

**LegCo Panel on Administration of Justice and Legal Services
2007-08 Policy Initiatives of the Department of Justice**

Introduction

This paper describes the Department of Justice's new and on-going policy initiatives.

Work of the Department of Justice

2. As Government's legal adviser, the Department of Justice's duties and responsibilities cover a wide range of activities. Our daily work consists of providing legal services in respect of prosecutions and civil litigation, giving legal advice to government bureaux and departments, drafting legislation, promoting Bills where the Secretary for Justice has policy responsibility, handling legal cooperation with other jurisdictions, promoting the understanding of the rule of law, amongst other matters. The new and on-going initiatives are only part of the Department's work that warrants highlighting.

Ten Major Infrastructures, Boosting Our Economy

3. We have five on-going initiatives under the heading of 'Ten Major Infrastructures, Boosting our Economy'. We are -

- Seeking the enactment of the Mainland Judgments (Reciprocal Enforcement) Bill to implement the arrangement for the reciprocal enforcement of judgments in specific commercial matters with the Mainland (the "Arrangement").
- Encouraging greater exchanges between Hong Kong and Mainland legal professions for the purpose of assisting local service providers to explore further opportunities to access the Mainland legal services markets and to strengthen cooperation with the Mainland counterparts under the CEPA.

- Assisting in the development of Hong Kong as a regional centre for legal services and dispute resolution.
- Going to consult the public on a draft Arbitration Bill which will provide for the unification of legal regimes for domestic and international arbitration and make both the law and the process more user-friendly.
- Overseeing the completion of the socio-legal research being conducted by consultants into the supply of, and demand for, legal services in the community and considering the way forward in the light of the recommendations made therein.

4. The Mainland Judgments (Reciprocal Enforcement) Bill is intended to implement the Arrangement. It provides for the enforcement of relevant Mainland judgments in Hong Kong through a simplified registration mechanism without going through costly and time-consuming legal process. It is being scrutinised by the Legislative Council Bills Committee. Various issues regarding the drafting and other aspects of the Bill have been discussed with information papers submitted for Members' consideration.

5. The Administration is striving for early passage of the Bill. To this end, the Administration will render necessary assistance to the Bills Committee and to address questions raised by Members. The Arrangement will come into effect following the passage of the Bill and the promulgation of the relevant judicial interpretation by the Mainland authorities.

6. In terms of promoting greater exchanges between the legal professions in Hong Kong and the Mainland, we will continue to work closely with the legal professional bodies with a view to the further liberalization of the legal services market in the Mainland under the framework of CEPA. To do so, we will maintain dialogue with the Mainland authorities and promote the views and suggestions of the Hong Kong legal profession and to identify ways of resolving problems arising from the implementation of the CEPA liberalization measures. We will, in conjunction with the legal professional bodies, promote our legal

services and the attributes that make Hong Kong an ideal centre for legal services and dispute resolution by attending conferences and promotional activities whether held in the Mainland or in Hong Kong.

7. To better implement the "One Country, Two Systems" principle, we will continue to provide training opportunities to Mainland officials through the "Common Law Training Scheme" whereby participating officials will be given an opportunity to attend an LL.M programme in a local tertiary institute as well as a period of attachment to relevant government departments for the purposes of familiarization.

8. We also offer short term attachment to officials from the Mainland so that they could better understand the legal system in Hong Kong. Visits will also be made by DoJ officials to the relevant Mainland organs at suitable juncture both to strengthen our relationship as well as to discuss matters of mutual interests or of concerns to both sides. We believe that these measures will enhance mutual understanding and facilitate greater cooperation in cross boundary legal matters.

9. We have been strengthening our efforts to foster Hong Kong's status as a regional arbitration hub. The demand for arbitration services is high in relation to disputes in Hong Kong and elsewhere in the region and the cases handled by the Hong Kong International Arbitration Centre ("HKIAC") have been increasing: the number of international arbitration cases in which the HKIAC was involved during 2006 stood at 394, as compared with 281 cases in 2005. While our home grown arbitration body and local arbitration professionals have already established their reputation and promoted the development of arbitration services in the region, enhancement and enrichment of the supporting arbitration environment would be a catalyst for further growth. We are strengthening our contact with international arbitration institutions with a view to promoting Hong Kong's credentials as an international arbitration centre. In addition, updating our arbitration legislation will make Hong Kong a more attractive place to conduct arbitration. We will shortly be consulting the public on a draft arbitration Bill which will provide for the unification of the legal regimes for domestic and international arbitration and make both the law and the process more user friendly. The

proposed unified regime will be based on the UNICITRAL Model law which, in 2003, practitioners recommended should be adopted in Hong Kong.

10. 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 the socio-legal research can help in shaping future policies in respect of legal services and dispute resolution. A Consultative Committee, consisting of members of the legal profession, legislators, academics and others was set up to monitor the work of the consultants.

Optimising Our Demographic Structure, Attracting Talent

11. Our on-going initiative under the heading of Optimising Our demographic Structure, Attracting talent relates to legal education. We are participating in the work of the Standing Committee on Legal Education and Training to keep under review and make recommendations on the system and provision of legal education and training in Hong Kong, including the provision of vocational training of prospective legal practitioners.

Investing in a Caring Society

12. We have one new initiative on mediation under the heading of 'Investing in a Caring Society'. We will map out how mediation can be more effectively and extensively applied in both commercial disputes and at the community level, with the assistance of a Working Group to be established by the Secretary for Justice.

13. One distinct feature of a first class world city is effective access to justice. Our fundamentals are strong. The independent judiciary, the Department of Justice, an effective legal aid system and well-regulated legal profession all contribute to ensure the maintenance of the rule of law and ready access to justice.

14. Access to justice however, does not mean that civil disputes must invariably be litigated through an adversarial process, with

apportionment of liability and blame. Mediation which facilitates engagement and communication has become the global trend in the resolution of disputes. Hong Kong has made a good start. Mediation to resolve construction disputes has been common since the 80s and more recently, court initiated mediation in family cases has been successfully introduced. In the coming year, the Secretary for Justice's cross-sectoral working group will chart out how else mediation can be more effectively and extensively applied - in both commercial disputes and at the community level. Mediation, effectively conducted, can provide a relatively quick and inexpensive procedure, producing a satisfactory and amicable result, which both parties actively worked towards and can live with, and which will not destroy an existing relationship. We hope to see social harmony brought about by more effective access to justice.

Developing Democracy, Enhancing Governance

15. The six on going initiatives under this heading are –

- Furthering the standards of advocacy and preparation in criminal cases through the provision of comprehensive training arrangements for prosecutors.
- 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 (ICAC) and the departmental prosecutors) and reviewing the disclosure arrangements of law enforcement agencies.
- 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 law drafting skill of law draftsmen through an in-house mentorship programme and enrich their drafting experience by organising training programmes.

- Continuing the Bilingual Law Information System with enhanced features, to provide easy access to our bilingual laws of Hong Kong and improving the standard of government lawyers in respect of bilingualism in law.
- Seeking the enactment of the Domicile Bill to implement the recommendations in the Law Reform Commission's Report on the Rules for Determining Domicile.

16. In relation to training arrangements for prosecutors, the Prosecutions Division will continue to organise in-house lectures/seminars to enhance the legal knowledge of prosecutors as well as their practical skills, arrange prosecutors to participate in courses/seminars organised by other organisations and attach junior counsel to senior prosecutors in trials and appeals as working juniors.

17. On enhancing the quality of criminal justice, the Prosecutions Division will continue to identify areas where criminal law and procedure require revision, and make the case for change. Prosecutorial techniques and practice will be subject to ongoing review in the interests of modernisation. Through publications, media interviews and meetings with concerned citizens and victim groups, the Division will promote community understanding of its work. By close liaison with the law enforcement agencies and involvement in their training agendas, the Division will contribute to the more effective investigation of crime. At the international level, the Division will continue to work closely with its counterparts in pursuit of shared objectives, including the development of more effective anti-crime strategies in such areas as transnational organized crime, money laundering and corruption.

18. The Law Drafting Division will continue to enhance the drafting skills of legislative draftsmen through the in-house mentorship programme and training programmes. A 6-month in-house legislative drafting training course for a group of junior counsel is scheduled to commence in May 2008

19. The Law Drafting Division will continue to maintain BLIS in order to provide free and ready access to statutes of Hong Kong. The

Law Drafting Division is pursuing a number of initiatives to enhance the system and to make it more user friendly.

20. The Department of Justice welcomes comments by members of the Panel on these initiatives and will continue to work with the Panel as we take those initiatives forward.

Department of Justice
October 2007