

International Law Division





Law Officer (International Law), Ms Amelia Luk (centre), with Deputy Law Officer (Mutual Legal Assistance), Mr Wayne Walsh, SC (left); and Deputy Law Officer (Treaties & Law), Mr Paul Tsang (right)

International Law Division

The International Law Division comprises two units, namely, the Treaties and Law Unit and the Mutual Legal Assistance Unit. The Division provides legal advice on public international law to the Government, negotiates international agreements or provides legal advice for such negotiations, and handles requests for legal co-operation between the HKSAR and other jurisdictions.

Review of work in 2012, 2013 and 2014

Advisory work

- Rendering advice on international trade law, privileges and immunities, civil aviation and maritime matters, international labour conventions, human rights, environment and health, visa abolition and outer space;
- Rendering advice on drafting and interpretation of customs, police, cultural and education co-operative agreements and arrangements; and

- Advising on the enactment of legislation to implement international instruments and agreements in the HKSAR including United Nations Security Council Resolutions, and agreements on maritime matters, conservation, surrender of fugitive offenders (SFO) and mutual legal assistance (MLA) in criminal matters.

Negotiations

- Negotiating agreements on behalf of the HKSAR on SFO, MLA, transfer of sentenced persons (TSP) matters; and



Heads of delegations initialling agreement



Negotiation in progress



Exchanging initialled texts



Happy faces at the conclusion of the negotiation

- Providing legal support in other bilateral negotiations such as agreements on air services, avoidance of double taxation, customs co-operation, investment promotion and protection, free trade and visa abolition.

Multilateral agreements and international conferences

- Participating in international meetings and diplomatic conferences held by international organisations.

Legal co-operation with other jurisdictions

- Acting as the Central Authority of the HKSAR on SFO and MLA matters, advising on and processing SFO and MLA requests;
- Advising on and processing letters of requests from overseas courts or tribunals pursuant to the Evidence Ordinance (Cap 8);
- Acting as the Central Authority of the HKSAR under the Hague Convention of the Civil Aspects of International Child Abduction, advising on and processing requests made under the Convention; and
- Advising the Security Bureau on TSP applications.

Other work

- Providing legal support to the Financial Secretary and the Secretary for Security in relation to the HKSAR's participation in the Financial Action Task Force Against Money Laundering (FATF), attending international meetings of FATF, participating in expert working groups and acting as expert legal assessors in mutual evaluations of fellow members' implementation of FATF recommendations on measures to combat money laundering and terrorist financing; and

- Serving as speakers and participating in regional and international seminars organised by other governments and international organisations such as the Hague Conference on Private International Law; conducting briefings for local and overseas law enforcement agencies on international legal co-operation matters; delivering papers in the field of international co-operation in criminal matters such as asset recovery and other forms of MLA.

Highlights of the Division's work in 2012, 2013 and 2014

Hearing of an appeal to the Court of Appeal and the Court of Final Appeal

Counsel in the Division was engaged in appeals to the Court of Appeal and the Court of Final Appeal (CFA) which arose from surrender of fugitive offenders proceedings involving a person who was wanted by the Government of Australia for prosecution on charges relating to drug trafficking.

It was the Australian Government's case that the person in question was involved in trafficking over 50 kilograms of crystal methamphetamine in Australia by giving directions to his accomplices through telephones while he remained in the HKSAR at the material time. The Australian Government sought his surrender from the HKSAR.

In March 2011, the person in question was committed into custody to await a decision by the Chief Executive on his surrender. He applied for *habeas corpus* on the ground that telecommunication intercepts evidence, though obtained lawfully in Australia, was inadmissible as evidence in surrender proceedings in HKSAR courts. The application was dismissed in July 2011.

He further appealed against the dismissal of his *habeas corpus* application and the Court of Appeal dismissed his appeal in July 2012. His application for leave to appeal to the CFA was dismissed by the Court of Appeal in January 2013.

In July 2013, the Appeal Committee of the CFA certified that the appeal ground raised a point of law of great and general importance, and granted leave to the person to appeal to the CFA. The final appeal was heard in February 2014 and the CFA dismissed the appeal, holding that Article 30 of the Basic Law did not render telecommunication intercepts obtained lawfully in a foreign jurisdiction inadmissible as evidence in surrender proceedings in the HKSAR.

Request for provisional arrest of a person who is wanted for prosecution of offences of unauthorised disclosure of national defence information, classified communication intelligence and theft of state property

In June 2013, the Division processed a request from the United States (US) Government for the provisional arrest of a person who is wanted for prosecution on alleged offences of unauthorised disclosure of national defence information, classified communication intelligence and theft of state property. The request was made under the Agreement between the Government of Hong Kong and the Government of the US of America for the Surrender of Fugitive Offenders.

The Division, which handled the matter strictly in accordance with the laws of the HKSAR, sought clarifications from the US Government in relation to the information provided in the request in order to ensure that the relevant requirements under the Fugitive Offenders Ordinance (Cap 503) for the issuance of a warrant for provisional arrest were met.

The person in question, however, left the HKSAR on his own volition before the requested clarifications were provided by the US Government. As the person did not commit any crime in the HKSAR, there was no legal basis to restrain him from leaving the jurisdiction.

Taking of evidence by live television link for use in overseas criminal proceedings

Counsel in the Division processed a MLA request issued by the Government of the United Kingdom which sought assistance in obtaining evidence from two witnesses in the HKSAR, by way of live television link.

The evidence was sought for the prosecution of two defendants in the United Kingdom for conspiracy to defraud involving documents purportedly issued and signed by two directors of a listed company in the HKSAR.

The evidence was taken in end October/early November 2012 from the two witnesses in the HKSAR before a Magistrate in the Technology Court, High Court. The evidence-taking proceedings were linked up to the trial in the United Kingdom with jury sitting, for the United Kingdom judicial team (the trial judge, prosecuting counsel and defence counsel) to take part in the evidence-taking proceedings.

Restraining assets and registering an external confiscation order in the HKSAR at foreign request

The Division processed a MLA request from Indonesia which arose from the collapse of a bank. Assistance was sought to restrain the properties of four defendants who were connected with the Indonesian investigation and criminal proceedings and of the related companies.

The Division obtained a restraint order from the Court of First Instance (CFI). The properties under restraint consisted of bank accounts with cash and a large bulk of complex securities and debt instruments.

The defendants and intervening third parties filed applications to discharge the restraint order. At the same time, the Division made an application to appoint receivers to manage the restrained properties pending registration of a final confiscation order from Indonesia. CFI dismissed the applications for discharge of the restraint order and granted the appointment of receivers. The defendants and parties sought leave to appeal and to stay the appointment of the receivers. CFI granted leave to appeal but refused to stay the appointment of receivers. The defendants and parties then filed notices of appeal and sought a fresh stay of the appointment of receivers. The Court of Appeal dismissed their stay applications but granted them leave to appeal.

Meanwhile, Indonesia made a supplementary MLA request seeking assistance to register and enforce the confiscation order made by the Indonesian Court. Pursuant to the supplementary MLA request, the Division lodged an application to CFI which was again challenged by the defendants. At the end of the hearing which lasted for five days in November 2013, CFI allowed registration and enforcement of the Indonesia confiscation order over the majority of the restrained properties. Defendants subsequently filed notices of appeal against CFI's order while the Division filed notice of cross-appeal. The hearing of the consolidated appeals and the cross-appeal remained pending.

Obtaining of legal assistance from overseas for prosecution in the HKSAR

The Division issued a MLA request to the Philippines in October 2012 seeking assistance in inviting nine witnesses to travel to the HKSAR to testify in criminal proceedings. The proceedings were a re-trial of a defendant for offering to traffic in a substance believed to be a dangerous drug. The defendant was arrested in the HKSAR in an anti-dangerous drugs operation jointly run by the Hong Kong Police and

the Philippines Drug Enforcement Agency (PDEA) when he was receiving drugs (cocaine) from an undercover action agent of the PDEA. The witnesses included the undercover PDEA agent and other PDEA agents participating in the joint operation. All nine witnesses accepted the invitation to travel from the Philippines and testified at the re-trial in the HKSAR in January 2013.

Processing a request for return of the child in a child abduction case

As the Central Authority under the Hague Convention of the Civil Aspects of International Child Abduction (the Convention), the Division received an application from a father concerning the return of his five-year-old child to Slovakia in August 2011.

Both parents were from Slovakia. They were not married. Their son was born in Slovakia in 2007 and the relationship ended in 2009. The mother removed the child to the HKSAR in September 2010. Formal application for the child's return was taken out by the father 11 months after the removal. Upon receipt of the application, the Division commenced proceedings before CFI under the Convention to preserve the

status quo pending resolution of the matter.

In January 2013, issues involving the father's right of custody, whether the father consented or acquiesced to the removal/retention of the child in the HKSAR and whether returning of the child to Slovakia would expose him to physical or psychological harm or otherwise place him in an intolerable situation were argued before the court. Both the father and the mother were legally represented. Counsel of the Division participated in the hearing to observe and to assist the court where necessary.

The evidence was carefully deliberated before the court which, in the end, found that the father had come to accept the status quo and had made a choice not to assert his rights to seek the child's prompt return. Further, the court held that there was a grave risk that the child would be placed in an intolerable situation if a return order was made.

Asia Pacific Regional Office of the Hague Conference on Private International Law

Counsel in the Division assisted the Hague



Official opening of the Asia Pacific Regional Office of the Hague Conference on Private International Law

Conference on Private International Law to open its Asia Pacific Regional Office (Regional Office) in the HKSAR on 13 December 2012, which represented a vote of confidence in the HKSAR as a regional centre for legal services.



Signing of the Memorandum of Administrative Arrangements concerning the establishment of the Asia Pacific Regional Office of the Hague Conference on Private International Law in the HKSAR by the Secretary for Justice, Mr Rimsky Yuen, SC (front row, second right), and the then Secretary General of the Hague Conference, Mr Hans van Loon (front row, second left)

Since its establishment, counsel in the Division continued to support the Regional Office in various ways. For instance, the Division organised jointly with the Regional Office a workshop on the Hague Intercountry Adoption Convention held in Macao in March 2013.



Co-organising the Workshop on the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption in Macao

In addition to organising events, counsel in the Division assisted the Regional Office to establish relationship with institutions in the region. For example, through the introduction and liaison work by counsel in the Division, the Regional Office entered into a Memorandum of Understanding on Academic Co-operation with Kyushu University, Japan in February 2013. Further, with the assistance of the Division, the Regional Office supported the organisation of a conference on transnational litigation in Wuhan University in September 2013.

The Regional Office also worked with the Division in promoting legal co-operation in the region through the use of the Hague Conventions. In particular, counsel in the Division organised, in collaboration with the Regional Office, an APEC Workshop on the Apostille Convention in Medan, Indonesia, in June 2013 under the auspices of the APEC Economic Committee with a view to promoting circulation of public documents through the use of the Apostille Convention. The workshop was so successful that it brought the Apostille Convention to the attention of APEC Ministers who encouraged wider participation in the Apostille Convention in their Joint Ministerial Statement in October 2013.



Colleague speaking at the Economic Committee Workshop during the Third APEC Senior Officials' Meeting in Medan, Indonesia

In August 2014, counsel in the Division organised, in collaboration with the Regional Office, another APEC Workshop on Ease of Doing Business through



Participants of the 9th International Forum on the electronic Apostille Programme jointly organised by the International Law Division with the Asia Pacific Regional Office of the Hague Conference on Private International Law

Hague Conventions in Beijing, China under the auspices of the APEC Economic Committee. The positive outcome of the workshop was expressly acknowledged and endorsed in the APEC Joint Ministerial Statement and Economic Leaders' Declaration in November 2014.

In October 2014, the Division organised jointly with the Regional Office the "HCCH Asia Pacific Week" (a series of international events held in the HKSAR), including the 9th International Forum on the electronic Apostille Program which was held for the first time in the Asian region.

Tax information exchange agreements; free trade agreement with Chile

The Global Forum on Transparency and Exchange of Information for Tax Purposes of the Organisation for Economic Co-operation and Development, of which the HKSAR is a member, recommended that the HKSAR should put in place a legal framework for entering into tax information exchange agreements (TIEAs) as instruments for exchanging information with other jurisdictions. Counsel in the Division

assisted the relevant policy bureau in preparing the Inland Revenue (Amendment) (No. 2) Ordinance 2013 (which was passed in July 2013) to provide the legal framework for entering into TIEAs with other jurisdictions. Counsel in the Division also assisted the policy bureau in preparing for TIEA negotiations.

In 2012, counsel in the Division actively participated in the negotiation and conclusion of the Free Trade Agreement with Chile (the Agreement). On 7 September 2012, the HKSAR and Chile signed the Agreement in the margins of the APEC Economic Leaders' Meeting in Russia. The Agreement covers a wide range of areas of mutual interest to the HKSAR and Chile, encompassing trade in goods and services, investment, and other related areas. It strengthens the bilateral relationship and economic partnership between the two sides. The Agreement entered into force on 9 October 2014. Alongside with the Agreement, the HKSAR and Chile also negotiated and signed two side instruments, namely, the Exchange of Notes on the negotiation of an agreement on investment and the Memorandum of Understanding on Labour Co-operation between Hong Kong, China and Chile, which entered into force on the same date

as that of the Agreement. Counsel in the Division also actively participated in these negotiations.

Permanent Court of Arbitration

Counsel in the Division have assisted in the preparation and negotiation of a Host Country Agreement and a related Memorandum of Administrative Arrangements with the Permanent Court of Arbitration (PCA), under which dispute resolution proceedings administered by PCA can be conducted in Hong Kong with the provision of facilities and support services required. The signing of the above instruments will further enhance the HKSAR's status as an international arbitration centre in the Asia-Pacific region.

Serving as speakers and participating in regional and international seminars

Counsel in the Division spoke and/or participated in a number of regional and international conferences and seminars, including:

- Third Asian Asset Forfeiture Regional Conference in Jakarta;
- Conference of the United Nations Convention Against Corruption in Vienna;
- 30th Cambridge International Symposium on Economic Crime;
- 75th Biennial Conference of the International Law Association in Sofia;
- Workshop for East and Southeast Asian State on the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption in the Macao SAR;
- The Hague Conference at 120: Today and the Future in The Hague;
- Conference on Recovery of Maintenance in the European Union and Worldwide in Heidelberg;
- Conference on International Judicial Co-operation, run by the 2nd EU-Macao Co-operation Programme in the Legal Field, in the Macao SAR;
- APEC Workshop on Simplified Authentication Process for Production of Public Documents Abroad through the Use of the Hague Apostille Convention in Medan;
- 16th Annual Meeting of the Asia-Pacific Group on Money Laundering in Shanghai;
- Conference on International Litigation in the Asia-Pacific Region in Wuhan;
- 8th and 9th International Forum on the e-APP (electronic Apostille Program) in Montevideo and in the HKSAR respectively;
- 2nd and 3rd Arab Fora on Asset Recovery in Marrakech and Geneva respectively;
- Seminar on Matters of Co-operation in the Sphere of Extradition and Legal Assistance in Criminal Matters in Vladivostok;
- 76th Biennial Conference of the International Law Association in Washington, DC;
- Conference on Cross-Border Family Matters and the Well-Being of the Child: Asia-Pacific Perspectives in Beijing; and
- APEC Workshop on Ease of Doing Business through Hague Conventions in Beijing.



The Deputy Law Officer (Mutual Legal Assistance), Mr Wayne Walsh, SC, speaks at the Conference on International Judicial Co-operation in Macao

Looking forward

Future work in collaboration with international organisations

Counsel in the Division will continue to support the Asia Pacific Regional Office of the Hague Conference on Private International Law (Regional Office) in promoting legal co-operation in the region. For example, the Division is planning to organise jointly with the Regional Office more regional or international events including a symposium in Macao SAR in June 2015 and an international conference in HKSAR in November 2015.

The Regional Office will also continue to support the Division in organising events under the auspices of APEC, with a view to promoting international co-operation through the use of Hague Conventions among APEC member economies, including a workshop on Effective Enforcement of Business Contracts and Efficient Resolution of Business Disputes Through the Hague Choice of Court Agreements Convention to be held in Cebu, the Philippines around early September 2015.

Moreover, co-operation with APEC and other APEC member economies will be further strengthened through the Group on Strengthening Economic and Legal Infrastructure (established by the APEC Economic Committee) of which counsel of this Division will assume the role of Convenor.

Counsel in the Division will continue to liaise with PCA to explore further co-operation opportunities, including organisation of a PCA seminar in the HKSAR in March 2015, in collaboration with the Legal Policy Division.

Counsel in the Division will also foster co-operation with the United Nations Commission on International

Trade Law (UNCITRAL) through participation in the international seminars organised by the UNCITRAL Regional Centre for Asia and the Pacific and jointly organising international conferences as well as possible secondment to the Centre.