia Pacific region.

34. A consultancy study was launched in 2014 on enhancing Hong Kong's position as a leading international arbitration centre in the Asia Pacific region. This study considers the strengths, weaknesses, opportunities and challenges for Hong Kong in relation to its status as an international arbitration hub, particularly in the face of stiffening regional and international competition.

35. The study covers a number of aspects of the arbitration industry, including our legal and institutional infrastructure for arbitration and how this compares to others in the region and internationally, the strengths and challenges within each of our major arbitration service areas, and the scope and potential in existing and emerging geographical markets. The study will also include an analysis of the direct and indirect benefits which international arbitration brings to Hong Kong. We expect that the findings and recommendations from the study will greatly assist the long-term policy planning and strategic development in this area. Preparation work relating to the study began in mid-2014. The design of the questionnaire for target interviewees from the legal, arbitration and business sectors is in progress.

Enhancing the promotion of legal and dispute resolution services of Hong Kong among emerging economies in the Asia Pacific region.

36. In February 2014, the DoJ led a delegation of representatives from the Hong Kong Bar Association, the Law Society of Hong Kong and various arbitral institutions in Hong Kong on a promotional trip to Vietnam and Cambodia. Through the seminars held in these emerging economies to promote Hong Kong's international legal and dispute resolution services, the delegation had fruitful exchanges with their legal and arbitration counterparts as well as prominent business leaders. Riding on the success of the visits to Vietnam and Cambodia, we led a similar promotional visit to Myanmar in August 2014. With the contacts established during these promotional visits, our legal and arbitration sectors have already been exploring opportunities for co-operation in training and capacity building in relation to dispute resolution in these fast growing economies. We are making plans for visits to other emerging economies in the Asia Pacific in 2015 and 2016.

37. To further promote Hong Kong as a leading centre for international arbitration services in the Asia Pacific region, we set up an Advisory Committee on Promotion of Arbitration in December 2014. The first meeting was held on 18 December 2014 to discuss generally the work of the Advisory Committee and its intended work plan.

38. The Advisory Committee, chaired by the Secretary for Justice, includes representatives from the DoJ and the legal, arbitration and relevant sectors in Hong Kong. Overseas arbitration experts may also be appointed from time to time to assist in the work of the Advisory Committee either generally or on specific issues.

39. The Advisory Committee will advise and assist the DoJ in respect of the promotion of arbitration in Hong Kong, including but not limited to –

- (a) considering, advising on and co-ordinating ongoing and new initiatives and overall strategies for the promotion of Hong Kong's arbitration services in and outside Hong Kong;
- (b) serving as a forum for discussing such issues as may be raised by the legal and dispute resolution sectors concerning the promotion of Hong Kong as a leading centre for arbitration services in the Asia Pacific region; and
- (c) such matters as may be incidental to the matters stated in (a) and (b) above (including, but not limited to, the conduct of researches or studies relating to arbitration).

(II) Governance, Constitutional Development and District Administration

40. The rule of law is vital for safeguarding our rights and freedoms. It is also instrumental in promoting our long-term sustainable development as an international financial and commercial centre. We will continue to improve our legal system and enhance our legal infrastructure to ensure that justice is upheld.

New Initiatives

41. In 2015, we will pursue a number of new initiatives in respect of ***law reform proposals***.

Conduct a public consultation on a bill to implement the Law Reform Commission's recommendations made in the report on Criteria for Service as Jurors.

42. The purpose of the proposed bill is to ensure that the criteria for appointment to and exemption from jury service are appropriate to the circumstances and are set out with clarity and precision. In June 2010, the Law Reform Commission ("LRC") published a report on Criteria for Service as Jurors. The report recommends that the Jury Ordinance (Cap. 3) be amended to ensure that the criteria for appointment to and exemption from jury service are as appropriate as possible to current circumstances and to improve the clarity and precision of the provisions in the Ordinance setting out those criteria.

43. The DoJ is now preparing a working draft bill for conducting a public consultation to seek the views of the legal professional bodies, the Judiciary and members of the public on the proposed legislative amendments.

Conduct a public consultation on a bill to implement the LRC's recommendations made in the report on Hearsay in Criminal Proceedings. The proposed bill aims mainly to reform the existing rule that hearsay evidence is generally inadmissible in criminal proceedings and to give the courts the discretionary power to admit hearsay evidence in criminal proceedings if the statutory "necessity" and "threshold reliability" criteria are satisfied.

44. Under the existing law, hearsay evidence is inadmissible in criminal proceedings unless it falls within one of a number of common law or statutory exceptions. A major criticism of the hearsay rule is that it is too strict and inflexible, and sometimes results in the exclusion of evidence

which, by the standards of ordinary life, would be regarded as accurate and reliable. In addition, some of the present exceptions to the rule are complex and uncertain.

45. In November 2009, the LRC published a report on hearsay in criminal proceedings. The report proposes that the existing rule which prohibits the admission of hearsay evidence in criminal proceedings should be reformed and that the court should be given discretion to admit hearsay evidence if it is satisfied that the admission of that evidence is “necessary”, and that that evidence is “reliable”.

46. The DoJ is now preparing a working draft bill to implement the LRC’s recommendations made in the report on Hearsay in Criminal Proceedings, with a view to consulting the legal professional bodies, the Judiciary and members of the public in 2015.

On-going Initiatives

47. We will take forward a number of on-going initiatives in relation to *improving the legal system and enhancing legal infrastructure*. In respect of our prosecutorial functions, we are –

- (a) *Improving the quality and efficiency of legal services, including advisory work and preparation and presentation of criminal cases, as well as raising the standards of advocacy through the provision of comprehensive training programmes for prosecutors and better use of resources.*
- (b) *Enhancing the capability and effectiveness of the prosecution service in the conduct of criminal proceedings.*
- (c) *Enhancing the quality of criminal justice by promoting transparency in public prosecutions, improving accountability to the community, and studying possible areas of the criminal law that may require reform.*
- (d) *Promoting co-operation among prosecutors at regional and international levels through active participation in international prosecuting organisations.*
- (e) *Continuing with the annual “Prosecution Week” event and “Meet the Community” programme to further enhance public understanding (in particular that of young people) of the criminal justice system, their role therein and their appreciation of the importance of the rule of law, through activities such as visits, talks, mock court as well as different*

types of competitions.

48. In support of the foregoing initiatives, the Prosecutions Division (“PD”) has implemented various measures to enhance its efficiency and effectiveness. Major measures include –

- (a) continued handling of each and every criminal cases, regardless of scale and complexity, with due diligence and care, applying the relevant law to the available evidence and in accordance with the prevailing prosecution policy as set out in the latest Prosecution Code released in September 2013, so as to uphold the rule of law;
- (b) continued development of expertise within PD for handling particular types of cases (including human exploitation cases, money laundering cases, cybercrime cases and on the award and assessment of legal costs) by continuing to appoint co-ordinators or specific units for such cases, so that they can be handled more effectively and efficiently. In handling cases concerning public order events, in order to achieve better efficiency and with a view to ensuring consistency of approach as far as possible, PD also continues to maintain a dedicated team of prosecutors to handle such cases, so that professional legal advice can be provided to the Police as expeditiously as possible so as to enable early referral of cases which merit prosecution to the courts for adjudication;
- (c) riding on the success of two conferences on criminal law issues held in 2012 and 2013 with the participation of members from different sectors of the legal community, we are working with the Hong Kong Bar Association and the Law Society of Hong Kong to organise the next run of the conference on criminal law to be held later this year;
- (d) continued provision of various continuous trainings to our in-house prosecutors, including seminars on different topics under the Continuing Legal Education Programme, as well as talks delivered by distinguished outside counsel; and
- (e) continued arrangement of the biannual Joint Training Programme (covering a two-week supervised engagement to prosecute in the Magistrates’ Courts after satisfactory performance upon completion of a one-day training course) organised with the Hong Kong Bar Association and the Law Society of Hong Kong for new lawyers in private practice (i.e. those with less than five years’ post qualification experience) who are interested in prosecuting cases for the DoJ, so as to enhance the overall quality of the prosecution service.

49. Looking ahead, we anticipate that cases arising from or related to the earlier “Occupy Movement” will form a significant part of PD’s work in 2015, on top of other cases that have or will come up. We shall continue to maintain an appropriate approach in the handling of our manpower resources, and engage, where operational needs so require, lawyers from the private sector to suitably manage our overall caseload in order that all cases can be dealt with efficiently and effectively.

50. As regards the promotion of co-operation amongst prosecutors at regional and international levels, apart from active participation in various international forums and events organised by international prosecuting organisations, attachments to and from other jurisdictions were also arranged during the year. This included prosecutors from Singapore joining PD on short-term attachment to gain first-hand working experience in the Division, and one counsel from PD attaching to the Shanghai Justice Bureau for a short stint to enhance our understanding of Shanghai’s legal system and practice. Our efforts to enhance exchanges and co-operation with prosecutors in other jurisdictions will continue.

51. During the year, PD has also taken forward the “Meet the Community” programme to further enhance the understanding of our young people of the criminal justice system, their role therein and their appreciation of the importance of the rule of law. Up to end 2014, a total of 69 secondary schools have indicated interest in participating in the programme and 46 talks covering various topics were held. As for the annual “Prosecution Week”, it was held from 24 to 30 June 2014, covering visits to the DoJ and courts, talks and mock court, as well as a slogan competition with over 100 entries submitted by secondary school students. These two flagship events will continue to be organised in 2015.

52. As regards law drafting, we are –

- (a) *Furthering the work on the establishment of an electronic database of Hong Kong legislation with legal status (Database). We are implementing the Legislation Publication Ordinance (Cap. 614) in stages.*
- (b) *Enhancing the quality of legislative drafting services by providing on-the-job training and professional development programmes for drafters, and by fostering their contact and exchange with local and overseas experts.*

53. We are proceeding with the phased implementation of the Database. Various tests are being carried out with a view to implementing in 2015/16

the new laws compilation and publication system for internal use, which is the focus of Phase 1 of the Database Project. The Law Drafting Division will move gradually to a new technology platform in line with other common law jurisdictions. In parallel, we will also start work on the system analysis and design for Phase 2, which mainly concerns online publication of legislation, dissemination of legislation-related information and legislation retrieval.

54. In conjunction with the development of the Database, we will continue to make use of the editorial and revision powers introduced by the Legislation Publication Ordinance to enhance the user-friendliness of the statute book and bring it in line with the latest drafting styles and practices.

55. We are committed to enhancing the quality of legislative drafting services. To this end, we provide on-the-job training and professional development programmes to drafters. A legislative training course lasting five full days was organised for junior drafters in the summer of 2014. This drafting course focused on technical drafting skills and was conducted by an experienced legislative drafter from Canada. To encourage exchange and sharing of experience, lawyers from other divisions of the DoJ and the Legislative Council Secretariat were also invited to attend the course. Similar courses may be held in the future as circumstances permit.

56. We also hold regular workshops on topics related to the work of law drafting. The workshops are conducted by senior drafters as well as experts from outside the DoJ. For example, linguists and speakers from Hong Kong and other jurisdictions (including Canada and Australia) have spoken on language issues and the practices of these jurisdictions. This will broaden the knowledge base and exposure of drafters. We will maintain close contact with these external experts to tap into their expertise.

57. We acknowledge the importance of keeping abreast of the developments in and maintaining the ties with other jurisdictions. Law Drafting Division counsel visited the drafting offices of their overseas counterparts and attended international forums and events, including the Australasian Drafting Conference, the IT Forum organised by the Australasian Parliamentary Counsel's Committee and the Clarity Conference. A senior drafter went on a 10-week secondment to the Office of the Queensland Parliamentary Counsel in Brisbane, Australia. The secondment provided a valuable opportunity for learning the professional and management practices of the Office and lay a solid foundation for further exchanges.

58. We are continuing to develop and review our drafting standards and practices for both the Chinese and English language texts of legislation through internal committees. The publication “Drafting Legislation in Hong Kong – A Guide to Styles and Practices”, which sets out many stylistic and standard practices of this Division in legislation drafting for reference by statute users, will be reviewed and updated as necessary to reflect the development and changes in our drafting style and practices.

59. In relation to *law reform proposals*, we are taking forward four on-going initiatives, the particulars of which are set out below.

Taking forward publicity and promotional work after the passage of the Contracts (Rights of Third Parties) Bill in end last year so that parties to a contract can make the best use of the rights provided under the ordinance.

60. The Contracts (Rights of Third Parties) Bill was enacted on 26 November 2014. The Ordinance will 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. After taking into account the views and comments of relevant stakeholders, the DoJ intends to bring the Ordinance into operation one year after its passage so as to allow stakeholders sufficient time to make due preparation for the new legislative regime. The DoJ will also actively promote the Ordinance such that stakeholders including the legal professional bodies and the general public are aware of the Ordinance.

Supporting the cross-sector Working Group on Class Actions in considering the LRC’s proposals on “Class Actions”.

61. In May 2012, the LRC published its report on “Class Actions”, recommending the introduction of a class action regime in Hong Kong. In view of the complexity of the issues involved, the DoJ has set up a cross-sector working group (“Working Group”) to study the LRC’s proposals and to make recommendations to the Government on how to take the matter forward. The Working Group is chaired by the Solicitor General with members from the private sector, relevant government bureaux and departments, the two legal professional bodies and the Consumer Council. Also on the Working Group is a representative from the Judiciary to provide input to the deliberations from the perspective of interface with court operations. The Working Group has so far held eight meetings to study the LRC’s proposals.

Preparing to conduct a public consultation on a bill to implement the LRC's recommendations on Enduring Powers of Attorney with regard to personal care. The proposed bill aims to extend the scope of an enduring power of attorney beyond the donor's property and financial affairs to include matters relating to the donor's personal care when the donor becomes mentally incapacitated.

62. Currently, the scope of an enduring power of attorney under the Enduring Powers of Attorney Ordinance (Cap 501) is limited to the property and financial affairs of the donor only.

63. In July 2011, the LRC published a report on "Enduring Powers of Attorney: Personal Care". The report recommends that the scope of an enduring power of attorney should be extended to include decisions as to the donor's personal care.

64. The DoJ has set up an inter-departmental working group to examine the recommendations in the report and is now preparing a working draft bill, with a view to consulting the legal professional bodies, the Judiciary and members of the public in 2015.

Assisting the high level inter-departmental working group, chaired by the Secretary for Justice, in undertaking a detailed study on possible legislation to deal with various aspects of gender recognition in the light of the observations made in the judgment of the Court of Final Appeal in the W Case (FACV 4/2012).

65. To follow up on the judgment of the Court of Final Appeal in the W Case (FACV 4/2012), the Secretary for Justice is now chairing the Inter-departmental Working Group on Gender Recognition ("the IWG") to consider legislation and incidental administrative measures that may be required to protect the rights of transsexual persons in Hong Kong in all legal contexts, and to make recommendations for reform as appropriate.

66. The IWG is reviewing issues relating to transsexual persons in Hong Kong, including the condition known as gender identity disorder or gender dysphoria, and conducting a review of the legislation, schemes and case law in other jurisdictions and the standards of international bodies, with a view to making recommendations to the Government on possible legislation that may be necessary to address the issues faced by transsexual persons. The scope of the IWG's study includes both recognition and post-recognition issues. As regards recognition issues, the IWG is reviewing issues such as various options for a gender recognition scheme, the

qualification criteria and the application procedure. As for post-recognition issues, the IWG is reviewing all the existing legislative provisions and administrative measures in Hong Kong which may be affected by legal gender recognition, so that any required legislative or procedural reform can be followed up by the Government.

67. In 2014, the IWG held six official meetings and seven informal meetings with medical experts, leading academics, transsexual groups and other stakeholders. The IWG will continue to consult widely in the course of its work. It will also issue one or more consultation papers to gather the views of interested parties and the public generally, in order to gauge what the overall consensus may be, if any, before finalising its recommendations to the Government.

68. Members are invited to comment on the above initiatives. We will continue to work with the Panel and other stakeholders to take the initiatives forward.

Department of Justice
January 2015