

## Foreword by the Secretary for Justice

It is with great pleasure that I present to you this ninth periodical review of the work of the Department of Justice (the Department), which covers the three-year period from 1 January 2012 to 31 December 2014. As I took over as the Secretary for Justice of the Hong Kong Special Administrative Region (HKSAR) Government on 1 July 2012, the Department was under the helmsmanship of my predecessor, Mr Wong Yan Lung, SC, during the first half of 2012. Mr Wong's professionalism and dedication set a shining example for the entire Department to follow.

During the three-year period covered by this review, the legal landscape and the environment within which the Department operated kept transforming, presenting new challenges as well as fresh opportunities. The Department's work has continued to increase significantly both in breadth and depth, which is being shouldered by colleagues with admirable dedication.

Capitalising on our well-developed legal system and legal infrastructure, it is the steadfast policy of the HKSAR Government, as well as one of the top priorities of the Department, to consolidate and enhance the HKSAR's status as a centre for international legal and dispute resolution services in the Asia-Pacific region. To meet this end, the Department frequently made efforts to promote the HKSAR as a hub for international legal and dispute resolution services (including, among others, arbitration and mediation) in the Asia-Pacific region at forums, seminars and other similar events held within or outside the HKSAR from 2012 to 2014.

In September 2012, the China International Economic and Trade Arbitration Commission (CIETAC) established in the HKSAR the CIETAC Hong Kong Arbitration Center, which is its first such centre ever established outside the Mainland. In January 2013, we concluded

an Arrangement Concerning Reciprocal Recognition and Enforcement of Arbitral Awards with the Macao Special Administrative Region, and enacted the Arbitration (Amendment) Ordinance in July 2013 to implement the Arrangement as well as to enhance the arbitration regime of the HKSAR in some other aspects. In November 2014, the China Maritime Arbitration Commission (CMAC), a leading maritime arbitration institution in the Mainland, set up an arbitration centre in Hong Kong, which is also its first centre outside the Mainland. Further, in December 2014, the Advisory Committee on Promotion of Arbitration was established to co-ordinate efforts and strategic plans for promoting the HKSAR as a leading centre for international arbitration services in Asia-Pacific region.

As I have previously said on other occasions, law reform plays an important role in any society which aspires to uphold the rule of law. The HKSAR is no exception. Over the last three years, the Department played an important part in the context of law reform including, among others, the implementation of recommendations made by the independent Law Reform Commission (LRC) on subjects including class actions; criteria for service as jurors; double jeopardy; hearsay in criminal proceedings and privity of contract. Some topics, for example, privity of contract, are more straightforward and a bill giving third parties the right to sue under agreements has been enacted as law. On the other hand, other topics, like class actions, are more complex and controversial, which called for the setting up of a cross-sector working group to study the LRC's proposals and to make recommendations to the HKSAR Government on how to take the matter forward.

During the three-year period in question, there have been important decisions by the courts in both criminal

and civil matters in respect of which counsel of the Department have played a significant role. In July 2013, the Court of Final Appeal (CFA) granted declarations that the relevant sections of the Marriage Ordinance and Matrimonial Causes Ordinance must be read and given effect so as to include within the meaning of the words “women” and “female” a post-operative male-to-female transsexual whose gender has been certified by an appropriate medical authority to have changed as a result of sex reassignment surgery. I am chairing an inter-departmental working group, with members comprising representatives of relevant policy bureaux and legal experts, to study issues that may benefit from legislative changes so as to address the problems facing transsexuals and make such recommendations to the HKSAR Government as may be appropriate.

On the criminal side, the CFA set out the applicable principles on interpreting strict or absolute liability offences in the landmark decision of *HKSAR v Kulemesin Yuriy & Another* (FACC 6 & 7/2012), and more details can be found in the chapter below on “Notable Cases”. The Prosecutions Division is also to be congratulated for successfully organising the Prosecution Weeks 2012, 2013 and 2014, an initiative to reach out to the public in promoting the work of the Division and enhancing the general public’s awareness of the rule of law in the HKSAR. In September 2013, the Division released the new *Prosecution Code* which replaces the previous *Statement of Prosecution Policy and Practice - Code for Prosecutors* published in 2009. These new guidelines for prosecutors, which took into account the international trend of prosecutions and latest development of criminal jurisprudence, are accessible to the public through the Department’s homepage.

In view of the importance of the HKSAR’s connections with the rest of the world, the Department’s activities have continued to extend beyond domestic issues. Indeed, to better promote the HKSAR as a centre for international legal and dispute resolution services in the Asia-Pacific region and in the overall interests of



the HKSAR, I always stress the importance of making the HKSAR as visible as possible in the international arena. In this regard, the work done by the Department included that relating to the setting up of the Asia Pacific Regional Office in the HKSAR by the Hague Conference on Private International Law in December 2012, which represented a vote of confidence in the HKSAR as a regional centre for legal services.

On another front, the Department continued to handle numerous cases of mutual legal assistance and related matters including requests for surrender of fugitives. The one that attracted much publicity is the case concerning Mr Edward Snowden. In June 2013, the Department processed a request

from the Government of the United States for the provisional arrest of Mr Snowden, who was wanted for prosecution in respect of alleged offences of unauthorised disclosure of national defence information, classified communication intelligence and theft of state property. Notwithstanding the sensitivity and media attention surrounding this case, the Department handled the request strictly in accordance with the laws of the HKSAR.

In September 2014, what turned out to be a 79-day “Occupy Movement” began, during which time traffic in some main roads of the HKSAR was blocked, and the rule of law faced significant challenges. Apart from handling the related prosecutions strictly in accordance with the *Prosecution Code* as well as in a fair and just manner, the Department has been working and will continue to work closely with other government departments and bureaux to enhance the general public’s understanding of the concept of the rule of law through different channels.

Apart from expressing my gratitude to my predecessor, Mr Wong Yan Lung, SC, as I did at the outset, I would also like to take this opportunity to acknowledge the significant contribution of Mr Eamonn Moran, QC, and Mr Kevin Zervos, SC, who were respectively our former Law Draftsman and Director of Public Prosecutions during the period covered by this review. Mr Paul Wan and Mr Keith Yeung, SC, have since joined the

Department and have taken up the offices leading the Law Drafting Division and the Prosecutions Division respectively. I also wish to express my gratitude to Mr Stuart Stoker who retired in 2012 after serving as the Secretary of the LRC for over 20 years. During the relevant period, we have also seen the addition of two “silks” (Senior Counsel) amongst our colleagues – Mr Wesley Wong, SC, and Mr Simon Tam, SC. Needless to say, this is one of the highest professional recognition a barrister could get in the course of his legal career! For the benefit of the Department and the HKSAR as a whole, I hope more counsel of the Department can in future attain the rank of Senior Counsel. Last but certainly not least, I would also like to take this opportunity to pay tribute again to the dedication and skill of those who serve in the Department, whether lawyer or otherwise. Their high calibre and dedicated attitude ensure that the Department is in a position to fulfil its important role.



(Rimsky Yuen, SC)  
Secretary for Justice