

**For discussion on
23 January 2017**

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

2017 Policy Initiatives of the Department of Justice

Introduction

This paper describes the policy initiatives of the Department of Justice (“DoJ”) in 2017.

Our Vision

2. The rule of law is the cornerstone of 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 safeguard the rule of law including judicial independence, and to enhance Hong Kong’s legal system and legal infrastructure. This is achieved through, among other things –

- providing legal advice to Government bureaux and departments and representing the Government in courts, in accordance with the provisions of the Basic Law (including the provisions which safeguard the rule of law and human rights) and other applicable laws;
- 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 the Prosecution Code, 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.

Part (I)

4. The aim of the rule of law is not confined to promoting economic success. That said, as set out in Chapter 1 of the 2017 Policy Agenda on ***“Economic Development and Innovation and Technology”***, 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 leading centre for international legal and dispute resolution services in the Asia-Pacific region, and the enhancement of our status in the international legal, dispute resolution and business arenas.

New Initiatives

5. In 2017, we will pursue a number of initiatives.

(a) Amend the Arbitration Ordinance (Cap. 609) to make it clear that disputes over intellectual property rights (“IPRs”) are capable of resolution by arbitration and it would not be contrary to public policy to enforce an arbitral award solely because the award is in respect of a dispute which concerns IPRs.

6. To enhance Hong Kong’s status as a leading centre for international legal and dispute resolution services and a premier hub for intellectual property (“IP”) trading in the Asia-Pacific region, we introduced the Arbitration (Amendment) Bill 2016 in December 2016 to amend the Arbitration Ordinance. The amendments seek to make clear that disputes over IPRs 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 involves a dispute over IPRs. The Government believes that the amendments would help (i) clarify the legal position in relation to the “arbitrability of disputes involving IPRs”; (ii) make Hong Kong more appealing for conducting arbitration involving such disputes; and (iii) demonstrate to the international community Hong Kong’s commitment to develop itself as an international centre for IP dispute resolution as well as an IP trading hub in the region. The Panel on Administration of Justice and Legal Services (“Panel”) expressed support for the introduction of the Bill into the Legislative Council (“LegCo”).

(b) Amend the Arbitration Ordinance (Cap. 609) and the Mediation Ordinance (Cap. 620) to make it clear respectively that third party funding for arbitration and mediation is permitted under Hong Kong law.

7. In recent years, third party funding of arbitration and other dispute resolution proceedings has become increasingly common in numerous

jurisdictions, including Australia, England and Wales, various European jurisdictions and the United States.

8. Hong Kong is one of the major centres of international arbitration in the Asia-Pacific region. It is likely that a party to an arbitration taking place in Hong Kong may wish to consider seeking third party funding of its participation in such an arbitration (or other dispute resolution proceedings) because of lack of financial resources or in relation to financial or risk management purposes. However, as it is currently unclear whether the common law doctrines of maintenance and champerty apply to third party funding of arbitration or dispute resolution proceedings taking place in Hong Kong, the attractiveness of Hong Kong as a venue of dispute resolution may be impaired. This may also impair the competitiveness of Hong Kong in handling cross-border investment and commercial disputes.

9. In October 2016, the Law Reform Commission (“LRC”) published the report on “Third Party Funding for Arbitration”. The report recommends that the reform of Hong Kong law is needed to state that the common law doctrines of maintenance and champerty do not prevent third party funding of arbitration and associated proceedings. It further recommends that consideration be given to amending the Mediation Ordinance to extend the non-application of these common law doctrines to mediation within the scope of the Mediation Ordinance.

10. The Government considers that the proposed law reform is desirable. It is important that Hong Kong, as one of the leading centres for international legal and dispute resolution services in the Asia-Pacific region, can keep up with the latest international practice and enhance its competitive position. DoJ has written to key legal and arbitration professional bodies in Hong Kong to consult them on the recommendations set out in the report. The organisations which have responded all indicated their support for the proposed reform. DoJ has also consulted the Steering Committee on Mediation (“Steering Committee”) and the Steering Committee supported the proposed consequential amendments to the Mediation Ordinance. The Panel also expressed support for the introduction of a Bill into the LegCo to implement the proposed reform.

11. The Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Bill 2016, which contains the above amendments, was introduced into the LegCo on 11 January 2017.

- (c) Introduce an Apology Bill within 2016-17, after two rounds of public consultation in June 2015 and February 2016 respectively on the proposal. The majority view from the two consultations is clearly in support of enacting apology legislation.***

12. In June 2015, the Steering Committee published a consultation paper on the enactment of 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 prevent the escalation of dispute and facilitate amicable settlement thereof by clarifying the legal consequences of making apologies. The responses received during the first round of consultation were on the whole supportive of the recommendation to enact such legislation in Hong Kong. In February 2016, an interim report was published and a second round of public consultation was conducted for a period of six weeks seeking comments on two specific issues and the draft Apology Bill. After having carefully considered the responses, the final report was published in November 2016. All the final recommendations of the Steering Committee are accepted by DoJ, which will seek to introduce the apology legislation in the legislative year 2016-17. The Panel expressed support for the introduction of the Bill into LegCo.

- (d) Provide mediation facilities in the vicinity of the West Kowloon Law Courts Building to encourage the use of mediation by members of the public to resolve suitable Small Claims Tribunal cases and other appropriate types of disputes through a mediation scheme, with a view to promoting more extensive use of mediation to resolve disputes and enhancing public awareness of mediation as a means of dispute resolution.***

13. Following a review of the work of the Small Claims Tribunal (“SCT”), the Judiciary has initiated discussions with DoJ to explore the provision of mediation services to litigants in certain SCT cases which are considered suitable for mediation. Examples of such cases include disputes concerning water seepage or leakage, renovation works, interior decoration works, and minor personal injuries which may not infrequently involve the calling of expert reports and witnesses, and thus involve higher litigation costs. All the parties involved in SCT cases are litigants-in-person and in most cases, they may not be aware of the possible implications (including costs implication) should the matter proceed to full hearing. The Judiciary believes that in these cases, if mediation services can be made available to the parties to facilitate their consideration of early settlement, this would be of great help and benefit to them.

14. DoJ agrees there are merits in providing mediation services to parties involved in SCT cases. This will promote more extensive use of mediation to resolve disputes and enhance public awareness of mediation as a means of dispute resolution. Having consulted and obtained the support of the Steering Committee, DoJ will implement a pilot scheme for a period not exceeding 5 years under which mediation services will be provided to litigants in SCT cases that are considered by the Adjudicators of the SCT to be suitable for mediation. Mediation services may also be provided under the scheme to other appropriate cases. Details of the scheme are being worked out. For the time being, it is envisaged that the scheme will involve the appointment of an independent coordinator to administer the scheme.

15. Meanwhile, DoJ has secured the Sham Shui Po District Council's support to construct the mediation facilities required to implement the scheme at a site in the vicinity of the West Kowloon Law Courts Building. DoJ is liaising with the relevant Government departments on construction of the mediation facilities. It is currently expected that the facilities will be ready for use in around early 2018.

On-going Initiatives

16. We will also continue with a number of on-going initiatives in this area.

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

17. DoJ continues to work closely with our counterparts under the Framework Agreement on Hong Kong/Guangdong Co-operation. Both sides have been discussing the implementation of the relevant co-operation initiatives under the framework of the Mainland and Hong Kong Closer Economic Partnership Agreement ("CEPA").

18. The relevant liberalisation measures introduced by the Agreement on Trade in Services, a subsidiary agreement on trade in services under the framework of CEPA, took effect on 1 June 2016. In terms of legal services, the Agreement, among other things, extends 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 a partnership.

19. As at December 2016, ten associations in the form of partnership between Hong Kong and Mainland law firms have been approved to be set up,

with seven in Qianhai, Shenzhen, two in Hengqin, Zhuhai, and one in Nansha, Guangzhou.

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 relevant CEPA measure. As at December 2016, 32 Hong Kong barristers are retained by Mainland law firms as legal consultants and among such law firms, 13 are from the Guangdong Province. This 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 (including matters relating to dispute resolution).

(b) Continuing to promote 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 follow up the completion of the required procedures for the entry into force of the recent Arrangement on Mutual Taking of Evidence in Civil and Commercial Matters between the Courts of the Mainland and the HKSAR, signed on 29 December 2016. The above Arrangement aims at assisting litigants of the two jurisdictions to obtain evidence in civil and commercial matters under the current legal framework but with enhanced efficiency and greater certainty. Further, DoJ will continue to monitor the implementation of the existing legal arrangements with the Mainland. DoJ has also been discussing with the Mainland authorities a proposed arrangement on mutual recognition and enforcement of judgments in matrimonial matters. This initiative is generally supported by the legal and dispute resolution communities and the relevant stakeholders. We briefed this Panel on 19 December 2016 on the outcome of the public consultation in respect of the proposed arrangement. Taking into account Members' views and comments as well as the representations we received through the consultation exercise, we will actively engage the relevant Mainland authorities in further discussions on issues relating to the proposed arrangement.

(c) With the recent establishment of the Joint Dispute Resolution Strategy Office to enhance the overall co-ordination of mediation and arbitration work etc. of DoJ, further promoting 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.

(d) Enhancing co-operation with the Mainland authorities, the local legal profession, and arbitration and mediation institutions in Hong Kong to facilitate the provision of international legal and dispute resolution services in the Mainland by Hong Kong professionals.

22. Hong Kong's legal system and members of our legal profession are highly regarded in the Asia-Pacific region. Hong Kong is also an ideal 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.

23. DoJ will continue to advocate for the appointment of more Hong Kong legal and dispute resolution professionals by the Mainland's dispute resolution and relevant institutions. We will also continue to promote Hong Kong as a seat of arbitration and the use of Hong Kong law as the governing law. In this connection, we are pleased to note that the Shenzhen Court of International Arbitration in its Guidelines for the Administration of Arbitration under the United Nations Commission on International Trade Law ("UNCITRAL") Arbitration Rules (effective as from 1 December 2016) has chosen Hong Kong as its default seat of arbitration where the parties have not agreed on the seat of arbitration, unless otherwise determined by the arbitral tribunal.

24. We also continue to work together with relevant stakeholders to promote in the Mainland the attributes of Hong Kong's legal and dispute resolution services and the role such services can play under the Belt and Road Initiative. Such promotional activities may take the form of visits, seminars and conferences, an example of which is the Hong Kong Legal Services Forum held in Nanjing in November 2016. The Forum was attended by over 860 Mainland legal and dispute resolution practitioners, enterprises and officials.

25. DoJ will continue to encourage relevant stakeholders to deepen their 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.

(e) Promoting the use of evaluative mediation (in addition to facilitative mediation) for resolving intellectual property disputes.

26. 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 identified the need to promote and develop the use of mediation as a means to resolving IP disputes in Hong Kong and also the desirability of exploring the use of evaluative mediation on top of facilitative mediation for that purpose.

27. To this end, DoJ and the Intellectual Property Department (“IPD”) organised an IP Mediation Workshop in May 2015 focusing solely on evaluative mediation for resolving IP disputes. A seminar on “Assessing the Suitability of Evaluative Mediation to Resolve IP Disputes” was also delivered as part of the events during the Mediation Week 2016 organised by DoJ and held in May 2016. The workshop and the seminar generated much interest and discussion among stakeholders of the IP industry. DoJ will, in consultation with the Steering Committee and other key stakeholders, study in further detail the measures to be taken and the infrastructure to be in place for facilitating the use of evaluative mediation in addition to facilitative mediation in Hong Kong.

(f) 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 of 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.

28. The Steering Committee 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).

29. The ***Regulatory Framework Sub-committee*** assists the Steering Committee in monitoring the implementation of the Mediation Ordinance 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 apology legislation. As mentioned in paragraph 12 above, the Steering Committee conducted a second round of public consultation on its recommendation to enact apology legislation and, in November 2016, published a final report setting out the Steering Committee's final recommendations. These recommendations were all accepted by DoJ.

30. 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 and performs accreditation and disciplinary functions. As at 9 January 2017, HKMAAL has 11 corporate members and 2 072 accredited mediators on its panels (1 782 on the General Panel, 239 on the Family Panel and 51 on the Family Mediation Supervisors Panel). The ***Accreditation Sub-committee*** of the Steering Committee is tasked to monitor the operation of HKMAAL and its future development. The Sub-committee has also been considering 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.

31. 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 assisted in organising Mediation Week in May 2016, with a one-day mediation conference involving local and international speakers to provide practitioners and end-users of mediation with an opportunity to share their experiences on the development of mediation and to discuss various ideas to foster the use of mediation. Other activities during Mediation Week included seminars and workshops, organised with the support of stakeholders, to further promote the use of mediation in various sectors such as the education, medical, commercial, community and IP sectors.

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

32. Enhancing Hong Kong's status as a centre for international legal and dispute resolution services in the Asia-Pacific region is an on-going policy objective. As part of its efforts to facilitate the establishment and growth of world-class arbitration bodies as well as local and international Law Related Organisations (collectively called "LROs") in Hong Kong, the Government plans to provide certain space to 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 of the former CGO and to be housed in part of WW, the area is planned to become a Legal Hub.

33. We are now pressing ahead with preparation for the renovation works required for the former CGO WW and FMB with a view to providing office space for the rest of DoJ headquarters as well as LROs. Funding for the necessary renovation works in respect of the former CGO WW was approved by the Finance Committee in July 2016 and works have commenced. For the renovation works in respect of the former FMB, we plan to consult the Panel in February 2017 prior to seeking funding approval from the Finance Committee for the works concerned. Our current target is for completion of the works in respect of the former CGO WW and FMB in around late 2018 and early 2020 respectively, after which space in the Legal Hub could be made available to the selected LROs. As regards the actual allocation of space, the outcome of the applications which have been made will be announced in due course and will take into account the views of the “Committee on Provision of Space in the Legal Hub”.

(h) Enhancing the promotion of international 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”).

34. In October 2016, 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 Bangkok, Thailand to promote Hong Kong’s international legal and dispute resolution services. As with our previous promotional trips to Vietnam, Cambodia and Myanmar in 2014 and Indonesia in 2015, a seminar was held to promote Hong Kong’s international legal and dispute resolution services, during which the delegation had fruitful exchanges with their Thai 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 region and beyond in 2017.

35. To enhance the promotion of Hong Kong’s international legal and dispute resolution services among emerging economies in the Asia-Pacific region, we have also 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.

36. 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 high quality legal profession, independent judiciary, and modern and mature legal infrastructure) could be shown to emerging economies in the Asia-Pacific region.

37. For example, in September 2015, we organised in the Philippines a workshop under SELI auspices 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 UNCITRAL. Further, a workshop under SELI auspices on “Dispute Resolution – the key to effective settlement of business disputes”, in collaboration with the Permanent Court of Arbitration and UNCITRAL was held on 26 February 2016 in Lima, Peru. Prominent speakers such as the Secretary of UNCITRAL, a senior legal officer from the Permanent Court of Arbitration and distinguished legal professionals from Hong Kong gave presentations to over 60 participants from APEC member economies and international organisations, including the Vice Minister of Justice of Peru. The workshop was a success as its conclusions and recommendations were endorsed by the APEC Economic Committee and attached to the report of the Chair of the Economic Committee to the First APEC Senior Officials’ Meeting from 3 to 4 March 2016. We are also planning to organise under SELI auspices, in collaboration with UNCITRAL, the International Institute for the Unification of Private Law and the Hague Conference on Private International Law, an APEC seminar on “Use of International Instruments to Strengthen Contract Enforcement in Supply Chain Finance for Global Businesses (including MSMEs)” in late February in Vietnam during the First APEC Senior Officials’ Meeting of 2017.

38. It is also relevant to note that in July 2016, the UNCITRAL adopted the “Technical Notes on Online Dispute Resolution” (“the Technical Notes”) submitted by its Working Group III. In this connection, the United States has initiated an online dispute resolution (“ODR”) project which seeks to formulate a set of rules for ODR proceedings on the basis of the Technical Notes for micro, small and medium size enterprises (“MSMEs”) and to establish a platform for ODR for MSMEs throughout APEC economies. DoJ counsel will participate in the relevant APEC meetings to be held in Vietnam

in February 2017 and will monitor the formulation of general ODR rules and the building of the platform in the Asia-Pacific region.

Part II

39. As set out in Chapter 8 of the 2017 Policy Agenda on “***Rule of Law, Governance, Elections and District Administration***”, the rule of law is vital for safeguarding our rights and freedoms. It is also instrumental in consolidating Hong Kong’s sustained 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 and justice are upheld.

New Initiative

40. As a 2017 new initiative, we will ***suggest legislative amendments to give the court a discretion, on its own motion or on application, to permit complainants of certain sexual offences to give evidence by way of a live television link, so as to enhance the protection for such complainants during court proceedings.***

41. There has been strong public demand over the past few years for greater protection for victims of sexual offences. In this regard, Mr Eric Cheung, Principal Lecturer of the Department of Law of The University of Hong Kong prepared a bill to amend the Criminal Procedure Ordinance (Cap. 221) to give the court a discretion, on application or on its own motion, to permit complainants of certain sexual offences to give evidence by way of a live television link, so as to enhance the protection to these complainants when giving evidence in court¹. At the meeting of the Panel held on 27 June 2016, both Panel Members and represented interest groups involved in providing assistance to victims of sexual offences indicated strong support for the proposal and called for its early introduction, while the two legal professional bodies had no fundamental objection to the proposal.

¹ This will involve adding a new provision to section 79B of the Criminal Procedure Ordinance, so that where a complainant within the meaning of section 156(8) of the Crimes Ordinance (Cap. 200) is to give evidence in proceedings in respect of a specified sexual offence within the meaning of section 117(1) of Cap. 200, the court may, on application or on its own motion, permit the complainant to give evidence by way of a live television link, subject to such conditions as the court considers appropriate in the circumstances. Under section 117(1) of Cap. 200, specified sexual offence means any of the following, namely, rape, non-consensual buggery, indecent assault, an attempt to commit any of those offences, aiding, abetting, counselling or procuring the commission or attempted commission of any of those offences, and incitement to commit any of those offences.

42. It is our considered view that the proposed legislative measure can broadly achieve the aim of offering additional protection to complainants in sexual offence cases, and at the same time satisfy the tests of rationality and proportionality, not affect the fundamental right of a defendant to a fair trial, be consistent with the principle of open justice, and not unduly fetter the court's discretion in the administration of criminal justice. Accordingly, DoJ issued a consultation paper with a draft bill in October 2016. As comments received were generally in support of the proposed bill, DoJ will take forward the proposed amendments to the Criminal Procedure Ordinance by way of the Statute Law (Miscellaneous Provisions) Bill 2017. We will consult the Panel on the Bill at its meeting in March 2017.

On-going Initiatives

43. We will also 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) ***Enhancing the quality and effectiveness of criminal prosecution work, including raising the professionalism and standard of advocacy of our prosecutors through the provision of training programmes and better use of resources.***
- (b) ***Promoting co-operation among prosecutors at regional and international levels through active participation in international prosecuting organisations.***
- (c) ***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 in it and their appreciation of the importance of the rule of law, through visits, talks, mock court and different types of activities.***

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, cybercrime, those involving vulnerable witnesses, 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) building on the success of the conferences on criminal law issues held in 2012, 2013 and 2015 with the participation of members from different sectors of the legal community (including members of the Judiciary, criminal law practitioners and academics), we will jointly organise a 2017 Criminal Law Conference with the Hong Kong Bar Association and the Law Society of Hong Kong in May 2017. Topical issues relating to the latest developments in criminal law and day-to-day administration of criminal justice in Hong Kong will be discussed and mooted;
- (d) continued provision of a variety of relevant training 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 in-house and distinguished outside counsel; and
- (e) continued arrangement of the biannual Joint Training Programme (comprising a two-week supervised engagement to prosecute in the Magistrates' Courts after satisfactory 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. A total of 98 participants joined the two programmes held in 2016.

45. An internal review was conducted by DoJ in 2016 of the handling of prosecution works before the Magistrates' Courts, including issues as to the future arrangement for the Court Prosecutor Grade. The primary aim of the review was to consider if there is any need, and if so how, to adjust the distribution and handling of cases to efficiently and effectively meet the current and future demand for prosecution service at the magistracy level. Based on comments received in response to a consultation paper issued earlier last year, we are now considering our proposed way forward with a view to reporting to the Panel as and when we are ready.

46. 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, prosecutors from Singapore joined PD on short-term attachment to gain first-hand working experience in the Division. Our efforts to enhance exchanges and co-operation with prosecution authorities

and personnel in other jurisdictions will continue.

47. During the year, PD has also continued to take forward the “Meet the Community” programme to further enhance the general public’s (especially young people’s) understanding about our criminal justice system, their role in it and their appreciation of the importance of the rule of law. In the first two rounds of the programme running from April 2014 to August 2015 and from September 2015 to August 2016 respectively, a total of 90 talks covering various topics were conducted. In response to our invitation issued in September 2016, 33 secondary schools indicated interest to participate in the third round of the Programme and up to end 2016, nine talks were conducted. Moreover, three talks on the legal consequences of drug abuse were conducted in 2015 and 2016 at residential rehabilitation centres for young persons. As for the annual “Prosecution Week”, it was held from 20 to 24 June 2016, covering visits to DoJ and courts, talks and mock court, as well as a slogan competition, with a total of 718 entries submitted by secondary school students. These two flagship events will continue to be organised in 2017.

48. As regards law drafting, we are –

(a) Continuing to further the work on the establishment of an electronic database of Hong Kong legislation with legal status (“Database”) and to implement the Legislation Publication Ordinance (“LPO”) (Cap. 614) in stages.

49. Under the Database Project, a system has been developed to facilitate convenient access to legislation with legal status. The proposed launch will be in around March 2017. The existing Bilingual Laws Information System will be replaced by the Database. The loose-leaf edition of the Laws of Hong Kong will also be phased out gradually. Copies of verified legislation printed from the Database are presumed to correctly state the law. We are progressively verifying legislation data in the Database, in order to ultimately provide copies with legal status under the LPO of all legislation. Priority will be given to verifying commonly-used and new legislation. We will continue to make use of the editorial and revision powers under the LPO to bring the statute book in line with prevailing drafting styles and practices.

50. We attach great importance to the input of users on the development and operation of the Database. Consultation will continue with the Hong Kong Legislation Database User Liaison Group, which we established in 2013 and which comprises representatives of both branches of the legal profession, the Judiciary and the Legal Service Division of the LegCoSecretariat.

(b) Enhancing the quality of legislative drafting work by providing on-the-job training and professional development programmes for drafters, and by fostering their contact and exchange with local and overseas experts.

51. Many of the policies required to take Hong Kong forward have to be implemented by introducing new legislation or amending existing legislation. A set of clear legislation which accurately reflects the relevant policy intents is one of the fundamental building blocks of our much treasured legal system. We are therefore committed to the provision of training and professional development programmes to counsel in the Law Drafting Division to enhance the quality of our legislative drafting service. For instance, a 2-week programme titled “Practical Course on Legislative Drafting in Hong Kong 2016” was organised for junior drafters in the summer of 2016. The course covered various drafting topics in the Hong Kong context and was conducted by experienced drafters in the Law Drafting Division.

52. Apart from on-the-job training, regular workshops and seminars were conducted by senior drafters, including workshops on Chinese legislative drafting. There were also sessions provided by experienced overseas drafters. This was all arranged with a view to strengthening the professional skills of our drafters. We will review the training needs of our colleagues from time to time and similar programmes may be organised as required.

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-sector Working Group on Class Actions in considering the proposals of the 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 2016, the Working Group has held sixteen 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 within 2017.

(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 of Hong Kong.

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 2017.

(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 the 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, with a view to consulting the legal professional bodies, the Judiciary and other interested parties in the first quarter of 2017. The Panel will be briefed on the working draft bill at the meeting scheduled for March 2017.

(e) Assisting the high level Inter-departmental Working Group on Gender Recognition (“IWG”), 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 on gender recognition issues. Upon completion of the first part of the study, the Working Group will move to the next stage of the study concerning post-recognition issues.

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 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 such recommendations for reform as may be appropriate.

65. The scope of the IWG’s study includes both recognition and post-recognition issues. On recognition issues, the IWG has been reviewing

various issues, including the condition known as gender identity disorder or gender dysphoria, whether there should be a gender recognition scheme, the various options for a gender recognition scheme, the relevant qualification criteria and the application procedure. In this connection, the IWG has been conducting a comprehensive review of the legislation, schemes and case law in over 100 overseas 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. As regards post-recognition issues, the IWG will focus on 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 may be followed up by the Government.

66. The IWG is currently focusing on the completion of a consultation paper, with a view to seeking the views of the public on recognition issues. 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
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