For discussion on
23 October 2017

Legislative Council Panel on
Administration of Justice and Legal Services

2017/18 Policy Initiatives of the Department of Justice

Introduction

This paper explains the 2017/18 policy initiatives of the Department of Justice ("DoJ").

Our Vision

2. The rule of law is the core value of the Hong Kong community. The Basic Law provides a solid basis for upholding the rule of law in the Hong Kong Special Administrative Region ("HKSAR"). 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 HKSAR exercises 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 the HKSAR's legal system and infrastructure. This is achieved through, among others –

- providing legal advice to Government bureaux and departments, as well as representing the Government in legal proceedings in accordance with the Basic Law and other applicable laws;
- providing a modern first-class prosecution service by seeking to ensure that prosecutions are conducted apolitically, fairly as well as with professionalism and integrity, and in accordance with the Prosecution Code and Article 63 of the Basic Law;
- ensuring legislation that implements Government policy is clear, easy to understand and readily accessible; and

- enhancing the competitiveness of the HKSAR as a leading centre for international legal and dispute resolution services in the Asia-Pacific region.

Policy initiatives under Chapter 3 of the 2017/18 Policy Agenda on "Diversified Economy, Better Jobs"

4. The HKSAR's economic success is built on our adherence to and respect for the rule of law. We will continue with our efforts in developing the HKSAR as a leading centre for international legal and dispute resolution services in the Asia-Pacific region, and enhancing our status in the international legal, dispute resolution and business arenas. One of the DoJ's priorities is to step up efforts in proactively promoting the HKSAR as an international legal and dispute resolution services centre in the context of the "Belt and Road" and the "Guangdong-Hong Kong-Macao Bay Area".

5. In 2017/18, we will pursue a number of initiatives in the area of "Professional Services", with specific reference to the consolidation of the HKSAR's position and competitiveness as a leading "International Legal and Dispute Resolution Services Centre in the Asia-Pacific Region".

(1) **In collaboration with the legal and dispute resolution services sectors, promoting such services of the HKSAR in the Mainland and overseas, and making extra efforts to promote further co-operation among relevant sectors in the HKSAR, the Mainland and overseas**

(a) Proactively strive for more liberalisation measures for our professional services when forging trade agreements with the Mainland and overseas governments. At the same time, we will allocate more resources to promote the HKSAR as a platform for providing professional services and a centre for dispute resolution services for the Belt and Road countries. Through the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA) framework and the upcoming development plan of the city cluster in the Guangdong-Hong Kong-Macao Bay Area, we will assist professional service companies in further opening up the Mainland market.

(b) Enhancing legal co-operation with Guangdong pursuant to the Framework Agreement on Hong Kong/Guangdong Co-operation[1].

6. Continuing close co-operation with our Guangdong counterparts under the Framework Agreement on Hong Kong/Guangdong Co-operation and the Framework Agreement on Deepening Guangdong-Hong Kong-Macao Cooperation in the Development of the Bay Area ("Bay Area") is key to the work of DoJ in this area. 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") as well as co-operation initiatives in the context of the Belt and Road Initiative.

7. Guangdong has always been in the forefront in terms of market access commitments in favour of the HKSAR legal professionals under CEPA. As at September 2017, eleven associations in the form of partnership between the HKSAR and Mainland law firms have been approved to be set up, with seven in Shenzhen, two in Guangzhou and two in Zhuhai.

8. Apart from the HKSAR law firms enjoying CEPA liberalisation measures, the HKSAR barristers also make use of the relevant CEPA measure to explore the Mainland market. As at August 2017, a total of 35 the HKSAR barristers are retained by Mainland law firms as legal consultants and among such law firms, 12 are from the Guangdong Province. This form of co-operation enables our Mainland counterparts to make use of the expertise of the HKSAR barristers and to better serve clients requiring cross-border legal services or dispute resolution services.

9. On 28 June 2017, the Agreement on Economic and Technical Cooperation ("Ecotech Agreement") was signed under the framework of CEPA. Legal and dispute resolution services are featured as one of the main co-operation areas. Besides, the Mainland side supports the HKSAR in establishing itself as a centre for international legal and dispute resolution services in the Asia-Pacific region under the Ecotech Agreement. The Government will continue to strive to further open up the Mainland market in favour of the HKSAR legal and dispute resolution professionals under CEPA.

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[1] Related to the area of "Promoting Mainland and External Affairs".

10. In order to extend and strengthen co-operation between the HKSAR and Shenzhen in legal matters, DoJ and the Shenzhen Municipal Government are to renew the "Co-operative Arrangement on Legal matters" on 12 October 2017[2]. The Co-operative Arrangement provides an effective platform for exchange and has enhanced co-operation between the two Governments as well as legal and dispute resolution professionals of the HKSAR and Shenzhen. The renewal is to be complemented by the holding of a joint DoJ and Shenzhen Court of International Arbitration seminar on recent arbitration developments in the Mainland against the background of the Bay Area to commemorate the occasion.

11. As regards enhancing legal co-operation in the Bay Area, DoJ will take forward initiatives with the objective of providing legal support for enhancing regional integration and collaboration.

(c) Enhancing co-operation with the Mainland authorities, the local legal profession, and arbitration and mediation institutions in the HKSAR to facilitate the provision of international legal and dispute resolution services in the Mainland by the HKSAR professionals, and strive to consolidate Hong Kong's position and competitiveness as a leading centre for international legal and dispute resolution services in the Asia-Pacific region under the Framework Agreement on Deepening Guangdong-Hong Kong-Macao Cooperation in the Development of the Bay Area.

12. On enhancing co-operation with Mainland authorities, DoJ is actively liaising with the Mainland authorities on proposals for facilitating the resolution of cross-boundary civil and commercial disputes through a clear and user-friendly legal regime so as to further safeguard the rights of the parties from the two places. In this regard, DoJ will explore with the Supreme People's Court and other relevant authorities appropriate ways to expand the scope of arrangements on mutual legal assistance between the two places in civil and commercial matters.

13. As regards the further development of the HKSAR as a leading 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 Bay Area and the other areas of the

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[2] The first "Co-operative Arrangement on Legal matters" was signed in November 2011.

Mainland and around the world, particularly in emerging economies in the Asia-Pacific region.

14. DoJ will continue to advocate for the appointment of more the HKSAR legal and dispute resolution professionals by the Mainland's dispute resolution and relevant institutions. We will also continue to promote the HKSAR as a seat of arbitration and (where appropriate) the use of the HKSAR law as the governing law[3].

15. We will continue to work together with relevant stakeholders to promote in the Mainland the attributes of the HKSAR's international legal and dispute resolution services and the role such services can play in the Belt and Road Initiative and the Bay Area plan. Such promotional activities may take the form of visits, seminars and conferences as well as biennial Hong Kong Legal Services Forum. Among others, we would encourage enterprises in the Bay Area seeking to "go global" and pursue the Belt and Road Initiative to fully utilise the HKSAR's international legal and dispute resolution services. One way of doing so is to encourage such enterprises to choose the HKSAR as the dispute resolution venue in the relevant commercial and investment agreements.

16. DoJ will continue to encourage relevant stakeholders 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 the HKSAR's international legal and dispute resolution services both within and outside the HKSAR.

(d) Enhance the overall co-ordination of DoJ's work concerning mediation and arbitration, etc. through the Joint Dispute Resolution Strategy Office to further promote the HKSAR'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 such professional services of the HKSAR in their business development pursuant to the Belt and Road Initiative.

17. Since its establishment in September 2016 to enhance the

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[3] The most recent achievement in this area being the Shenzhen Court of International Arbitration having chosen the HKSAR as its default seat of arbitration where the parties have not agreed on the seat of arbitration, unless otherwise determined by the arbitral tribunal, as set out 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).

overall coordination of mediation and arbitration work of DoJ, the Joint Dispute Resolution Strategy Office ("JDRSO") has been promoting the HKSAR's international legal and dispute resolution services by taking part in conferences and seminars overseas as well as in the Mainland and the HKSAR. For overseas promotion, the JDRSO took part in promotional trips organised by the Hong Kong Trade Development Council ("HKTDC"), including the thematic seminar on "Legal Risk Management: Key to International Trade and Investment" co-organised by HKTDC and DoJ in Bangkok in 2016. For promotion in the Mainland, the JDRSO participated in the Hong Kong Legal Services Forum in Nanjing in 2016 organised by DoJ and the International Mediation Summit in Hangzhou in 2017 organised by the China Council for the Promotion of International Trade.

18. The JDRSO also participates in conferences and seminars organised by various legal and dispute resolution stakeholders and meets with delegates of overseas and Mainland governments, courts and law societies with a view to promoting the HKSAR's international legal and dispute resolution services. It has also given briefings on mediation to mediation users including trade associations and overseas the HKSAR Economic Trade Offices representatives.

19. To enhance the HKSAR's presence in and support to the international dispute resolution community, the JDRSO has been actively participating in the development of dispute resolution at the international level, such as the development of online dispute resolution being studied by the Economic Committee of the Asia-Pacific Economic Cooperation ("APEC") and proposals regarding the enforcement of international commercial settlement agreements under the working group of the United Nations Commission on International Trade Law ("UNCITRAL").

20. In particular, the 2nd UNCITRAL Asia Pacific Judicial Summit, co-organised by DoJ, UNCITRAL and the Hong Kong International Arbitration Centre, will be held from 16 to 19 October 2017. Building on the success of the first Summit held in 2015, the primary objective of the event is to continue enhancing international trade and development by way of capacity-building for the judiciaries and other relevant stakeholders in the Asia-Pacific, focusing on the interpretation and application of the UNCITRAL and other international instruments. This event has the advantages of enhancing the participants' awareness of different means of dispute resolution and increasing the HKSAR's image and influence in Asia-Pacific as an international legal and dispute resolution services centre.

21. In November 2017, DoJ will lead a delegation of representatives of various legal and arbitration professional bodies in the HKSAR to attend a promotional trip to Kuala Lumpur, Malaysia. During the visit, the Secretary for Justice will officiate at a thematic seminar on the HKSAR's international legal and dispute resolution services to be co-organised by HKTDC and DoJ.

(2) Continuing to enhance the HKSAR's legal framework and infrastructure in respect of arbitration and mediation

(a) In accordance with the Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance 2017, we will issue codes of practice for third party funding of arbitration and mediation after consulting members of the public.

22. The Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance 2017 ("Amendment Ordinance") was passed by the Legislative Council (LegCo) on 14 June 2017. Its main objective is to amend the Arbitration Ordinance (Cap. 609) and the Mediation Ordinance (Cap. 620) to clarify that third party funding of arbitration, mediation and related proceedings is permitted under the HKSAR law. With third party funding of arbitration and other dispute resolution proceedings having become increasingly common in numerous jurisdictions, including Australia, England and Wales, various European countries and the United States, the Amendment Ordinance would enable the HKSAR's dispute resolution regime to stay at the forefront among major dispute resolution and financial centres around the world, and further enhance the HKSAR's status as a leading centre for international legal and dispute resolution services in the Asia-Pacific region.

23. The Amendment Ordinance will come into effect in two stages to facilitate the preparatory work for the relevant regulatory framework to be carried out before the provisions clarifying the legal position come into operation. Upon its gazettal on 23 June 2017, Divisions 1, 2, 4 and 6[4] of the new Part 10A of the Arbitration Ordinance

[4] Division 1 states the purposes of Part 10A, i.e., to ensure that third party funding of arbitration is not prohibited by particular common law doctrines and to provide for related measures and safeguards. Division 2 provides for the interpretation of key concepts in relation to third party funding of arbitration. Division 4 seeks to facilitate the regulatory framework for third party funding of arbitration in the HKSAR. Division 6 empowers the Secretary for Justice to appoint an advisory body and an authorised body for the purposes of Part 10A and provides that the appointments are to be made by notice published in the Gazette.

added by the Amendment Ordinance have already come into operation, which will facilitate us to take forward the setting up of the relevant regulatory framework, including :

(a) the preparatory work for setting up the regulatory framework (including public consultation on the issue of a code of practice) with which third party funders are expected to comply in order to ensure that safeguards are in place for funded parties in arbitration and mediation; and

(b) the appointment of an advisory body by the Secretary for Justice to monitor and review the operation of the regulatory framework to be set up under those provisions.

24. As for the provisions clarifying the legal position on third party funding for arbitration and mediation (i.e. Divisions 3 and 5 of the Amendment Ordinance[5]), they will commence operation later on a day to be appointed, after the regulatory framework is in place.

(b) 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 pilot 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.

25. 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 frequently involve the commissioning of expert reports and calling of witnesses in SCT proceedings, and hence incurring higher litigation costs. All the parties involved in SCT cases are litigants-in-person and in most cases, they may not be fully aware of the possible implications (including costs implications) should the matter concerned proceed to a full hearing. The Judiciary believes that, if mediation services can be made available to the parties in these cases to facilitate

[5] Division 3 seeks to ensure that third party funding of arbitration is not prohibited by particular common law doctrines (in respect of both civil and criminal liability). Division 5 provides for certain measures and safeguards where an arbitration involves third party funding.

their consideration of early settlement, this would be of great help and benefit to them.

26. DoJ agrees that there are merits in providing mediation services to parties involved in suitable SCT cases. This will promote more extensive use of mediation for resolving disputes and enhancing public awareness of mediation as a means of dispute resolution. Having consulted and obtained the support of the Steering Committee on Mediation, DoJ will implement a pilot scheme for a period not exceeding five years under which mediation services will be provided to litigants in those SCT cases that are considered by the Adjudicators of SCT to be suitable for mediation. Mediation services may also be provided under the pilot scheme in other appropriate cases in addition to those cases referred by SCT for mediation under the pilot scheme.

27. DoJ has secured the Sham Shui Po District Council's support to construct the mediation facilities required to implement the pilot scheme at a site in the vicinity of the West Kowloon Law Courts Building. DoJ has also obtained the use of the site under a Temporary Government Lands Allocation granted by the Lands Department for 5 years. It is currently expected that the mediation facilities on the site will be ready for use in around early 2018.

28. It is envisaged that an independent coordinator will be appointed to operate the pilot scheme and the mediation facilities on the site. The independent coordinator's main functions include matching cases referred to mediation under the pilot scheme with suitable mediators, and providing venues and facilities on the site for the conduct of mediation.

(c) Promote the use of evaluative mediation (in addition to facilitative mediation) for resolving appropriate types of disputes including those concerning intellectual property.

29. The Working Group on Intellectual Property Trading – led by the Secretary for Commerce and Economic Development to study ways to promote the HKSAR as a premier intellectual property trading hub in the region – has identified the need to promote and develop the use of mediation as a means to resolving intellectual property disputes in the HKSAR and also the desirability of exploring the use of evaluative mediation in addition to facilitative mediation for that purpose.

30. In consultation with the Steering Committee on Mediation and other key stakeholders, DoJ will continue to study the measures to be taken and the infrastructure to be put in place for facilitating the use of evaluative mediation in addition to facilitative mediation in the HKSAR.

31. A Special Committee on Evaluative Mediation ("SCEM") has recently been formed under the Steering Committee on Mediation to explore the use of evaluative mediation in addition to facilitative mediation to resolve disputes including those concerning intellectual property rights, so as to provide more choices to end-users of mediation in the HKSAR. The tasks of the SCEM include a review of the current development of evaluative mediation and provision of evaluative mediation services in the HKSAR, and the making of recommendations on the necessary supporting regulatory framework, training and accreditation, if required, for the proper development and use of evaluative mediation. The SCEM will report and make recommendations to the Steering Committee.

(d) Create favourable environment and infrastructure so as to facilitate international legal and dispute resolution institutions (especially world-class institutions) to provide services or set up offices in the HKSAR. Measures include providing such institutions with space in the West Wing of the former Central Government Offices and the former French Mission Building.

32. As part of its efforts to achieve the policy objective of consolidating the HKSAR's status as a leading centre for international legal and dispute resolution services in the Asia-Pacific region, the Government will provide certain space to law-related organisations ("LROs") in the West Wing ("WW") of the former Central Government Offices ("CGO") and the entire former French Mission Building ("FMB"). Together with DoJ offices already housed in the Main and East Wings of the former CGO and to be housed in part of the WW, the area is intended to form a Legal Hub at the heart of the HKSAR.

33. In respect of CGO WW, renovation works with a view to providing office space for the rest of DoJ headquarters and LROs commenced in October 2016 after funding approval was given by the LegCo Finance Committee ("FC") in July 2016. As for the conversion works of the former FMB for use by LROs, funding approval for the works concerned was also given by the FC in July 2017 and works are expected to commence in early 2018. Our current target is to complete

the works in respect of the former CGO WW and FMB in around end of 2018 and mid-2020 respectively, after which space in the Legal Hub could be made available to selected LROs.

34. Regarding the allocation of space to LROs, the Committee on Provision of Space in the Legal Hub considered the applications received in two separate exercises (i.e. Stage 1 and supplementary stage) and based on the relative merits, recommended a total of 17 LROs to be provided space in the Legal Hub. The selected LROs, representing a good mix of reputable local, regional and international organisations specialising in different legal or dispute resolution services or functions, have all confirmed acceptance of the offer of space in the Legal Hub. Under current planning, a Stage 2 application exercise will be launched in around 2018.

(e) Continue to enhance promotion of the HKSAR's international legal and dispute resolution services through co-operation with international organisations such as the UNCITRAL, as well as participation in the work of the "Friends of the Chair group on Strengthening Economic and Legal Infrastructure" (SELI) under the Economic Committee of the Asia-Pacific Economic Cooperation (APEC).

35. To enhance promotion of the HKSAR's international legal and dispute resolution services among emerging economies in the Asia-Pacific region, we have been actively co-operating with renowned international organisations such as UNCITRAL and actively participating in the work of SELI.

36. In collaboration with UNCITRAL, we organised a number of international workshops on various legal subjects, including the APEC workshop on effective enforcement of business contracts and efficient resolution of business disputes in the Philippines in 2015, the APEC workshop on alternative dispute resolution in Peru in 2016, and the seminar on use of international instruments to strengthen contract enforcement in supply chain finance for global businesses (including micro, small and medium enterprises (MSMEs)) in Vietnam in February 2017. The latter was organised also in collaboration with the Asia Pacific Regional Office of the Hague Conference on Private International Law and the International Institute for the Unification of Private Law. Besides, as mentioned in paragraph 20 above, in light of the success of the first UNCITRAL Asia Pacific Judicial Summit that we co-organised with UNCITRAL in the HKSAR in 2015, we will co-organise with

UNCITRAL its second Asia Pacific Judicial Summit in the HKSAR in mid-October this year. Through these joint activities, the profile of the HKSAR as a regional or international legal and dispute resolution services centre has been further enhanced.

37. With respect to our participation in the work of SELI, a counsel from DoJ has assumed the role of its convenor since its establishment in February 2015. SELI provides a platform for the HKSAR to share 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 the HKSAR as an international legal and dispute resolution services 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.

38. In August this year, we organised a policy discussion on the SELI Work Plan on Online Dispute Resolution ("ODR") during the plenary meeting of the APEC Economic Committee in Ho Chi Minh City. As a result of the discussion, the SELI Work Plan was expanded to cover the use of modern technology in dispute resolution and electronic agreement management in general. The SELI Work Plan aims to develop an APEC-wide cooperative framework for dispute resolution and prevention, and the HKSAR is taking the lead in this work. We are planning to organise under SELI's auspices an APEC workshop on "Use of Modern Technology for Dispute Resolution and Electronic Agreement Management (particularly ODR)" in February 2018 during the First APEC Senior Officials' Meeting to be held in Papua New Guinea next year.

(f) Continue to enhance legal collaboration in civil and commercial matters between the HKSAR and the Mainland, so as to facilitate the resolution of civil and commercial disputes in a more cost-effective manner. We will take forward the discussion with stakeholders on a proposed arrangement with the Mainland on reciprocal recognition and enforcement of judgments in civil and commercial matters.

39. DoJ will continue to monitor the implementation of the existing arrangements with the Mainland on juridical assistance, including the recent Arrangement on Mutual Taking of Evidence in Civil and Commercial Matters between the Courts of the Mainland and the HKSAR, implemented since 1 March 2017.

40. On 20 June 2017, the Government signed the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil Matrimonial and Family Cases by the Courts of the Mainland and of the Hong Kong Special Administrative Region ("Matrimonial Arrangement") with the Supreme People's Court. The Arrangement establishes a mechanism for reciprocal recognition and enforcement of judgments in civil matrimonial and family cases between the HKSAR and the Mainland, thereby providing better safeguards to families, in particular, parties to cross-boundary marriages and their children. Legislative proposals for consultation with stakeholders are being prepared, with a view to introducing the legislative proposals into the LegCo not later than mid-2018.

41. We will also take forward the discussion with relevant stakeholders on a proposed arrangement with the Mainland on reciprocal recognition and enforcement of judgments in civil and commercial matters ("Proposed Arrangement"). The Proposed Arrangement together with the Matrimonial Arrangement will enhance the legal co-operation and juridical relations between the HKSAR and the Mainland in civil and commercial matters.

Other on-going work : Fostering the development of mediation services in the HKSAR with the efforts of the Steering Committee on Mediation.

42. The Steering Committee on Mediation ("Steering Committee") continues to play an active role to further promote and develop the wider use of mediation for resolving disputes in the HKSAR. 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, and also SCEM (see paragraph 31 above).

43. The Regulatory Framework Sub-committee assists the Steering Committee in monitoring the implementation of the Mediation Ordinance. It has promulgated guidelines on the disclosure of mediation communications under section 8(2) of the Mediation 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 will assist the Steering Committee in monitoring the operation of the Mediation Ordinance. It will also assist the Steering Committee in monitoring the operation of the

recently enacted Apology Ordinance, which will come into force on 1 December 2017.

44. The Accreditation Sub-committee of the Steering Committee is tasked to monitor matters relating to the training, accreditation and regulation of mediators in the HKSAR, including such matters which may arise from the operation of the Hong Kong Mediation Accreditation Association Limited ("HKMAAL") and its future development. HKMAAL is an industry-led company limited by guarantee which commenced operation in April 2013. HKMAAL is currently the largest accreditation body for mediators in the HKSAR and performs accreditation and disciplinary functions. As at 29 September 2017, HKMAAL has 11 Corporate Members, a total of 1 826 Accredited General Mediators, 245 Accredited Family Mediators, and 52 Family Mediation Supervisors. The Sub-committee has also been considering HKMAAL's revised draft of the Hong Kong Mediation Code (which is a code of conduct adopted by HKMAAL and a number of mediation services providers) and HKMAAL's revised draft of the Mediators Disciplinary Tribunal Proceedings Rules.

45. The Public Education and Publicity Sub-committee considers and proposes initiatives and measures to promote and raise awareness of the use of mediation, with a view to developing a stronger mediation culture.

46. The Sub-committee assisted in organising the Mediate First Pledge ("MFP") event held in June 2017 aiming to promote the use of mediation first to resolve disputes, especially among Small and Medium Enterprises. The event featured a Seminar on Mediation with mock mediation demonstration showing the use of facilitative and evaluative modes of mediation and a MFP Reception. More than 500 people attended the MFP event and more than 100 new pledges were received. About 470 entities have now signed the "Mediate First" Pledge.

47. To complement and enhance the objective of the MFP, DoJ has launched a MFP Logo and Star Logo Award Scheme designed to encourage pledgees to fulfill their "Mediate First" Pledges. Under the Award Scheme, pledgees can display the Logo, as a notable symbol of "Mediate First" Pledge, at their shops or adopt the Logo in their letterheads. Moreover, pledgees who take part in promoting or supporting mediation to resolve dispute will be awarded a Star Logo. Pledgees' involvement can take various forms, which include resolving disputes by mediation, inclusion of mediation clauses in contracts, and handling of

customer complaints by mediation techniques. The MFP Logos and Star Logos are winning designs of a design competition among secondary schools of the HKSAR held by DoJ.

48. Following the Mediation Week 2016, the Sub-committee proposes to hold the biennial Mediation Week in June 2018, which will include a mediation conference and other thematic events during the Mediation Week to further promote the use of mediation in various sectors such as intellectual property, commercial, education, medical and health, as well as the community sectors.

Policy initiatives under Chapter 7 of the 2017/18 Policy Agenda on "Enhance Governance, Streamline Administration"

49. The rule of law is vital for safeguarding our rights and freedoms. It is also instrumental in promoting the HKSAR's development as an international financial and commercial centre. We will further perfect our legal system and related infrastructure to ensure that the rule of law and justice continue to be upheld.

(1) Law reform proposals

(a) Study possible options to enhance the efficiency and operation of the Law Reform Commission. The study includes examining the experience of various law reform agencies in other jurisdictions.

50. As our society evolves, our laws must change to meet society's needs. Effective law reform plays an important role in any society which aspires to maintain the rule of law. The primary source for law reform initiatives in the HKSAR is Government bureaux and departments. However, the Law Reform Commission of Hong Kong (LRC) has a particularly valuable role in law reform, including, where:

(a) the subject does not fall readily under the responsibility of one particular bureau of the Government;

(b) the subject raises issues which are outside the Government's day-to-day activities;

(c) the subject requires the dedication of full-time legal input to conduct a review.

51. The remit of the LRC, which was established in 1980, is to consider for reform such aspects of the law as are referred to it by the Secretary for Justice (who chairs the LRC) or the Chief Justice (who is an *ex-officio* member of the LRC). The aim of any LRC reference is to consider the law in a specified area and, where appropriate, present well-considered proposals for improving the law.

52. As the process of law reform set out above has been in operation for quite some time, it is considered useful to review the process with a view to exploring possible options to enhance the efficiency and operation of the LRC. The purpose of this study is to consider, with reference to the experience of various law reform agencies in other jurisdictions, whether the law reform system in the HKSAR, and insofar as it involves the structure and operations of the LRC, should be improved and if so, to identify possible measures and options for reform.

(b) Support the cross-sector Working Group on Class Actions in considering the LRC's proposals on "Class Actions".

53. In May 2012, the LRC published its report on "Class Actions", recommending the introduction of a class action regime in the HKSAR. 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 September 2017, the Working Group has held 19 meetings to study the LRC proposals in detail.

(c) Conduct public consultation on the 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.

54. 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.

55. 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.

56. DoJ has set up an inter-departmental working group to examine the recommendations in the report. The working draft bill is being settled in anticipation of its publication within the fourth quarter of 2017 for consultation with the legal professional bodies, the Judiciary and members of the public.

(d) Conduct 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 the HKSAR.

57. 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.

58. The purpose of the proposed bill is to give effect to the recommendations of the LRC's report. The working draft of the proposed bill which DoJ is settling will be published in 2018 with a view to consulting the legal professional bodies, the Judiciary and members of the public.

(e) We are reviewing comments received from a consultation exercise on the Evidence (Amendment) Bill 2017 which ended on 31 July 2017. The proposed bill seeks to implement the LRC's recommendations made in the report on Hearsay in Criminal Proceedings. Following the recommendations of the report, 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. DoJ plans to introduce the proposed bill into LegCo in the 2017/18 legislative session.

59. Under the existing law, hearsay evidence is inadmissible in criminal proceedings unless it falls within one of the common law or statutory exceptions. One of the major criticisms 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.

60. 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".

61. DoJ has prepared a working draft bill, i.e. the Evidence (Amendment) Bill 2017, to implement the LRC's recommendations. DoJ launched a consultation exercise to seek the views of the legal professional bodies, the Judiciary and other interested parties on the working draft Bill in the second quarter of 2017. The consultation exercise ended on 31 July 2017 and DoJ received comments from nine government agencies and outside bodies on the draft Bill. DoJ would refine the draft Bill taking into account the comments received. The aim is to introduce the Bill in the 2017/18 legislative session.

(f) Assist the Inter-departmental Working Group on Gender Recognition ("IWG"), chaired by the Secretary for Justice, in undertaking a detailed study on possible legislation and administrative measures 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 completing a public consultation on the first part of the study on gender recognition issues following publication of a consultation paper on 23 June 2017. 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.

62. 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 the

HKSAR in all legal contexts, and to make such recommendations for reform as may be appropriate.

63. The scope of the IWG's study includes both recognition and post-recognition issues. On recognition issues, the IWG has been reviewing various matters, 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 the HKSAR which may be affected by legal gender recognition, so that any required legislative or procedural reform may be followed up by the Government.

64. The IWG published a consultation paper, with a view to seeking the views of the public on recognition issues, on 23 June 2017. The consultation period will end on 31 October 2017. The IWG will continue to consult widely in the course of its work before finalising its recommendations to the Government.

(2) Improving the legal system and enhancing the legal infrastructure

65. In respect of our ***prosecutorial functions***, we will –

(a) Enhance the quality and effectiveness of criminal prosecution work, including raising the professionalism, including the standard of advocacy, of our prosecutors through the provision of training programmes and better use of resources.

(b) Promote co-operation among prosecutors at regional and international levels through active participation in international prosecuting organisations.

66. 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, we jointly organised the 2017 Criminal Law Conference with the Hong Kong Bar Association and the Law Society of Hong Kong in May 2017. Some 120 members of the Judiciary, criminal law practitioners and academics participated in the discussion of various topical issues relating to the latest developments in criminal law and day-to-day administration of criminal justice in the HKSAR;

(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 together 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. 57 participants joined the most recent run of the programme held in March 2017 while the next run is scheduled for the latter half of the year.

67. An internal review was conducted by DoJ in 2016 of the handling of prosecution work before the Magistrates' Courts, including issues concerning the future arrangement for the Court Prosecutor (CP) Grade. The primary aim of the review was to consider if there was

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. DoJ presented the outcome of the review and the proposed way forward to the Administration of Justice and Legal Services (AJLS) Panel of LegCo at its meeting for 22 May 2017. With AJLS Panel Members and attending deputation generally raising no views against DoJ's proposals set out in the Administration's paper, and having taken into account all feedbacks on our consultation, including those of the two legal professional bodies, we have taken forward the key proposals full steam[6].

68. 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, three prosecutors from Singapore joined PD on short-term attachment in the first quarter of 2017 to gain first-hand working experience in the Division, while counsel from PD will be attached to the Chongqing Justice Bureau and Shanghai Justice Bureau (one for each office) for a short stint in the last quarter of 2017 to enhance our understanding of Mainland's legal system and practice. Our efforts to enhance exchanges and co-operation with prosecution authorities and personnel in other jurisdictions will continue.

69. 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 of our criminal justice system, their role in it and their appreciation of the importance of the rule of law. In the three rounds of the programme running from April 2014 to August 2017, a total of 111 talks covering various topics were conducted. In response to our latest invitation issued in September 2017, 30 secondary schools have indicated interest to participate in the

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[6] Including, *inter alia* :

- commencement of a recruitment exercise for new CP Grade officers in September 2017, with a view to having a new crop of CPs joining PD in around the first or second quarter of 2018, and to be in full operation in around early 2019 after attending a nine-month full-time course of instruction in law, court procedures and prosecution techniques;
- posting of Senior Government Counsel (SGC) to the Magistrates' Courts to strengthen our prosecution services, with the first batch of two SGC joining the prosecutions team of the Eastern Magistracy and the West Kowloon Magistracy on 3 October 2017, and will steadily take forward the posting of SGC to the other Magistrates' Court teams in a timely manner; and
- implementation of the "Scheduled Duty" list, after adjustments, on 3 October 2017 (which sets out prosecution cases which generally should only be handled by the legally qualified).

fourth round of the programme by end September. As for the annual "Prosecution Week", it was held from 26 to 30 June earlier this year, covering visits to DoJ and the courts, talks and mock court (with a total of 21 participating schools), as well as a Law Quiz (with a total of 12 participating schools). These two flagship events will continue to be organised in 2018.

70. As regards ***law drafting***, we will –

(a) Continue to enhance the newly-launched Hong Kong e-Legislation (HKeL).

71. HKeL was launched on 24 February 2017. Since then, operational performance has been improved and we have introduced a number of enhancements to facilitate quicker and more convenient access to legislation. These include providing a Chapter Number Index with links to PDF copies of legislation and an enhanced "Quick Search" function which enables users to go direct to the whole enactment of the latest version of legislation simply by inputting the chapter number. In parallel, we have been providing training courses on the use of HKeL to different groups of users. As regards the verification of legislation, priority is given to frequently-used legislation and new legislation. We have published verified copies for a number of most-frequently used chapters, e.g. the Employment Ordinance (Cap. 57), Buildings Ordinance (Cap. 123) and Companies Ordinance (Cap. 622), and verified copies of new legislation which commenced operation since the launch of HKeL (e.g. Private Columbaria Ordinance (Cap. 630)).

72. We attach great importance to the views of our users on the future development of HKeL. Consultation will continue with the Hong Kong Legislation Database User Liaison Group [7] on proposed enhancement works to HKeL and the de-commissioning of the Bilingual Laws Information System (BLIS).

(b) Enhance 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.

73. Many of the policies required to take the HKSAR forward

[7] The group was established in 2013 and comprises representatives of both branches of the legal profession, the Judiciary and the Legal Service Division of the LegCo Secretariat.

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 continuous professional development of counsel in the Law Drafting Division to enhance the quality of our legislative drafting service.

74. For on-the-job training, junior counsel are exposed to legislative items in different areas and supervised by seniors who clear their drafts and offer guidance throughout the drafting process. Counsel are also from time to time nominated for training attachment to drafting offices in other jurisdictions to gain work experience outside the HKSAR.

75. Apart from on-the-job training, there are induction programmes for new recruits as well as regular workshops and seminars conducted by seniors within the Division and from other Divisions on specific topics. Overseas speakers are often invited to speak on their expertise and practices of other jurisdictions. Drafting counsel also attend relevant international conferences and seminars to broaden their exposure and maintain ties and interflow with other drafting offices. These are all arranged with a view to strengthening the professional knowledge, skills and competencies of our drafters.

Views Invited

76. 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
October 2017