

**Opening Remarks of the Secretary for Justice  
at the Special Meeting of Finance Committee  
of the Legislative Council  
to Examine the Estimates of Expenditure 2019-20  
on 8 April 2019**

Chairman,

The total estimated expenditure of the Department of Justice (DoJ) for 2019-20 is about \$2,330 million, representing an increase of 31.7% (or around \$560 million) over the revised estimate for the last financial year, and an increase of only about 1.7% (or around \$39 million) over the original estimate for the last financial year. The mild increases relate mainly to the expenditure on manpower and case handling.

2. With regard to manpower, there will be a net creation of 15 posts in the coming year to cope with the increasing demand of government departments for legal services and meeting our operational need.

3. For briefing out and court costs, the estimated expenditure is worked out on the basis of information available at the time of preparing the estimates and the principles of prudent management of public finances. The ultimate amount to be incurred in this regard will depend on the number of cases, their complexity, their development and outcome.

4. The Hong Kong Special Administrative Region Government (HKSARG) strives for Hong Kong's status as a leading centre for international legal and dispute resolution services in the Asia-Pacific region. This January, the DoJ established the Inclusive Dispute Avoidance and Resolution Office (IDAR Office), which works directly under the Secretary for Justice's steer. The establishment of the IDAR Office will help better co-ordinate and

implement various initiatives that the DoJ has been undertaking in the areas of dispute avoidance and resolution.

5. The IDAR Office will pursue and conclude co-operation or partnership arrangements with other jurisdictions and international organisations. It will also organise, support or encourage a number of important international events and activities in Hong Kong, as well as raising the international profile of Hong Kong in deal making and dispute resolution through capacity building and promotional activities overseas. For instance, the DoJ will join hands with the United Nations Commission on International Trade Law (UNCITRAL) and the Asian Academy of International Law to hold the UNCITRAL Judicial Summit in Hong Kong in the coming November for capacity building for the judiciaries in the region and enhancing international trade and development. Moreover, following the signature of a memorandum of co-operation with the Ministry of Justice of Japan on 9 January 2019, the DoJ is actively seeking to sign such memorandum with more places with a view to enhancing communication, exchanges and co-operation between Hong Kong and foreign jurisdictions on matters relating to international dispute resolution, as well as promoting the relevant development.

6. In addition to the deal making and dispute resolution fronts, the DoJ also devotes time to capacity building work to explore new opportunities in the Mainland and the Belt and Road countries for Hong Kong's legal and dispute resolution professions.

7. I will now outline the DoJ's major areas of work under the five programmes in the new financial year.

#### Programme (1) – Prosecutions

8. With respect to criminal prosecutions, we will continue to handle prosecution work in a fair, impartial and professional manner according to the relevant legislative provisions, the Prosecution Code, legal principles and evidence.

9. Since 1 July 2018, summaries of notable judicial decisions have been uploaded onto the DoJ's website for the general public's reference purpose. We will also continue to promote the rule of law and further public and international understanding of Hong Kong's criminal justice system through the "Prosecution Week" and other large-scale international conferences to be held in Hong Kong<sup>1</sup>.

#### Programme (2) – Civil

10. Providing legal advice for the Government and representing the Government to respond in judicial review cases form a major part of the matters handled by the Civil Litigation Unit of the Civil Division (CD). 95% of the some 3 000 new applications for leave last year were related to non-refoulement claims. In the past three years, courts at all levels delivered around 650 judgments in judicial review cases involving the Government, of which over 85% were ruled in favour of the Government. Proper use of the judicial review regime by the public helps ensure that public officers make lawful decisions and policies, thus enhancing governance and safeguarding the rule of law.

11. The DoJ is now compiling the third edition of *The Judge Over Your Shoulder – A Guide to Judicial Review for Administrators*, setting out the basic principles and procedures of judicial review, and will be uploading it onto the DoJ's website upon completion.

12. The CD plans to roll out an understudy programme for less-experienced barristers to undertake more of the Government's civil work in order to enhance their exposure.

13. Under the steering of the newly-established IDAR Office, the Mediation Team of the CD will continue to assist in matters relating to

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<sup>1</sup> Other events include the "Criminal Law Conference" and the "Meet the Community" programme.

developing and promoting more extensive use of mediation to resolve disputes. Major initiatives include:

- (1) holding the biennial “Mediate First” Pledge event (2019);
- (2) assisting in the implementation of the mediation mechanism for investment disputes established under the Investment Agreement of CEPA<sup>2</sup>;
- (3) continuing to organise training courses on international investment law and international investment mediation skills;
- (4) supporting the development of an online dispute resolution platform; and
- (5) monitoring the pilot mediation scheme implemented at the West Kowloon Mediation Centre.

### Programme (3) – Legal Policy

14. The Legal Policy Division will continue to discharge the important role of upholding and promoting the rule of law, and providing professional legal support to bureaux and departments on matters relating to the Basic Law, human rights and elections.

15. To further enhance communication with the legal sector, the DoJ has, since last year, had regular meetings with the Hong Kong Bar Association and the Law Society of Hong Kong to discuss different issues<sup>3</sup>.

16. The DoJ and the Ministry of Justice of the Mainland signed a record of meeting on 23 January 2019, reaching consensus with respect to assistance for

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<sup>2</sup> The full title is the Mainland and Hong Kong Closer Economic Partnership Arrangement.

<sup>3</sup> These include the exploration of opportunities for young practitioners and the initiatives to consolidate Hong Kong's position as a centre for international legal and dispute resolution services, etc.

Hong Kong's legal sector to enter the Mainland market. The Ministry of Justice has agreed in principle to further relax restrictions by allowing Hong Kong solicitors and barristers to be retained as legal consultants by one to three Mainland law firms concurrently, and to remove the minimum capital injection ratio of 30% by Hong Kong partner firms in the partnership associations set up by Mainland and Hong Kong law firms, etc. The DoJ will continue to follow up on these matters with the Mainland authorities, with a view to implementing the measures within 2019.

17. Another priority of the DoJ in recent years is to enhance Hong Kong's status as a leading centre for international legal and dispute resolution services in the Asia-Pacific region and to take forward the Legal Hub project. The renovation works for the Legal Hub at the West Wing of the former Central Government Offices will soon be completed. It is expected that space will be provided to international and local law-related organisations starting from the second half of this year.

18. The DoJ co-organised with the industry the 5th Hong Kong Legal Services Forum in Guangzhou last September. The purpose of the event was to promote Hong Kong as an international legal and dispute resolution services centre in the context of the Belt and Road Initiative and the Guangdong-Hong Kong-Macao Greater Bay Area development to Mainland enterprises and the legal sector. The forum was very well received.

19. Meanwhile, the DoJ is committed to enhancing the legal framework for dispute resolution. Regarding the amendments to the arbitration and mediation legislation in 2017, the new provisions on third party funding of arbitration have also come into effect since February 2019, following the issue of the relevant code of practice. For the new provisions on third party funding of mediation, the commencement date will be determined after further consulting the Steering Committee on Mediation and stakeholders.

20. The Government supports the non-governmental development of an online dispute resolution and deal making platform as well as promotion of the

development of LawTech. We are grateful to the Panel on Administration of Justice and Legal Services for its support of the project and will seek funding approval from the Finance Committee in due course.

21. The DoJ has been actively enhancing legal co-operation in civil and commercial matters between Hong Kong and the Mainland. In early March 2019, we completed public consultation on the Bill<sup>4</sup> for implementing the Matrimonial Arrangement<sup>5</sup>. The DoJ is following up on the drafting work with a view to introducing the Bill into the Legislative Council in June and endeavouring to implement the Arrangement as early as possible so as to take forward the new mechanism for application for reciprocal recognition and enforcement of matrimonial judgments.

22. In addition, the HKSARG and the Supreme People's Court (SPC) of the Mainland signed an arrangement on reciprocal recognition and enforcement of judgments in civil and commercial matters<sup>6</sup> on 18 January 2019 to reduce the need for re-litigation and offer more effective protection to the parties involved. The DoJ will conduct a public consultation on the relevant bill in due course.

23. The HKSARG and the Mainland's SPC also signed the Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the HKSAR on 2 April 2019. As a seat of arbitration, Hong Kong becomes the first jurisdiction outside the Mainland where parties to arbitral proceedings administered by its arbitral institutions would be able to apply to the Mainland courts for interim measures.

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<sup>4</sup> The full title is the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Bill.

<sup>5</sup> The full title is the Arrangement on Reciprocal Recognition and Enforcement of Civil Judgments in Matrimonial and Family Cases by the Courts of the Mainland and of the Hong Kong Special Administrative Region.

<sup>6</sup> The full title is the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region.

24. The DoJ also plans to conduct public consultation in the second quarter of this year with a view to reaching early consensus on arrangements with the Mainland for reciprocal recognition and assistance regarding insolvency cases in order that better legal protection be provided and the business and investment environment in both places improved.

25. To implement the recommendations made by the Law Reform Commission in its Report on Hearsay in Criminal Proceedings, we will continue to assist the Legislative Council Bills Committee in its work so that the relevant law can keep abreast of the times.

#### Programme (4) – Law Drafting

26. As regards law drafting, apart from drafting and amending legislation as instructed by bureaux, the Law Drafting Division will –

- (1) prepare for publication on-line of the Combined DoJ Glossaries of Legal Terms in order to promote legal bilingualism; and
- (2) enhance the database of Hong Kong e-Legislation to facilitate more convenient access.

#### Programme (5) – International Law

27. The International Law Division (ILD) will continue to provide legal advice on different aspects of international law to bureaux and departments, and handle requests involving international legal co-operation.

28. Through co-operation with international organisations<sup>7</sup>, participation in the work of the Asia-Pacific Economic Cooperation<sup>8</sup>, and sending officers to join Chinese delegations participating in international organizations and

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<sup>7</sup> Such as the Hague Conference on Private International Law and the UNCITRAL.

<sup>8</sup> Such as the Friends of the Chair Group on Strengthening Economic and Legal Infrastructure under the Economic Committee.

international conferences,<sup>9</sup> the ILD will also maintain its efforts in enhancing our international legal and dispute resolution services, our image and influence.

### Conclusion

29. Chairman, the above sets out the DoJ's major areas of work in the coming financial year. My colleagues and I will be happy to answer Members' questions and listen to your views.

Thank you.

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<sup>9</sup> Such as participation in the discussion of the Working Group III of UNCITRAL in relation to the investor-state dispute settlement reform.