

**For discussion on
25 January 2016**

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

2016 Policy Initiatives of the Department of Justice

Introduction

This paper describes the policy initiatives of the Department of Justice (“DoJ”) in 2016.

Our Vision

2. The rule of law is one of the vital factors which contribute to Hong Kong’s success and is an essential attribute of a modern society. The Basic Law has provided a solid basis for upholding the rule of law in Hong Kong. Fundamental rights, including the rights to freedom of speech, freedom of assembly, freedom of demonstration and access to the courts are guaranteed by the relevant provisions of the Basic Law. The courts of the Hong Kong Special Administrative Region (“HKSAR”) are authorised to exercise judicial power independently, free from any interference.

3. DoJ is committed to doing its utmost to protect the rule of law including the independence of the Judiciary, and to progressively enhance Hong Kong’s legal system and 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 the provisions which safeguard the rule of law and human rights);
- providing a modern first-class prosecution service by seeking to ensure that prosecutions are conducted fairly with professionalism and integrity, and within the framework of defined and clear prosecution policy guidelines, as well as in accordance with Article

63 of the Basic Law;

- ensuring legislation that implements Government policy is completed on time and is readily accessible; 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) Economic Development

4. Hong Kong's economic success is built on our adherence to and respect for the rule of law. We will continue with the development of Hong Kong as a centre for international legal and dispute resolution services in the Asia Pacific region, so as to enhance our status in the international legal, dispute resolution and business arenas.

New Initiatives

5. In 2016, we will pursue a number of initiatives.

(a) Further promote Hong Kong's international legal and dispute resolution services so that enterprises in the Mainland and in jurisdictions along the "Belt and Road" will make use of Hong Kong's professional services in their business development pursuant to the "Belt and Road" Initiative.

6. The "Belt and Road" Initiative is a long-term key national development strategy of the Central Government. The "Belt" (the "Silk Road Economic Belt") and the "Road" (the "21st Century Maritime Silk Road") are two initiatives put forward to boost economic, trade, cultural and people-to-people ties among the Mainland and more than 60 countries spanning three continents.

7. The implementation of this initiative will create huge opportunities for Mainland enterprises to explore new markets along the two corridors in the process of "going global". We see the initiative as a strong momentum

for driving the demand for cross-jurisdictional legal and dispute resolution services.

8. Hong Kong's legal and dispute resolution professionals are highly regarded in the Asia Pacific region. They consist of both local talents and experts from other jurisdictions who have rich experience in financial and international trade matters, and can provide high quality legal and dispute resolution services in various specialised areas.

9. In addition, Hong Kong is the only common law jurisdiction within China. Under the "One Country, Two Systems" principle, Hong Kong maintains its common law system with which the international community is familiar. Hong Kong courts, including the Court of Final Appeal, are known for their quality and independence. We also have the added advantage of sharing the same language and culture with the Mainland. Hong Kong will have a pivotal role to play in providing the requisite legal and dispute resolution services when Mainland enterprises "go global" to pursue the "Belt and Road" initiative.

10. DoJ has been encouraging businesses, local and overseas, to fully utilise the attributes of Hong Kong's legal and dispute resolution services when they pursue opportunities under the "Belt and Road" initiative. One way of doing this is to choose Hong Kong as the dispute resolution venue in the relevant commercial and investment agreements. Hong Kong stands ready to serve as a neutral venue for dispute resolution, and provide efficient and reliable dispute resolution services for disputes involving Mainland parties and other economies along the "Belt and Road". We also encourage the business sector to choose Hong Kong law, where appropriate, as the applicable law in commercial and investment contracts.

11. DoJ has also been actively promoting Hong Kong's legal and dispute resolution services in the Mainland in the context of the "Belt and Road" initiative. In collaboration with the Beijing Office and the relevant Economic and Trade Offices of the HKSAR Government in the Mainland as well as the legal and dispute resolution services sectors of Hong Kong, seminars were held in 2015 in Beijing, Shanghai, Chongqing and Chengdu respectively. These seminars served to introduce to the Mainland business sector what services Hong Kong's legal and dispute resolution professionals could provide when Mainland enterprises pursue the "Belt and Road"

initiative by going global or implementing other business plans. Similar seminars are tentatively planned to be organised in Guiyang and Xi'an in February, Wuhan in March/April and Kunming in June 2016. We are also planning to hold our biennial Legal Services Forum in Nanjing in November 2016. Such promotion will be part of our on-going efforts in this regard.

(b) Study the desirability of amending the relevant legislation (including the Arbitration Ordinance, Cap. 609) with a view to attracting more parties to resolve their intellectual property disputes by arbitration in Hong Kong.

12. With increasing intellectual property (“IP”) transactions taking place around the world, there is growing demand for the use of dispute resolution procedures. DoJ will assist in promoting Hong Kong as an international IP arbitration and mediation centre and will continue to consider amendments to relevant legislation in support of this development. In this regard, we intend to introduce the Arbitration (Amendment) Bill 2016 in the second quarter of 2016 to amend the Arbitration Ordinance with a view to making it clear that disputes over IP rights are capable of resolution by arbitration and that it would not be contrary to public policy to enforce an arbitral award solely because the award is in respect of a dispute or matter which relates to IP rights. Such amendments will be useful in attracting more parties to resolve their IP disputes by arbitration in Hong Kong.

(c) Explore the use of evaluative mediation (in addition to facilitative mediation) for resolving IP disputes.

13. The Working Group on Intellectual Property Trading – led by the Secretary for Commerce and Economic Development to study ways to promote Hong Kong as a premier IP trading hub in the region – has recommended the need to promote and develop the use of mediation as a means to resolving IP disputes in Hong Kong and also the desirability to explore the use of evaluative mediation on top of facilitative mediation for the purpose. Evaluative mediation offers an additional option to the end-users in the IP field so that they can consider which mode of mediation can best serve their needs.

14. To this end, DoJ and the Intellectual Property Department (“IPD”) organised an IP Mediation Workshop (“Workshop”) in May 2015 focusing on

evaluative mediation for resolving IP disputes. The Workshop was the first of this kind in Hong Kong and generated much interest among stakeholders and users of the IP industry. We will continue to follow up on the progress regarding how evaluative mediation may be effectively used to resolve IP disputes. A further IP Mediation Workshop to explore the use of evaluative mediation to resolve IP disputes to be organised jointly by DoJ and IPD is intended to be held during the Mediation Week in May 2016.

(d) Consider the introduction of an apology legislation to facilitate the resolution of disputes by clarifying the legal consequences of making an apology.

15. In June 2015, the Steering Committee on Mediation published a paper on the proposed enactment of an apology legislation in Hong Kong for a 6-week public consultation. The main objective of the proposed legislation is to promote and encourage the making of timely apologies in order to facilitate amicable settlement of disputes by clarifying the legal consequences of making apologies. The responses received during the first round of consultation were generally supportive of the recommendation to enact such legislation in Hong Kong. A second round of public consultation on a number of specific issues arising from earlier responses will take place in early 2016.

On-going Initiatives

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

(a) Enhancing legal co-operation with Guangdong pursuant to the Framework Agreement on Hong Kong/Guangdong Co-operation.

17. DoJ maintains regular contacts 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”).

18. The Agreement on Trade in Services was signed on 27 November 2015 between Hong Kong and the Mainland. It is a stand-alone, subsidiary agreement relating to trade in services under the framework of CEPA. In terms of legal services, the Agreement contains the following liberalisation measures –

- extending the pilot area of the Guangdong Province to the whole of the Mainland where Mainland law firms may second Mainland lawyers to work as consultants on Mainland law in representative offices set up by Hong Kong law firms;
- extending the pilot area of the Guangdong Province to the whole of the Mainland where Hong Kong law firms may second Hong Kong lawyers to work in Mainland law firms as consultants on Hong Kong law or cross-border laws;
- extending the pilot areas (previously covering only Qianhai, Nansha and Hengqin) to the three cities of Shenzhen, Guangzhou and Zhuhai, where Hong Kong and Mainland law firms may operate in association in the form of partnership.

19. As at November 2015, seven associations in the form of partnership between Hong Kong and Mainland law firms have been approved to be set up, with five in Qianhai, one in Nansha and one in Hengqin.

20. Apart from Hong Kong law firms enjoying CEPA liberalisation measures, it is encouraging to see Hong Kong barristers are also making use of the CEPA measure. In November 2015, seven Hong Kong barristers of different seniority were retained by Mainland law firms in Shanghai as legal consultants. This new form of co-operation enables our Mainland counterparts to utilise the expertise of Hong Kong barristers on Hong Kong and international laws and to better serve clients requiring cross-border legal services (especially on matters relating to dispute resolution).

(b) 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.

21. DoJ will continue to monitor the implementation of the existing legal arrangements with the Mainland. DoJ is also seeking to explore with

the Mainland authorities the possibility of concluding an arrangement on mutual recognition and enforcement of judgments in matrimonial matters.

22. Hong Kong's legal system and members of our legal profession are highly regarded in the Asia Pacific region. Hong Kong is a natural venue for resolution of commercial and investment disputes. As regards the continued development of Hong Kong as a *centre for international legal and dispute resolution services in the Asia Pacific region*, DoJ will continue to work closely with the legal professional bodies and the dispute resolution sectors to enhance our promotional efforts in the Mainland and around the world, particularly in emerging economies in the Asia Pacific region. In this regard, we are taking forward the following on-going initiatives.

(a) Enhancing co-operation with the Mainland authorities, as well as the legal and dispute resolution sectors in Hong Kong to facilitate the provision of legal and dispute resolution services in the Mainland by Hong Kong professionals.

23. On top of the CEPA-related developments set out in paragraphs 17 to 20 above, DoJ will continue to advocate for the appointment of more Hong Kong arbitrators to the panel of arbitrators of Mainland's arbitration institutions. DoJ will also facilitate more exchanges among Hong Kong and Mainland mediation bodies to enhance the provision of mediation services in the Mainland by Hong Kong mediation services providers.

24. It is also relevant to note that the Hong Kong International Arbitration Centre has reached an important milestone in November 2015 by being the first international arbitration institution to set up a representative office in the Mainland. The representative office is located within the China (Shanghai) Pilot Free Trade Zone.

25. As regards mediation, the China Council for the Promotion of International Trade ("CCPIT") and the Hong Kong Mediation Centre ("HKMC") recently set up the CCPIT-HKMC Joint Mediation Center in Hong Kong and the inauguration ceremony was held on 9 December 2015. It is the first joint mediation centre in Hong Kong set up by major mediation institutions from the two places. The CCPIT-HKMC Joint Mediation Center aims to provide a platform for resolving cross-boundary commercial disputes in the Mainland and Hong Kong. Hong Kong offers an appropriate

venue for providing cross-boundary dispute resolution services when Mainland and foreign or Hong Kong enterprises are in dispute.

26. DoJ will continue to work closely with relevant stakeholders and seek to encourage the legal, dispute resolution and other relevant sectors to enhance co-operation with their Mainland counterparts so as to capitalise on each other's strengths, with a view to taking forward the development of Hong Kong's legal and dispute resolution services in the Mainland.

(b) Fostering the development of mediation services in Hong Kong with the efforts of the Steering Committee on Mediation by organising events, providing training and taking other relevant measures to enhance the awareness of the general public and targeted sectors for mediation and promote its wider use, as well as monitoring the effectiveness of the Mediation Ordinance and the operation of the Hong Kong Mediation Accreditation Association in maintaining the standard of mediators.

27. The Steering Committee on Mediation plays an active role to further promote and develop the wider use of mediation to resolve disputes in Hong Kong. The Steering Committee is assisted by three Sub-committees (namely, the Regulatory Framework Sub-committee, the Accreditation Sub-committee and the Public Education and Publicity Sub-committee).

28. The **Regulatory Framework Sub-committee** assists the Steering Committee in monitoring the implementation of the Mediation Ordinance (Cap. 620) and advising on the promulgation and promotion of a set of guidelines on the disclosure of mediation communication under section 8(2) of the Ordinance for research, evaluation or educational purposes without revealing, or being likely to reveal, directly or indirectly, the identity of a person to whom the mediation communication relates. It also assists the Steering Committee on the study concerning the enactment of an apology legislation. As mentioned in paragraph 15 above, the second consultation on specific issues on the proposal for an apology legislation upon consideration of the responses received during the first consultation will be conducted in early 2016.

29. Hong Kong Mediation Accreditation Association Limited ("HKMAAL"), an industry-led company limited by guarantee commenced

operation in April 2013. HKMAAL is currently the largest accreditation body for mediators in Hong Kong, discharging accreditation and disciplinary functions. As at 18 December 2015, HKMAAL has 11 corporate members and about 2 132 accredited general mediators on its panel of mediators. The *Accreditation Sub-committee* of the Steering Committee is tasked to monitor the operation of HKMAAL and its future development. The Sub-committee will also consider HKMAAL's review of the Mediation Code (which is a code of conduct adopted by the HKMAAL and a number of mediation services providers) and HKMAAL's proposed new disciplinary procedures.

30. The *Public Education and Publicity Sub-committee* considers and proposes initiatives and measures to promote and raise awareness of mediation with a view to developing a stronger mediation culture. It will organise a Mediation Week in May 2016, with a one-day mediation conference involving local and international speakers, to provide practitioners and end-users of mediation an opportunity to share their experiences on the development of mediation and to discuss various ideas to foster the use of mediation. Other intended activities of the Mediation Week, including seminars and workshops, will be organised with the support of stakeholders, to further promote the use of mediation in various sectors such as the medical, commercial, community and IP sectors.

(c) Building a favourable environment and infrastructure so as to facilitate legal and dispute resolution institutions (especially world-class institutions) to develop services or establish in Hong Kong. Relevant measures include providing such institutions with certain office space in the West Wing of the former Central Government Offices and the former French Mission Building.

31. Pursuant to the policy objective of enhancing Hong Kong's status as a centre for international legal and dispute resolution services in the Asia Pacific region, the Government plans to provide certain space to international and local Law Related Organisations ("LROs") in the West Wing ("WW") of the former Central Government Offices ("CGO") and the entire former French Mission Building ("FMB") (after completion of necessary procedures). Together with DoJ offices already housed in the Main and East Wings and to be housed in part of WW of the former CGO, the area is planned to become a legal hub.

32. We are now pressing ahead with the preparation for the renovation works required for former CGO WW and FMB with a view to providing office space for the rest of DoJ headquarters as well as LROs. We plan to consult the Panel later this year prior to seeking funding approval from the Finance Committee for the works concerned. In respect of the applications already received from LROs for the use of space in the Legal Hub, we plan to announce the outcome of the stage one allocation of space in early 2016, taking into account the views of the “Committee on Provision of Space in the Legal Hub”. Our current works plan is that space should be available for actual allocation to selected LROs in WW by or around the end of 2018 and in FMB in or around Q2/2019.

33. We will also continue our efforts in facilitating the establishment and growth of world-class arbitration bodies and LROs in Hong Kong. Further to the successful establishment of an 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 (“CIETAC”) (in September 2012), the Hague Conference on Private International Law (in December 2012) and the China Maritime Arbitration Commission (“CMAC”) (in November 2014), we are seeking to facilitate other major international or regional LROs to establish offices in Hong Kong. In addition, in relation to the conduct of dispute settlement proceedings in the HKSAR by the Hague-based Permanent Court of Arbitration (“PCA”), the Central Government signed the Host Country Agreement and the HKSAR Government signed the related Memorandum of Administrative Arrangements with the PCA respectively last year. DoJ will continue to take forward the related work as well as the promotion of international investment arbitration in Hong Kong.

34. DoJ has also been constantly reviewing the Hong Kong arbitration regime in consultation with the arbitration sector and will consider necessary improvement to the Arbitration Ordinance (Cap. 609) as and when appropriate.

35. In particular, as mentioned in paragraph 12 above, we plan to introduce in the second quarter of 2016 a bill to amend the Arbitration Ordinance to clarify the arbitrability of disputes over IP rights and the effect and enforceability of arbitral awards involving IP rights. The proposed bill will also be discussed at the meeting of this Panel on 25 January 2016. It

will also update, for the purposes of the Ordinance, the list of parties to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.

(d) Following up on a study conducted in conjunction with the Hong Kong Trade Development Council on the development of arbitration in Hong Kong and the challenges and opportunities faced by Hong Kong as a centre for international arbitration in the Asia Pacific region.

36. A consultancy study was launched in 2014 on enhancing Hong Kong's position as a leading international arbitration centre in the Asia Pacific region. This study considers 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.

37. The study covers 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, the 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 assist the long-term policy planning and strategic development in this area. The results of the study are likely to be available in 2016.

(e) Enhancing the promotion of legal and dispute resolution services of Hong Kong among emerging economies in the Asia Pacific region through, among others, active participation in a sub-group on strengthening economic and legal infrastructure under the Asia-Pacific Economic Cooperation ("APEC").

38. In September 2015, DoJ led a delegation of representatives from the Hong Kong Bar Association, the Law Society of Hong Kong and various arbitral institutions in Hong Kong on a promotional trip to Jakarta, Indonesia to promote Hong Kong's legal and dispute resolution services. As in our previous promotional trips to Vietnam, Cambodia and Myanmar in 2014, a seminar was also held in Jakarta to promote Hong Kong's international legal

and dispute resolution services, during which the delegation had fruitful exchanges with their Indonesian legal and arbitration counterparts as well as business leaders there. We are currently making plans for promotional trips to other emerging economies in the Asia Pacific (such as Thailand) and beyond in 2016.

39. To enhance the promotion of Hong Kong's legal and dispute resolution services among emerging economies in the Asia Pacific region, we have been actively participating in the activities of a sub-group on strengthening economic and legal infrastructure established under the Economic Committee of APEC. Entitled "Friends of the Chair on Strengthening Economic and Legal Infrastructure" ("SELI"), the subgroup was established in February 2015 and a counsel from DoJ has assumed the role of its convenor.

40. SELI facilitates Hong Kong in sharing our experience and expertise on the use of international legal instruments to strengthen economic and legal infrastructure. Through participation in the work of SELI, the strength of Hong Kong as an international legal services and dispute resolution centre (including our top quality legal profession, independent judiciary, and modern and mature legal infrastructure) could be made known to emerging economies in the Asia Pacific region.

41. For example, in September 2015, we organised in the Philippines a workshop under SELI in relation to enforcement of business contracts and resolution of business disputes, in collaboration with the Asia Pacific Regional Office of the Hague Conference on Private International Law and the Regional Centre for Asia and the Pacific of the United Nations Commission on International Trade Law ("UNCITRAL"). We also plan to conduct in February 2016, during the APEC meetings in Peru, a workshop under SELI on "Dispute Resolution – the key to effective settlement of business disputes", in collaboration with the Permanent Court of Arbitration and UNCITRAL.

(II) Rule of Law, Governance, Elections and District Administration

42. The rule of law is vital for safeguarding our rights and freedoms. It is also instrumental in promoting our long-term sustainable development as an international financial and commercial centre. We will continue to

improve our legal system and enhance our legal infrastructure to ensure that the rule of law is upheld.

43. 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 and preparation and presentation of criminal cases, as well as raising the standards of advocacy through the provision of comprehensive training programmes for prosecutors and better use of resources.***
- (b) ***Enhancing the capability and effectiveness of the prosecution work in the conduct of criminal proceedings.***
- (c) ***Enhancing the quality of criminal justice by promoting transparency in public prosecutions, improving accountability to the community, and studying areas of the criminal law that may possibly require reform.***
- (d) ***Promoting co-operation among prosecutors at regional and international levels through active participation in international prosecuting organisations.***
- (e) ***Continuing with the annual “Prosecution Week” event and “Meet the Community” programme to further enhance public understanding (in particular that of young people) of the criminal justice system, their role therein and their appreciation of the importance of the rule of law, through activities such as visits, talks, mock court as well as different types of competitions.***

44. In support of the foregoing initiatives, the Prosecutions Division (“PD”) has implemented/maintained various measures to enhance its efficiency and effectiveness. Major measures include –

- (a) continued handling of each and every criminal case, regardless of scale and complexity, with due diligence and care, applying the relevant law to the available evidence and in accordance with the prevailing prosecution policy as set out in the latest Prosecution Code released in September 2013, so as to uphold the rule of law;
- (b) continued development of expertise within PD for handling particular types of cases (including cases relating to public order events, human exploitation, money laundering and cybercrime, as well as matters concerning criminal costs) by the appointment of

co-ordinators or specialised units for such cases/matters, so that they can be handled more effectively and efficiently;

- (c) riding on the success of the two conferences on criminal law issues held in 2012 and 2013 with the participation of members from different sectors of the legal community, we jointly organised the 2015 Criminal Law Conference with the Hong Kong Bar Association and the Law Society of Hong Kong in October 2015. Some 120 members of the Judiciary, criminal law practitioners and academics participated in the Conference to discuss topical issues relating to the latest development in criminal law and day-to-day administration of criminal justice in Hong Kong;
- (d) continued provision of a variety of relevant trainings to our in-house prosecutors, including seminars on different topics under the Continuing Legal Education Programme, advocacy training at the Middle Temple, as well as talks delivered by distinguished outside counsel; and
- (e) continued arrangement of the biannual Joint Training Programme (covering a two-week supervised engagement to prosecute in the Magistrates' Courts after satisfactory performance upon completion of a one-day training course) organised with the Hong Kong Bar Association and the Law Society of Hong Kong for new lawyers in private practice (i.e. those with less than five years' post-qualification experience) who are interested in prosecuting cases for DoJ, so as to enhance the overall quality of the prosecution service. A total of 104 participants joined the two runs of the programme in 2015.

45. As regards the promotion of co-operation amongst prosecutors at regional and international levels, apart from active participation in various international forums and events organised by international prosecuting organisations, attachments to and from other jurisdictions were also arranged during the year. For instance, one counsel from PD was attached to the Qingdao Justice Bureau for a short stint to enhance our understanding of the Mainland's legal system and practice. Moreover, legal executives from Singapore joined PD on attachment (as part of their short-term study visit to DoJ) to gain exposure to work processes related to administrative and legal support aspects in the Department. Our efforts to enhance exchanges and co-operation with prosecution authorities and personnel in other jurisdictions will continue.

46. During the year, PD has also continued to take forward the "Meet

the Community” programme to further enhance the understanding of our young people in respect of the criminal justice system, their role therein and their appreciation of the importance of the rule of law. In the first round of the programme running from April 2014 to August 2015, a total of 55 talks covering various topics were conducted. In response to our invitation issued in September 2015, 51 secondary schools indicated interest to participate in the 2nd round of the Programme and up to end 2015, 10 talks were conducted. Moreover, two talks on the legal consequence in respect of the abuse of drugs were also conducted in 2015 for two residential rehabilitation centres for young persons. As for the annual “Prosecution Week”, it was held from 24 to 30 June 2015, covering visits to DoJ and courts, talks and mock court, as well as a slogan competition with a total of 364 entries submitted by secondary school students. These two flagship events will continue to be organised in 2016.

47. As regards law drafting, we are –

- (a) *Furthering the work on the establishment of an electronic database of Hong Kong legislation with legal status (“Database”). We are implementing the Legislation Publication Ordinance (“LPO”) (Cap. 614) in stages.*
- (b) *Enhancing the quality of legislative drafting services by providing on-the-job training and professional development programmes for drafters, and by fostering their contact and exchange with local and overseas experts.*

48. After the successful completion of Phase 1 of the Database Project by implementing a new laws compilation system for internal use in 2015, we are now working on Phase 2 of the Project which mainly concerns making verified text of legislation available for public use. The existing Bilingual Laws Information System will be replaced by a new platform with advanced features. In parallel, we are verifying the data in the Database, in order to provide verified copies of legislation with legal status under the LPO. The next task is to complete the verification work progressively after the new platform is rolled out to the public, and we target to provide the verified copies of commonly-used ordinances and subsidiary legislation first at the initial roll-out.

49. We attach great importance to the input of users on the development and operation of the Database. We will continue to consult the

Hong Kong Legislation Database User Liaison Group, which comprises representatives of both branches of the legal profession, the Judiciary and the Legal Service Division of the Legislative Council Secretariat.

50. Shortly before the roll-out of the new platform, we will commence those provisions under the LPO which provide for the legislative backing to the Database and related matters. In addition, we will continue to make use of the editorial and revision powers under the LPO to bring the statute book in line with the prevailing drafting styles and practices.

51. Many policies that are required to take Hong Kong forward have to be implemented by means of introducing new legislation or amending existing legislation. A set of clear legislation which accurately reflect the relevant policy intents is a building block of our much treasured legal system. We are therefore committed to the provision of training and professional development programme to counsel in the Law Drafting Division to enhance the quality of legislative drafting service. Following the legislative training courses for junior drafters in 2013 and 2014, a 3-day advanced training course was organised for the more experienced drafters in the summer of 2015. The course mainly covered technical drafting skills and was conducted by an experienced legislative drafter from Canada who has rich experience and expertise in training legislative drafters. We will review the training needs of colleagues from time to time and similar programmes may be organised as required.

52. Besides on-the-job training, workshops and seminars are conducted on a regular basis by senior drafters as well as experts from outside the Government with a view to broadening the horizon and strengthening the professional skills of the drafters.

53. The development of legislative drafting in other jurisdictions provides useful reference, experience and ideas. We will continue to attend relevant international conferences and seminars on legislative drafting and maintain ties and interflow with other drafting offices.

54. In relation to *law reform proposals*, we are taking forward five on-going initiatives, the particulars of which are set out below.

(a) Supporting the cross-sectoral Working Group on Class Actions in

considering the proposals of the Law Reform Commission (“LRC”) on “Class Actions”.

55. 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, DoJ has set up a cross-sector working group (“Working Group”) to study the LRC’s proposals and to make recommendations to the Government 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. As at the end of 2015, the Working Group has held twelve meetings to study the LRC proposals.

(b) Conducting a public consultation on a bill to implement the LRC’s recommendations on Enduring Powers of Attorney with regard to personal care. The proposed bill aims 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.

56. Currently, the scope of an enduring power of attorney under the Enduring Powers of Attorney Ordinance (Cap. 501) is limited to the property and financial affairs of the donor only.

57. In July 2011, the LRC published a report on “Enduring Powers of Attorney: Personal Care”. The report recommends that the scope of an enduring power of attorney should be extended to include decisions as to the donor’s personal care.

58. DoJ has set up an inter-departmental working group to examine the recommendations in the report and is now preparing a working draft bill, with a view to consulting the legal professional bodies, the Judiciary and members of the public in the first half of 2016.

(c) Conducting a public consultation on a bill to implement the LRC’s recommendations made in the report on Criteria for Service as Jurors.

The proposed bill aims to ensure that the criteria for appointment to and exemption from jury services are set out clearly and precisely and are appropriate to present-day circumstances.

59. In June 2010, the LRC published a report on Criteria for Service as Jurors recommending that the Jury Ordinance (Cap. 3) be amended to ensure that the criteria for appointment to and exemption from jury service are appropriate to the current circumstances and are set out with clarity and precision.

60. The purpose of the proposed bill is to give effect to the recommendations of the LRC's report. DoJ is now preparing a working draft bill with a view to consulting the legal professional bodies, the Judiciary and members of the public in the first half of 2016.

(d) Conducting a consultation on a bill to implement the LRC's recommendations made in the report on Hearsay in Criminal Proceedings. The proposed bill aims mainly to reform the existing rule that hearsay evidence is generally inadmissible in criminal proceedings by giving the courts the discretionary power to admit hearsay evidence in criminal proceedings if the statutory "necessity" and "threshold reliability" criteria are satisfied.

61. Under the existing law, hearsay evidence is inadmissible in criminal proceedings unless it falls within one of a number of common law or statutory exceptions. A major criticism of the hearsay rule is that it is too strict and inflexible, and sometimes results in the exclusion of evidence which, by the standards of ordinary life, would be regarded as accurate and reliable. In addition, some of the present exceptions to the rule are complex and uncertain.

62. In November 2009, the LRC published a report on hearsay in criminal proceedings. The report proposes that the existing rule which prohibits the admission of hearsay evidence in criminal proceedings should be reformed and that the court should be given discretion to admit hearsay evidence if it is satisfied that the admission of that evidence is "necessary", and that that evidence is "reliable".

63. DoJ is now preparing a working draft bill to implement the LRC's recommendations made in the report on Hearsay in Criminal Proceedings, with a view to consulting the legal professional bodies, the Judiciary and members of the public in the first half of 2016.

(e) Assisting the high level Inter-departmental Working Group on Gender Recognition, chaired by the Secretary for Justice, in undertaking a detailed study on possible legislation to deal with various aspects of gender recognition in the light of the observations made in the judgment of the Court of Final Appeal in the W Case (FACV 4/2012), and in conducting a public consultation on the first part of the study.

64. To follow up on the judgment of the Court of Final Appeal in the W Case (FACV 4/2012), the Secretary for Justice has been chairing the Inter-departmental Working Group on Gender Recognition ("IWG") to consider legislation and incidental administrative measures that may be required to protect the rights of transsexual persons in Hong Kong in all legal contexts, and to make recommendations for reform as appropriate.

65. The focus of the IWG's work is to review issues relating to transsexual persons in Hong Kong, including the condition known as gender identity disorder or gender dysphoria, and conducting 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 Government on possible legislation that may be necessary to address the issues faced by transsexual persons. The scope of the IWG's study includes both recognition and post-recognition issues. As regards recognition issues, the IWG is reviewing issues such as various options for a gender recognition scheme, the qualification criteria and the application procedure. As for post-recognition issues, the IWG is reviewing all the existing legislative provisions and administrative measures in Hong Kong which may be affected by legal gender recognition, so that any required legislative or procedural reform can be followed up by the Government.

66. Since its establishment in 2014, the IWG has so far held thirteen official meetings and nine informal meetings with medical experts, leading academics, transsexual groups and other stakeholders. It is currently focusing on the completion of a consultation paper with a view to seeking the views of the public on recognition issues (which is the first major part of

the study). It will continue to consult widely in the course of its work before finalising its recommendations to the Government.

67. We welcome Members' views on the above initiatives. We will continue to work with the Panel and other stakeholders to take the initiatives forward.

Department of Justice
January 2016