

For Information

**LegCo Panel on Administration of Justice and Legal Services
2011-12 Policy Initiatives of the Department of Justice**

Introduction

This paper describes the policy initiatives of the Department of Justice in the year 2011-12.

Work of the Department of Justice

2. The Department of Justice (the Department) advises Government bureaux and departments on a vast array of legal issues and represents the Administration in public law (judicial review) cases. It is responsible for all prosecutions and we draft all the Government legislation. The landscape within which the Department operates continues to evolve and becomes intricate : the demand for legal advice and different forms of legal service has steadily increased and the complexity of the legal issues involved deepened; the Department is also expected to be open and transparent in its operation, in particular in handling prosecution cases.

Policy Initiatives of the Department of Justice

Developing the Infrastructure for Economic Growth

3. In pursuance of developing the infrastructure for economic growth, we will in 2011-12 –

- Liaise and work with the relevant Mainland Authorities, the legal profession and arbitration institutions in Hong Kong on how to take further the new measures introduced to facilitate the provision of legal and arbitration services in Qianhai, Shenzhen by Hong Kong service providers.

4. Following the announcement of the “Overall Development Plan on Shenzhen-Hong Kong Co-operation on Modern Services Industries in Qianhai Area” in October 2010, the Department has been liaising closely with the Hong Kong legal and arbitration professions to exchange views on possible ways to promote the use of Hong Kong legal and arbitration services in resolving commercial disputes in Qianhai.

5. The “Regulations on Qianhai Shenzhen-Hong Kong Modern Services Industries Co-operation Area” were promulgated by the Shenzhen People’s Congress in June 2011 under which initiatives were proposed to –

- (i) set up a special tribunal (專門的商事審判機構) for hearing of commercial disputes in Qianhai;
- (ii) encourage the establishment of a mechanism for the verification of the law of other jurisdictions (法律查明機制); and
- (iii) encourage Hong Kong arbitration bodies to provide arbitration services to enterprises set up in Qianhai.

On-going discussion has been conducted with the relevant Shenzhen authorities to reflect the views of the Hong Kong legal and arbitration profession and explore the ways to implement the proposals set out in the Regulations.

6. Riding on the positive measures as announced by the Vice-Premier of the State Council, Mr. Li Keqiang in August 2011 in support of –

- (i) improving the mode of association between law firms of the Mainland and Hong Kong; and
- (ii) encouraging Hong Kong arbitration bodies to provide arbitration service in Qianhai,

we will maintain dialogue with the Mainland authorities and the Hong Kong legal and arbitration professionals to explore possible pilot measures on provision of legal and arbitration services in Qianhai.

7. In the coming year, we will continue to –

- Actively promote Hong Kong legal services in the Mainland and strengthen co-operation between the legal professions in Hong Kong and the Mainland.
- Promote the development of Hong Kong as a regional centre for legal services and dispute resolution.
- Enhance legal co-operation in civil and commercial matters, including family law matters, between Hong Kong and the Mainland, 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.

8. More specifically, we have regularly consulted the professional bodies and arbitration institutions for their views and proposals to develop their practices in the Mainland market under the framework of the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA). We have also engaged the relevant Mainland authorities for discussion in order to take full advantage of the opportunities arising from the development of Qianhai and to explore further pilot measures under the framework of CEPA for implementation in Guangdong.

9. With the support of legal and arbitration professionals from both Hong Kong and the Mainland, the first “Hong Kong Legal Services Forum”, attended by well over 500 participants, was successfully held in Shanghai in July 2010. This has led to strengthened co-operation between the legal and arbitration professionals in both jurisdictions. The Department is making preparation for a similar forum in the second half of 2012 to further promote Hong Kong’s legal and arbitration services in the Mainland, which will help to reinforce Hong Kong’s position as a leading regional centre for legal services and dispute resolution.

10. On the legal services side, we would continue to enhance the competitiveness of Hong Kong as a regional centre by, among other things, seeking to attract more legal talents, both local and overseas, to practise and provide world class legal services in Hong Kong for clients all over the world. We are now working closely with the Law Society on two such initiatives, namely the introduction of the solicitor corporation and the limited liability partnership (LLP) as additional alternative business models for solicitors’ practice in Hong Kong. It is

hoped that the implementing legislation for the two models, namely the Legal Practitioners (Amendment) Bill 2010 (which seeks to introduce LLP for solicitors) and the draft Solicitor Corporation Rules (which are to be made by the Council of the Law Society) will be adopted within the current legislative session.

11. In relation to arbitration, we have taken a number of significant initiatives last year on the arbitration front. The new Arbitration Ordinance (Cap. 609) came into force on 1 June 2011. The new Ordinance, which is based on the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration, has brought our law in tune with the latest and best international practice that is familiar to both local and foreign arbitration users and practitioners.

12. As a clear demonstration of our determination to promote Hong Kong as a leading arbitration centre of the Asia Pacific, the Government of the HKSAR will be making available additional office space to the Hong Kong International Arbitration Centre (HKIAC) to enable it to expand its hearing and office facilities. In 2012, HKIAC will be able to operate from the entire floor of its current address in Two Exchange Square, doubling the size of the present establishment. With the HKIAC's expansion, Hong Kong will be able to cope with the increasing demand of arbitration services in Hong Kong. We will continue to work with the arbitration community to boost Hong Kong's status as a leading arbitration centre of the Asia-Pacific.

13. In October 2010, the Department of Justice signed a co-operation arrangement with the China Council for the Promotion of International Trade (under which the leading Mainland arbitral institution, China International Economic and Trade Arbitration Commission (CIETAC) was established) with the aim of enhancing the dispute resolution mechanism in both places. The two sides agreed to promote further exchanges and strengthen co-operation between the arbitration and mediation bodies in Hong Kong and the Mainland.

14. To continue to develop co-operation in civil and commercial matters, the Department had held exploratory discussion with the Supreme People's Court on the subject of mutual recognition and enforcement of matrimonial judgments. We will continue to discuss

with the Supreme People's Court the legal issues involved. The Panel and the stakeholders will be consulted on the subject in due course.

15. The Framework Agreement on Hong Kong/Guangdong Co-operation supports further legal exchanges between Guangdong and Hong Kong. The Department maintains regular contact with the relevant authorities in Guangdong and discusses the way to facilitate efficient and timely exchange of laws and legal information to enhance greater understanding of the legal development on both sides. The Department will continue to encourage the development of closer co-operation between the legal and the notarial sectors of both sides pursuant to the Framework Agreement.

Investing for a Caring Society

16. In relation to investing for a caring society, we will continue to implement the various recommendations of the Working Group on Mediation which have received general support from the community. Amongst other tasks, we will seek to introduce the Mediation Bill towards the end of this year to provide a proper legal framework in respect of the conduct of mediation in Hong Kong without hampering the flexibility of mediation.

17. With a view to helping to address the concerns over the availability of venues to conduct mediation at the community level, with the support of the Yau Tsim Mong District Council and the Wan Chai District Council, designated time slots were reserved in two community centres (the Henry G Leong Yaumatei Community Centre and Leighton Hill Community Hall) for the use of mediators. We will monitor the usage statistics and feedback closely with a view to assessing how best to support mediators.

Optimising our Demographic Structure and Attracting Talent

18. In terms of optimising our demographic structure, the Department of Justice continues to participate in the work of the Standing Committee on Legal Education and Training and to keep under review

and make recommendations on the system and provision of vocational training of prospective legal practitioners.

Developing Democracy and Enhancing Governance

19. In respect of developing democracy and enhancing governance, we are –

- Improving the quality and efficiency of legal advice, the preparation in criminal cases and the standards of advocacy through comprehensive training programmes for prosecutors and making better use of resources.
- Enhancing the quality of criminal justice by promoting transparency in public prosecutions and improving our accountability to the community we serve.
- Promoting co-operation amongst prosecutors at the regional and global level by actively participating in the work of the various international prosecutors organisations.

20. In support of the above ongoing initiatives, the Prosecutions Division has been taking forward a series of initiatives with a view to modernizing the Division and enhancing its efficiency and effectiveness. Major initiatives include –

- (a) The introduction of the quick advisory system known as “FAST” to promptly deal with relatively simple and straightforward cases;
- (b) The establishment of a new subdivision of advocacy to reflect the importance of advocacy expertise and provide the means for specialization;
- (c) The establishment of a staff training unit and of a continuing legal education programme;
- (d) The creation of a Joint Training Programme with the Hong Kong Bar Association and the Law Society of Hong Kong for newly qualified lawyers; and

- (e) The conduct for selected cases of “case review meetings” between prosecutors and relevant officers of the law enforcement agency to see what lessons can be learned and how to improve things for the future.

21. Apart from the above measures which will go a long way in improving Hong Kong’s prosecution service, in order to enhance the openness and transparency of the Prosecutions Division, a complaints and feedback unit and a media relations unit have also been set up to handle complaints from the public and to deal with enquiries from the media.

22. 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. We are also considering the effective means to enhance the public’s understanding of the prosecution service and the criminal justice system.

23. As regards communications at the professional level, the Division has engaged in active dialogue with the private profession and interested groups on a variety of issues and has fostered a partnership with the private profession in improving professional standards and addressing matters of common interest in relation to the criminal justice system.

24. The Prosecutions Division has also fostered its close links with counterparts in other jurisdictions. Prosecutors have actively participated in various international fora and events as well as experience-sharing with other jurisdictions by way of video conferencing. 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.

25. In terms of developing democracy and enhancing governance, we are also –

- Continuing to press ahead with the establishment of an electronic database of Hong Kong legislation with legal status through conducting a tender process and proceeding with the staged implementation of the Legislation Publication Ordinance.

- Enhancing the accessibility of legislation through publishing guidelines on the drafting of legislation.

26. The Legislation Publication Ordinance was gazetted on 30 June 2011. The Ordinance provides the legal basis for the establishment of a brand-new electronic database of the Laws of Hong Kong. The contents of the database will be verified and given a statutory status that can be accepted by the courts. In 2011-12, we will proceed to the tender evaluation for proposals to develop the new system. It is expected that the new system will be implemented in 2015-16 at the earliest. Legislation data will then be gradually migrated from the loose-leaf edition to the database in the subsequent years. Easy access to legislation by the public is an indispensable element of a sound legal system. In this respect, the Ordinance sets a new milestone for the publication of legislation in Hong Kong.

27. The Ordinance also consolidates existing provisions for making minor and technical amendments to legislation scattered in various Ordinances and adds certain new editorial and revision powers. In 2011-12, we will proceed to exercise these new powers under the loose-leaf edition regime. This will enable us to ensure uniformity in appearance across consolidated legislation (i.e. the modernized format and styles that we introduced in 2010-11 to improve the legislation's presentation and user-friendliness) and streamline the making of minor and technical amendments.

28. We also intend to publish a Guide to the Styles and Practices adopted by government counsel in drafting legislation. The intention in publishing the Guide is to assist readers of legislation in gaining an understanding of the approaches taken, and techniques followed, by legislative drafting counsel. The Guide will also be of assistance to those who draft legislation for non-government entities and thereby promote uniformity in drafting practices across the whole of the Statute Book. Consistency in drafting style greatly assists legislation users in reading and understanding legislation.

Other Initiatives

29. Apart from the above, we are assisting the Legislative Council Bills Committee in its scrutiny of the Enduring Powers of Attorney (Amendment) Bill 2011 which seeks to implement the recommendations of the Law Reform Commission report on “Enduring Powers of Attorney” so as to relax the existing requirement that an enduring power of attorney be signed at the same time before a medical practitioner and a solicitor. We look forward to the early enactment of the legislation.

30. The Department of Justice welcomes 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
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