

**For discussion on
28 January 2014**

**Legislative Council Panel on
Administration of Justice and Legal Services**

2014 Policy Initiatives of the Department of Justice

Introduction

This paper describes the policy initiatives of the Department of Justice (“DoJ”) in 2014.

Our Vision

2. The rule of law is a vital element in Hong Kong’s success and is an essential quality for any democratic society. The Basic Law has provided a solid platform for the development of the rule of law in Hong Kong. In accordance with the Basic Law, the DoJ is committed to do our utmost to protect and preserve the rule of law, including the independence of the Judiciary, progressively strengthen our legal system and enhance our legal infrastructure. This is achieved through, *inter alia* –

- providing legal advice to government bureaux and departments and representing Government in courts, in accordance with the provisions of the Basic Law (including its provisions safeguarding the rule of law and human rights);
- providing a modern first class prosecution service by seeking to achieve professional excellence in upholding the rule of law and ensuring that prosecutions are conducted fairly, with professionalism, skill and integrity, and within the framework of defined and clear prosecution policy guidelines;
- ensuring legislation that implements Government policy is completed on time and is readily accessible in terms of comprehensibility and publication; and
- enhancing the competitiveness of Hong Kong as a centre for international legal and dispute resolution services in the Asia Pacific region.

Policy Initiatives of DoJ

(I) In respect of “Economic Development”

3. Hong Kong’s economic success is built on our firm belief in, and respect for, the rule of law. We shall continue to promote the development of Hong Kong as an international legal and dispute resolution services centre in the Asia Pacific region, which will be a positive force to foster our economic development. We will also continue to enhance our legal co-operation in civil and commercial matters with the Mainland.

New Initiatives

4. In 2014, we will pursue a number of new initiatives.

(a) Conduct a study on the development of arbitration in Hong Kong and the challenges and opportunities that Hong Kong faces as a regional centre for international arbitration in the Asia Pacific region.

5. A consultancy study will be launched in 2014 on enhancing Hong Kong’s position as a leading international arbitration centre in the Asia Pacific region. This study will consider the strengths, weaknesses, opportunities and challenges for Hong Kong in relation to its status as an international arbitration hub, particularly in the face of stiffening regional and international competition.

6. The study will cover a number of aspects of the arbitration industry, including our legal and institutional infrastructure for arbitration and how this compares to others in the region and internationally, strengths and challenges within each of our major arbitration service areas, and the scope and potential in existing and emerging geographical markets. The study will also include an analysis of the direct and indirect benefits which international arbitration brings to Hong Kong. We expect that the findings and recommendations from the study will greatly assist with long-term policy planning and strategic development in this area.

(b) Enhance the promotion of legal and dispute resolution services of Hong Kong in emerging economies in the Asia Pacific region.

7. Hong Kong’s legal system and members of our legal profession are highly regarded in the Asia Pacific region. Hong Kong is thus a natural venue for resolution of commercial and investment disputes. DoJ will work closely with the legal professional bodies and the arbitration sector to enhance our promotional efforts in the Mainland and around the world, particularly in

emerging economies in Asia Pacific.

8. We showcased in April 2013 the strength of our legal and arbitration services in a seminar held in Xiamen as part of the programme for “2013 Fujian Xiamen Hong Kong Week” jointly organized by the governments of Hong Kong, Fujian Province and Xiamen Municipality. It attracted over 300 participants from the legal, arbitration and business sectors in the Mainland and legal and arbitration professionals of Hong Kong. The event served as an effective platform whereby legal and arbitration professionals of both places could share experience and build up co-operation network. Building upon the success of this seminar in Xiamen as well as the first and second Hong Kong Legal Services Forum held respectively in Shanghai in 2010 and Guangzhou in 2012, we will organize the next Legal Services Forum in 2014 in Qingdao to enhance our promotional efforts.

9. In February 2014, the Secretary for Justice will lead a delegation of representatives from the Law Society, the Bar Association and arbitral institutions in Hong Kong on a promotional visit to Vietnam and Cambodia. Promotional visits to other emerging economies in the Asia Pacific region later in the year are also being planned. Our attention is turned to these countries as there will be new and increasing demands for dispute resolution services as emerging economies open up to the rest of the world.

(c) Establish an advisory committee to advise on and co-ordinate the development and promotion of Hong Kong as an international arbitration centre in the Asia Pacific region.

10. To step up the joint efforts between DoJ and the legal/arbitration sector to foster the development and growth of arbitration in Hong Kong, it is proposed that an Advisory Committee on Promotion of Arbitration be established. It will be chaired by the Secretary for Justice and its members will be drawn from the legal profession, the arbitration sector (including arbitration institutions) as well as other related institutions.

11. The Advisory Committee will have two key functions. The first will be to consider, advise on and co-ordinate on-going and new initiatives for the promotion of Hong Kong arbitration services in the Asia Pacific region. This should help maximize the benefits to Hong Kong and the legal/arbitration sector from the wide range of promotional efforts that are undertaken by interested parties. The second key function of the Committee will be to serve as a forum for the discussion of issues raised by the legal/arbitration sector on Hong Kong’s positioning as a leading arbitration centre in the region, including the promotion of its arbitration services.

(d) Conduct a “Mediation Week” and produce new promotional video and audio clips to enhance the understanding of mediation among members of the public, government officers as well as the stakeholders of various sectors and to promote its wider use as a means of dispute resolution.

12. With the advice of the Public Education and Publicity Sub-committee under the Steering Committee on Mediation, DoJ is organizing a “Mediation Week” to be held between 20 to 27 March 2014 with a two-day mediation conference with participation of eminent overseas and local speakers to share their views and experience on the development of mediation and to discuss various ideas to foster the wider use of mediation. Other activities during the “Mediation Week”, including seminars, workshops and mock mediation, will be organized with the support of stakeholders to promote the wider use of mediation in various sectors such as legal, commercial, construction, education, family, financial, insurance, medical and social.

13. A new Announcement in the Public Interest, with both video and audio clips, will also be produced and broadcasted in early 2014 to enhance the awareness of the public on the understanding of mediation and to encourage the wider use of mediation as a means of dispute resolution.

(e) Take over the former French Mission Building (“FMB”) upon the relocation of the Court of Final Appeal from there and provide space in the Building for use by law-related organizations (“LROs”), on top of the provision of office space to them in the West Wing of the former Central Government Offices (“CGO”).

14. The proposed use of the FMB for accommodating LROs is in line with the government’s policy as set out in the 2013 Policy Address to facilitate suitable international legal organizations as well as local LROs to set up or develop services in Hong Kong. It would also fit in well with the former CGO being used as the home for DoJ and LROs. It will enable FMB and the former CGO to form a “legal hub”, which is commensurate with the status and historical background of FMB as a highly significant building and a declared monument.

15. We will take forward the necessary arrangements (including the design and renovation works required for the building) in good time so that the building can be put to use as soon as practicable after the relocation of the Court of Final Appeal from there.

On-going Initiatives

16. We will also take forward a number of on-going initiatives in this area. In respect of *economic and trade relations with the Mainland and regional co-operation*, we are –

- (a) *Enhancing legal co-operation in civil and commercial matters between Hong Kong and the Mainland, so as to facilitate the resolution of civil and commercial disputes in a more cost-effective manner.*
- (b) *Enhancing legal co-operation with Guangdong pursuant to the Framework Agreement on Hong Kong/Guangdong Co-operation.*

17. As regards the further development of legal co-operation in civil and commercial matters with the Mainland, the Department continues to monitor the implementation of the existing legal arrangements with the Mainland. In addition, the Department is exploring the possibility of concluding an arrangement on mutual recognition and enforcement of judgments in matrimonial matters. The Department is studying the legal issues involved and will continue to engage our Mainland counterparts to resolve the same. We will consult the Panel after seeking the views of the stakeholders on this subject.

18. The Department also maintains regular contact with our counterparts under the Framework Agreement on Hong Kong/Guangdong Co-operation. Both sides have been discussing co-operation initiatives which include the implementation of measures on legal services in Guangdong on a pilot basis under the framework of the Mainland and Hong Kong Closer Economic Partnership Agreement (“CEPA”).

19. Pursuant to Supplement X to CEPA signed on 29 August 2013, Hong Kong and Guangdong law firms are allowed from 1 January 2014 to enter into an agreement under which a Guangdong law firm may second Mainland lawyers to work as consultants on Mainland law in a representative office set up by a Hong Kong law firm in Guangdong. Moreover, as an implementation measure for the relevant commitment under Supplement VIII to CEPA, the scope of legal services that can be undertaken by Hong Kong residents qualified to practise law in the Mainland has been expanded to cover litigation cases in civil matters related to Hong Kong and Macao with effect from 1 October 2013. Pursuant to Notice 136 issued by the Ministry of Justice, such legal services include disputes in matrimonial and succession matters, contractual disputes, disputes on intellectual property rights, disputes relating to company and securities and procedural matters such as the applications for enforcement of foreign and Hong Kong judgments and arbitral awards.

20. In respect of the continued development of Hong Kong as a *centre for international legal and dispute resolution services in the Asia Pacific Region*, we are taking forward the following on-going initiatives.

(a) Working with Mainland Authorities and the legal profession and arbitration institutions in Hong Kong to facilitate Hong Kong professionals to provide legal and dispute resolution services in the Mainland, particularly Qianhai and Nansha.

21. The development of Qianhai as a Hong Kong/Guangdong modern service industry innovation and co-operation exemplary zone with pilot measures for the opening up of the service industries presents good opportunities for Hong Kong's legal, arbitration and other related services sectors to further develop their businesses. The legal and dispute resolution services sectors of Hong Kong are interested in exploring co-operation with their counterparts and providing professional services in Qianhai as well as other new development areas such as Nansha and Hengqin.

22. The Department will continue to work with the relevant professional bodies and institutions as well as the relevant Mainland authorities on ways to take forward the introduction of Hong Kong's legal and dispute resolution services in these new development areas of the Mainland. The main objectives to be pursued include the implementation of the proposed initiative to enable association in the form of partnership between Hong Kong and Mainland law firms, promoting the use of Hong Kong law as the applicable law in commercial contracts concluded by enterprises conducting business (except in obviously inappropriate situations, such as the sale and purchase of real estate in the Mainland) in these new development areas, and the designation of Hong Kong as the seat of arbitration should disputes arise, or allowing Hong Kong arbitration bodies to provide services directly in these new development areas.

23. We will work closely with the relevant stakeholders and seek to encourage the legal, arbitration and other relevant sectors to enhance co-operation with their Mainland counterparts so as to capitalize on each other's strengths, with a view to deepening the development of Hong Kong's legal and arbitration services in the new development areas of the Mainland on the one hand, and enhancing the investment environment of these development areas on the other.

(b) Further fostering the development of mediation services in Hong Kong with the efforts of the Steering Committee on Mediation chaired by the Secretary for Justice. Towards this end, we will enhance public education and publicity regarding the use of mediation, monitor the implementation of the Mediation Ordinance and the operation of the Hong Kong Mediation Accreditation Association Limited as a regulatory body, and also consider the need to introduce apology legislation.

24. The Steering Committee on Mediation (“Steering Committee”) chaired by the Secretary for Justice and comprising a cross-sector membership has played an active role to further promote and develop the wider use of mediation to resolve disputes in Hong Kong. The Steering Committee, assisted by its three Sub-committees (namely the Regulatory Framework Sub-committee, the Accreditation Sub-committee and the Public Education and Publicity Sub-committee), has undertaken various tasks with the key ones set out below.

Regulatory Framework Sub-committee

25. The Regulatory Framework Sub-committee is tasked to monitor the implementation of the Mediation Ordinance (Cap. 620) and to consider the need for an apology legislation. In respect of the latter, a sub-group has been formed to conduct research on apology legislation in various jurisdictions and will prepare and present a discussion paper on the subject to the Sub-committee for consideration. The Sub-committee will make its recommendations to the Steering Committee in due course.

26. With a view to assisting persons intending to use mediation communications for research, evaluation or educational purposes to comply with section 8(2)(e) of the Mediation Ordinance¹, a set of draft guidelines was prepared and circulated to relevant stakeholders in June 2013 for a 3 months’ consultation. A number of returns from the stakeholders were received which are being considered by the Sub-committee.

Accreditation Sub-committee

27. One of the tasks of the Accreditation Sub-committee is to monitor the development of accreditation of mediators in Hong Kong including the

¹ Under section 8 of the Mediation Ordinance, a person must not disclose a mediation communication except as provided by subsection (2) or (3). The exception provided under section 8(2)(e) concerns the circumstances where the content of the mediation communication is information that has already been made available to the public, except for information that is only in the public domain due to an unlawful disclosure.

operation of the Hong Kong Mediation Accreditation Association Limited (“HKMAAL”) as a regulatory body². The HKMAAL is currently the largest accreditation body for mediators in Hong Kong with over 1 300 accredited mediators on its lists of general and family mediators. It also has disciplinary functions and the disciplinary rules and system for HKMAAL mediators are in the process of being drafted and will be considered by the HKMAAL council.

28. The Accreditation Sub-committee will continue to monitor the development of the accreditation standards and disciplinary regime for mediators in Hong Kong.

Public Education and Publicity Sub-committee

29. The Public Education and Publicity Sub-committee considers and proposes initiatives for the promotion of mediation in Hong Kong. A “Mediate First” Pledge Reception was held on 18 July 2013 to encourage members of the commercial sector to consider the use of mediation as a means of dispute resolution before resorting to litigation. The Reception was well attended by representatives from the commercial sectors, mediation stakeholders, Consuls General, representatives of chambers of commerce and legal practitioners. Looking ahead, the DoJ will work with the Public Education and Publicity Sub-committee on the organization of the “Mediation Week” as well as the new promotional video and media clips as mentioned in paragraphs 12 and 13 above.

Mediation Training within Government

30. In 2013, the DoJ has provided mediation training (including mediation advocacy skills training workshops and mediation experience sharing sessions) for government counsel and general mediation seminars for para-legals. DoJ will nominate 10 government counsel to attend a HKMAAL accredited 40-hour mediation training course in early 2014. Government counsel who pass the training course may apply to HKMAAL for accreditation assessment.

31. A number of mediation seminars were also organized by DoJ for civil servants in 2013 in conjunction with the Civil Service Bureau. Mediation seminars for directorate and senior officers were conducted in September 2013 and for middle rank officers in October 2013. The mediation seminar for

² HKMAAL, an industry-led company limited by guarantee with the Hong Kong Bar Association, the Law Society of Hong Kong, the Hong Kong International Arbitration Centre, and the Hong Kong Mediation Centre as founder-members, was incorporated on 28 August 2012 and commenced formal operation on 2 April 2013.

middle rank officers attracted strong interest and was repeated in December 2013 and January 2014 to meet the demand. Tailor-made mediation training programme was also conducted for the Government Logistics Department in November 2013. DoJ will continue to work with government departments that require tailor-made mediation training courses to address their particular requirements.

(c) Creating a favourable environment and infrastructure to facilitate legal and dispute resolution institutions to develop services and set up permanent presence in Hong Kong, including the allocation of certain office space to them in the West Wing of the former CGO.

32. The Department has been constantly reviewing the Hong Kong arbitration regime in consultation with the arbitration sector and will consider necessary improvement to the Arbitration Ordinance as and when appropriate. In July 2013, the Arbitration (Amendment) Ordinance 2013 was passed. Its principal object is to introduce new provisions into the Arbitration Ordinance (Cap. 609) to implement the Arrangement Concerning Reciprocal Recognition and Enforcement of Arbitral Awards Between the HKSAR and the Macao SAR (“the Arrangement”) concluded in January 2013. The relevant statutory provisions came into force on 16 December 2013 to facilitate summary enforcement of Macao arbitral awards by Hong Kong courts under the Arrangement.

33. The rest of the Arbitration (Amendment) Ordinance 2013 came into force on 19 July 2013 and made miscellaneous amendments to the Arbitration Ordinance to further enhance the arbitral regime of the HKSAR in the light of international good practices. Of particular importance is the addition of new provisions for the judicial enforcement of emergency relief granted by an emergency arbitrator before an arbitral tribunal is constituted. They complement the 2013 Hong Kong International Arbitration Centre Administered Arbitration Rules and the 2012 International Chamber of Commerce Rules of Arbitration. Both sets of rules include provisions for the appointment of an emergency arbitrator by the relevant arbitral institution to grant orders for urgent interim or conservatory relief (e.g. an order to preserve assets out of which a subsequent arbitral award may be satisfied, or an order to preserve relevant and material evidence).

34. We will also continue our efforts in facilitating the establishment and growth of world class arbitration and LROs in Hong Kong. Further to the successful establishment of their respective office in Hong Kong by the International Court of Arbitration of the International Chamber of Commerce (in November 2008), the China International Economic and Trade Arbitration

Commission (in September 2012) and the Hague Conference on Private International Law (in December 2012), we are seeking to facilitate other major international or regional LROs to establish offices in Hong Kong. A very recent development is the plan of the China Maritime Arbitration Commission (“CMAC”) to set up a branch office in Hong Kong. Being a key maritime arbitration institution in the Mainland, CMAC’s presence in Hong Kong would further enhance Hong Kong’s role in the resolution of maritime disputes, and thereby reinforce our position as a leading international arbitration centre in Asia Pacific.

35. Another international LRO which we are seeking its enhanced presence in Hong Kong is the Permanent Court of Arbitration (“PCA”), a leading international institution with its headquarters in the Hague with a long history and good reputation in the field of international investment arbitration. At our request, the Central People’s Government (“CPG”) and the PCA have commenced negotiation of a host country agreement on the conduct of dispute settlement proceedings in Hong Kong, which will help attract more investment arbitrations to be conducted in Hong Kong.

36. In respect of hardware, we are pressing ahead with the preparation for the conversion works required for the West Wing of the former CGO with a view to providing office space for DoJ as well as LROs. The technical feasibility study has been completed and we are working with departments concerned on the necessary preparation work. The target completion time for the works is end 2017.

New Development

Proposing to the CPG to include in its 13th Five-Year plan an initiative to support the positioning of Hong Kong as a Centre for International Legal and Dispute Resolution Services in the Asia Pacific Region

37. With the various initiatives relating to legal and dispute resolution services that the DoJ is taking forward in the coming year, we consider that such initiatives will be given a great boost if our efforts may be acknowledged and affirmed in the 13th National Five-Year Plan. The Department accordingly intends to propose to the CPG that the 13th National Five-Year Plan should include a policy statement indicating clearly that the CPG supports and endorses the positioning of Hong Kong as a Centre for International Legal and Dispute Resolution Services in the Asia Pacific region. We intend to consult the Administration of Justice and Legal Services Panel on this initiative in a meeting within this legislative session.

(II) In respect of Governance, Constitutional Development and District Administration

38. The rule of law is vital for safeguarding our rights and freedoms as well as instrumental in continuing Hong Kong's success story as an international financial and commercial centre. We will progressively strengthen our legal system and enhance our legal infrastructure with a view to ensuring the proper administration of justice.

New Initiatives

39. In 2014, we will pursue a number of new initiatives in respect of ***improving the legal system and enhancing legal infrastructure*** as well as ***law reform proposals***.

Improving the Legal System and Enhancing Legal Infrastructure

(a) Embark on a "Meet the Community" programme.

40. On top of the successful annual "Prosecution Week" event launched since 2012, we will embark on a new "Meet the Community" programme in 2014. Under the programme, prosecutors of DoJ will visit different schools and other interested community institutions to give talks on various topics related to their work. The programme will help to enhance the public's understanding of the criminal justice system and their role therein, as well as their appreciation of the importance of the rule of law.

Law Reform Proposals

(b) Conduct public consultation on a bill to implement the Law Reform Commission's recommendations on Enduring Powers of Attorney with regard to personal care. The purpose of the proposed bill is to extend the scope of an enduring power of attorney beyond the donor's property and financial affairs to include matters relating to the donor's personal care when the donor becomes mentally incapacitated.

41. In July 2011, the Law Reform Commission ("LRC") published a report on Enduring Powers of Attorney: Personal Care. The report recommends that the scope of an enduring power of attorney ("EPA") should be extended to include decisions as to the donor's personal care. At present, an EPA applies only to decisions about the donor's property and financial affairs and cannot be used to delegate decisions about the donor's personal care.

42. DoJ has established an inter-departmental working group to examine the recommendations in the report and is now making preparation for a working draft bill, with a view to consulting the legal professional bodies, the Judiciary and members of the public. Views collected from the public consultation exercise will be taken into account in preparing the proposed legislation, which will be introduced into the Legislative Council in the 2014/15 legislative session.

(c) Set up a high level inter-departmental working group, chaired by the Secretary for Justice, to undertake a detailed study on possible legislation to deal with various aspects of gender recognition in light of the observations made in the judgment of the Court of Final Appeal in the W Case (FACV 4/2012).

43. As a response to observation in the judgment of the Court of Final Appeal in the W Case (FACV 4/2012), the Secretary for Justice will head an Inter-departmental Working Group (“IWG”) to study possible legislation on various aspects of gender recognition in respect of transsexual persons. The principal aim of the IWG is to consider legislation that may be required to protect the rights of transsexual persons and make such recommendations as the IWG may see fit.

44. The IWG will review issues relating to transsexual persons in Hong Kong, including the condition known as gender identity disorder, or gender dysphoria, research on issues relating to discrimination on the ground of a person’s acquired gender or on the ground that the victim is a transsexual person, and conduct a review of the legislation, schemes and case law in other jurisdictions and the standards of international bodies, with a view to making recommendations to the Administration on possible legislation that may be necessary to address issues faced by transsexual persons. The IWG will consult widely in the course of its work.

On-going Initiatives

45. We will take forward a number of on-going initiatives in relation to ***improving the legal system and enhancing legal infrastructure***. In respect of our prosecutorial functions, we are –

(a) Improving the quality and efficiency of legal services, including advisory work, the preparation and presentation of criminal cases and the standards of advocacy. Improvements are achieved through comprehensive training programmes for prosecutors and better use of

resources.

- (b) Enhancing the integrity, capability and effectiveness of the prosecutions service in the conduct of criminal proceedings.***
- (c) Enhancing the quality of criminal justice by enhancing communication amongst interested entities, promoting transparency in public prosecutions, improving accountability to the community, and studying possible areas of the criminal law that may require reform.***
- (d) Promoting co-operation amongst prosecutors at regional and international levels through active participation in international prosecuting organizations.***

46. In support of the foregoing initiatives, the Prosecutions Division (“PD”) has implemented various measures to modernize the Division and enhance its efficiency and effectiveness. Major measures include :

- (a) publication of a new Prosecution Code in September 2013, after a comprehensive review of the Statement of Prosecution Policy and Practice published in 2009. The new Code has taken into account the latest developments of criminal jurisprudence and international trends as well as the prevailing circumstances in which prosecutors operate. With substantial revision to the contents of the previous statement, modernizing it in terms of substance, presentation as well as language, the new Code can better serve its function as the key document governing the conduct of prosecutions;
- (b) continued development of expertise within PD for handling particular types of cases (including human exploitation cases, money laundering cases, cybercrime cases and on the award and assessment of legal costs) by maintaining coordinators or specific units for such cases, so that they can be handled more effectively and efficiently;
- (c) organization of conferences and discussions with the participation of members of the private legal profession and the Judiciary on various topics, with a view to considering whether any particular aspects of the criminal justice system should be reformed to better meet the expectations of the community. In particular, riding on the success of two conferences on criminal law issues held in 2012 and 2013 respectively with the participation of members from different sectors of the legal community, conference on criminal law will be one of our annual feature events; and
- (d) continued provision of various continuous trainings to our in-house prosecutors, as well as arrangement of the biannual Joint Training

Programme (covering a one-day training course followed by a two-week supervised engagement to prosecute in the Magistrates' Courts) organized with the Hong Kong Bar Association and the Law Society of Hong Kong for new lawyers in private practice of less than five years' post qualification experience who are interested in prosecuting cases for the Department, so as to enhance the overall quality of the prosecution service.

47. As regards the promotion of co-operation amongst prosecutors at regional and international levels, apart from active participation in various international fora and events organized by international prosecuting organizations, we hosted the 12th Heads of Prosecuting Agencies Conference in May 2013, with over 40 heads of prosecution agencies or their representatives gathering in Hong Kong to examine the common challenges faced by modern prosecution services in both the international and domestic contexts. Moreover, prosecutors from other common law and related jurisdictions have joined PD for short-term attachments from time to time to gain first-hand experience in working in the Division. Our efforts to enhance exchanges and co-operation with prosecutors in other jurisdictions will continue.

48. Regarding law drafting, we are –

- (a) Working on the establishment of an electronic database of Hong Kong legislation with legal status, and proceeding with the staged implementation of the Legislation Publication Ordinance.***
- (b) Providing on-the-job training and professional development programmes relating to legislative drafting for counsel in the Law Drafting Division of the DoJ to enhance their professional capability.***

49. We are continuing to press ahead with the establishment of an electronic database of Hong Kong legislation with legal status (“Database”) and proceeding with the staged implementation of the Legislation Publication Ordinance (Cap. 614) (“LPO”). The establishment of the Database will be implemented in two phases. Work on the system analysis and design for Phase 1 started in early 2013. Phase 1 mainly concerns the implementation of a new laws compilation and publication system for internal use by the Law Drafting Division (“LDD”) in legislation capture, legislation compilation, dissemination of legislation-related information, reporting as well as the associated data conversion and verification.

50. We value users' views on the Database and a “Hong Kong Legislation Database User Liaison Group” comprising representatives from the Law Society

of Hong Kong, Hong Kong Bar Association, Judiciary and the Legal Services Division of the Legislative Council Secretariat was set up in September 2013 to give suggestions on topics concerning the design and functions of the Database. Our recommended layout (which is similar to the design adopted for the Loose-leaf Edition) of the future verified copy of legislation was well received and supported by the Group. The Group will meet to give suggestions on specific topics concerning the user end as the project progresses.

51. To prepare for the establishment of the Database, we continued to make use of the editorial and revision powers under LPO to enhance the user-friendliness of the statute book and bring it in line with the latest drafting styles and practices. To facilitate the dissemination of Hong Kong Ordinances, a new copyright policy is in place. Subject to compliance with certain terms and conditions, no royalty will be charged for reproduction of Hong Kong Ordinances, whether for commercial or non-commercial purposes.

52. We are also enhancing the professional capability of drafters by providing training and professional development programmes. As very few local lawyers have any experience in legislative drafting before joining LDD, special induction and in-house courses are organized for junior drafters to familiarize them with the drafting practice and to equip them with the necessary drafting skills. A legislative training course comprising 10 sessions was organized for six junior drafters in the summer of 2013. This in-house drafting course focused on practical issues and was entirely designed and conducted by LDD itself. Similar courses will be held in the future when the need arises.

53. We also hold regular workshops on topics related to the work of law drafting. The workshops are conducted by senior drafters as well as senior officers from other Divisions of DoJ. Linguists and speakers from other jurisdictions (including Canada and Australia) have also spoken on language issues and the practices of these jurisdictions. This will broaden the knowledge base of drafters and keep them abreast of the practices and initiatives of other jurisdictions.

54. We acknowledge the importance of keeping abreast of the developments in and keeping ties with other jurisdictions. LDD counsel attended various international forums and events, including the Conference of the Commonwealth Association of Legislative Counsel and the IT Forum organized by the Australasian Parliamentary Counsel's Committee. Recently, LDD counsel participated in a drafting workshop that was jointly organized with their counterparts in the Macao Special Administrative Region, which also requires legislation to be enacted bilingually.

55. We are also developing drafting standards and practices, and enhancing the accessibility of legislation through publishing guidelines on the drafting of legislation. To promote the development and adoption of good drafting practices and standards, we have set up internal committees to review our drafting practices for both the Chinese and English language texts. The publication “Drafting Legislation in Hong Kong – A Guide to Styles and Practices” sets out many stylistic and standard practices of this Division in legislation drafting, some of which are recommended by the committees. These practices enable statute users to gain a clearer understanding of the law and enhances the accessibility of legislation. The Guide has been well received since its publication in 2012. It will be reviewed and updated as necessary to reflect the development and changes in our drafting practices.

56. In relation to *law reform proposals*, we are pursuing three on-going initiatives which are set out below.

(a) Taking forward the Contracts (Rights of Third Parties) Bill to implement the recommendations of the LRC on “Privity of Contract”. The Bill will enable a third party, i.e. a person not a party to a contract, to enforce the contractual terms subject to the contracting parties’ intention.

57. The LRC published its report on “Privity of Contract” in September 2005 recommending reform of the general rule that only parties to a contract may enforce rights under the contract. Many common law jurisdictions have already reformed this rule. The Department has prepared the Contracts (Rights of Third Parties) Bill with a view to implementing the recommendations of the LRC in full. The Bill would enable a third party, i.e. a person not a party to a contract, to enforce the contractual terms subject to the contracting parties’ intention. We consulted the Panel in November 2013 on the policy aspects of the legislative proposal and members have indicated support in full. Our plan is to introduce the Bill to the Legislative Council in the first half of 2014.

(b) Working on a legislative proposal to facilitate the admission in civil proceedings of notarial acts or instruments and foreign business records.

58. The Department has been working with the Hong Kong Society of Notaries on a legislative proposal to facilitate the admission of notarial acts or instruments duly executed by notaries public registered in Hong Kong as prima facie evidence in civil proceedings in Hong Kong courts, subject to any proof to the contrary. The Department further proposes to introduce legislative amendments to render foreign public, banking, routine business and computer records obtained pursuant to mutual legal assistance requests admissible in the courts of Hong Kong as prima facie evidence of any facts stated therein if they

are annexed to a deposition, affidavit, affirmation or declaration made according to the law of the foreign jurisdiction concerned. The above proposals have been included in the Statute Law (Miscellaneous Provisions) Bill 2014. We have consulted the Panel on these legislative proposals on 16 December 2013 and will take forward the legislative proposals accordingly.

(c) Supporting the cross-sector Working Group on Class Actions to consider the LRC's proposals on "Class Actions".

59. In May 2012, the LRC published its report on "Class Actions", recommending the introduction of a class action regime in Hong Kong. In view of the complexity of the issues involved, the Department has set up a cross-sector working group ("Working Group") to study the LRC's proposals and to make recommendations to the Administration on how to take the matter forward. The Working Group is chaired by the Solicitor General with members from the private sector, relevant government bureaux and departments, the two legal professional bodies and the Consumer Council. Also on the Working Group is a representative from the Judiciary to provide input to the deliberations from the perspective of interface with court operations. The Working Group has so far held four meetings to study the LRC's proposals.

60. We welcome comments by members of the Panel on the above initiatives. We will continue to work with the Panel and other stakeholders to take forward the Department's initiatives.

Department of Justice
January 2014