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Panel on Administration of Justice and Legal Services

Meeting on 30 April 2018

**Background brief on enhancing Hong Kong's position as
the leading international arbitration centre in the Asia-Pacific region**

Purpose

This paper provides background information on the Administration's initiatives in enhancing Hong Kong's position as the leading international arbitration centre in the Asia-Pacific region. It also provides a brief account of the past discussions of Legislative Council ("LegCo") Members and the Panel on Administration of Justice and Legal Services ("the Panel") on the above and related matters.

Background

2. In her 2017 Policy Address published in October 2017, the Chief Executive reported that the Department of Justice ("DoJ") will implement various initiatives to consolidate Hong Kong's position as a centre for international legal and dispute resolution services in the Asia-Pacific region. The initiatives include promoting such services of Hong Kong in the Mainland and overseas in collaboration with the relevant sectors and making extra efforts to promote further co-operation among relevant sectors in Hong Kong, the Mainland and overseas, and providing professional services to Mainland enterprises "going global" as well as those enterprises investing in the Mainland.

3. Furthermore, one of DoJ's priorities is to step up efforts in proactively promoting Hong Kong as an international legal and dispute resolution services centre for the Belt and Road Initiative and the Guangdong-Hong Kong-Macao Bay Area ("Bay Area") development, and encourage the legal sectors of Hong

Kong and the Bay Area to enhance their level of co-operation. To attract more international legal services and dispute resolution institutions to set up branches or offices in Hong Kong, the Administration is rolling out the Legal Hub programme to provide office space for international and local law-related organizations, including arbitration institutions, in the West Wing of the former Central Government Offices and the former French Mission Building.

4. According to the Administration, international legal and dispute resolution services are an aspect of professional services where Hong Kong has a competitive edge. Hong Kong's mature legal system and judicial independence provide a solid foundation for the development of its legal services in the Asia-Pacific region. The legal and dispute resolution services practitioners in Hong Kong are fully biliterate and trilingual with extensive experience in handling cross-border commercial activities and international outlook in different types of transactions. Moreover, Hong Kong lawyers are well positioned to use their bilingual abilities to handle capital raising projects, as well as drafting and negotiating contracts in Hong Kong. When Mainland enterprises "go global", Hong Kong can provide them with diversified professional legal and related services to assist them in exploring overseas markets in an orderly and steady manner. Hong Kong's legal system, which is familiar to the international business community and well recognized, can provide due legal protection and recognition to the transactions and investments of Mainland enterprises.

Major views and concerns of Members

5. The major views and concerns of LegCo Members and the Panel on enhancing Hong Kong's position as the leading international arbitration centre in recent years are summarized in the ensuing paragraphs.

Promotion of Hong Kong as an arbitration centre in the context of the Belt and Road Initiative and the Guangdong-Hong Kong-Macao Bay Area development

6. At the Panel meeting on 25 January 2016, some members expressed the view that Hong Kong had lagged behind other jurisdictions in the development of international arbitration and dispute resolution services, and urged the Administration to expedite its work in that respect. They also considered that the Administration should seize the opportunity of the Belt and Road Initiative and the Bay Area development to promote Hong Kong's arbitration services and to strive for a more active role for Hong Kong's legal and dispute resolution services in the context of these initiatives. During the examination of the Estimates of Expenditure 2018-2019, a Member had also asked what specific work would be undertaken by DoJ in that respect.

7. In response, the Administration advised that one of its key efforts in promoting legal services was to use Hong Kong law as the applicable law and Hong Kong as the place for dispute resolution. It would continue to work together with relevant stakeholders to promote in the Mainland the strengths of Hong Kong's international legal and dispute resolution services and the role such services could play in the Belt and Road Initiative and the Bay Area development. Such promotional activities might take the form of visits, seminars and conferences as well as the major biennial Hong Kong Legal Services Forum held in the Mainland. On the other hand, DoJ's major work on arbitration was to enhance Hong Kong's arbitration regime in a timely manner in response to the latest international developments, and to actively assist the profession in promoting arbitration services in Hong Kong.

8. The Administration further advised that DoJ's work to promote Hong Kong as a regional hub of international legal and dispute resolution services was primarily undertaken by the Mediation Team of the Civil Division and the dedicated Arbitration Unit of the Legal Policy Division, supplemented by resources deployed from time to time as necessary from other parts of DoJ. Support would also be rendered by the Joint Dispute Resolution Strategy Office, which was set up internally within DoJ in September 2016 to coordinate the department's promotional work for mediation and arbitration services and to further promote Hong Kong's international legal and dispute resolution services.

Evaluation of the effectiveness of the promotional activities

9. On Members' enquiry on the effectiveness of past promotional activities in respect of promoting the use of arbitration in Hong Kong and Hong Kong as a regional hub of international legal and dispute resolution services arbitration, the Administration advised that the relevant events had been well received and it had been maintaining effective dialogues with the stakeholders to keep in view the effectiveness of the relevant activities, and to take forward new measures to further promote the attributes of Hong Kong's legal and dispute resolution services.

Development of a talent pool under the Belt and Road Initiative and the Guangdong-Hong Kong-Macao Bay Area development

10. Members noted that to step up efforts in proactively promoting Hong Kong as an international legal and dispute resolution services centre for the Belt and Road Initiative and the Bay Area development, and encourage the legal sectors of Hong Kong and the Bay Area to enhance their level of co-operation, one of the Administration's initiatives was to explore the setting up of a Bay Area legal co-operation platform for the legal sectors of the three places to effect

mutual notification, exchange information, provide training and develop a talent pool. Members were concerned about the specific measures to develop the talent pool.

11. The Administration advised that the Department of Justice of Guangdong, the Hong Kong Law Society and the Hong Kong Bar Association were promoting the establishment of a "Joint-conference Mechanism of the Lawyers Associations of the Bay Area" to enhance co-operation in various aspects through activities such as regular meetings, training and thematic talks, as well as to start developing a talent pool of lawyers in the three places. Meanwhile, the Asian Academy of International Law ("AAIL")¹ also contributed to the development of a talent pool by organizing regular training in Hong Kong.

12. Furthermore, the Administration would seek suitable opportunities for seconding young and promising Government Counsel of DoJ to appropriate international organizations to broaden their international horizons and enhance their understanding of the legal practice of such organizations, so as to strengthen their training and help develop a relevant talent pool.

Training for arbitration manpower

13. Members were concerned whether if the Administration would make ready resources for training up arbitration talent in Hong Kong. The Administration advised that at present, manpower training for the arbitration sector in Hong Kong was mainly taken up by the law faculties of universities, arbitration professional bodies and arbitration institutions. There were no statutory requirements to be met for qualification as an arbitrator in Hong Kong. Those interested in becoming arbitrators would take up a course offered by the Chartered Institute of Arbitrators ("CIArb")² or the Hong Kong Institute of Arbitrators, or a recognised university course before becoming a member of the institute on passing the relevant assessment.

14. The Administration further advised that the Hong Kong International Arbitration Centre ("HKIAC") had been running an internship programme since the early 2000s, which offered interns, inter alia, the opportunity to attend hearings at its hearing facilities and work on arbitration proceedings

¹ AAIL is an independent and non-profit making body set up in Hong Kong to further the studies and development of international law in Asia by, among others, conducting training courses, seminars on topical issues and joint studies on major international law issues.

² Headquartered in London, UK, CIArb has branches around the world. As at March 2018, CIArb (East Asia Branch) in Hong Kong is the institute with the largest membership worldwide.

administered by HKIAC. Similar internship programmes were run by the Hong Kong Arbitration Center of the China International Economic and Trade Arbitration Commission and the Secretariat of the International Court of Arbitration of the International Chamber of Commerce (Asia Office), which was also based in Hong Kong. Moreover, since December 2015, HKIAC had regularly run tribunal secretary training programmes in Hong Kong and elsewhere. Where necessary, DoJ would work with the professional institutions based in Hong Kong to ensure that the training needs of aspiring arbitrators could be addressed by relevant and updated training courses and programmes to be organized.

Conditional fees for arbitration in Hong Kong

15. The Panel enquired whether the Administration would consider introducing conditional fees for arbitration in Hong Kong. The Administration advised that it was open-minded to this suggestion and would listen to the views from different stakeholders. In considering the introduction of conditional fees, two important principles to be upheld were that the measure(s) should enhance the competitiveness of the Hong Kong Special Administrative Region as a leading centre for international legal and dispute resolution services in the Asia-Pacific region; and the measure(s) would not sacrifice the professional standards and ethics of the legal profession.

Latest position

16. Supported by DoJ, the Hong Kong Trade and Development Council has commissioned a study on Hong Kong's arbitration services. According to the Administration, the aim of the study is to, inter alia, (a) identify Hong Kong's strengths and weaknesses in international arbitration services and identify opportunities and threats to Hong Kong; and (b) make recommendations on enhancing Hong Kong's status as a leading centre for international arbitration services in the Asia-Pacific region. The Administration will brief the Panel at its meeting on 30 April 2018 on the Report (in English only) and the Administration's response to the recommendations set out in the Report.³

³ A copy of the Report can be found at <http://www.doj.gov.hk/eng/new/index.html> and <http://www.doj.gov.hk/eng/public/arbitration.html#adv>.

Relevant papers

17. A list of relevant papers is in the **Appendix**.

Council Business Division 4
Legislative Council Secretariat
24 April 2018

**Enhancing Hong Kong's position as
the leading international arbitration centre in the Asia-Pacific region**

List of relevant papers

| Meeting | Date | Paper |
|--|------------|---|
| Council | 18.6.2014 | <u>Hon Dennis KWOK raised a question on HK as centre for international legal and dispute resolution services in Asia-Pacific region</u> |
| Panel on Administration of Justice and Legal Services | 25.1.2016 | <u>Minutes of meeting</u> |
| | 30.10.2017 | <u>Administration's paper</u> <u>Minutes of meeting</u> |
| | 29.1.2018 | <u>Administration's paper</u> |
| Finance Committee | 16.4.2018 | <u>Examination of Estimates of Expenditure 2018-2019 (Reply Serial Nos. SJ047, SJ050, SJ053 and SJ057)</u> |