

**For discussion on
29 October 2018**

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

2018 Policy Initiatives of the Department of Justice

Introduction

This paper sets out the 2018 policy initiatives of the Department of Justice (“DoJ”).

Policy initiatives relating to “Diversified Economy, Better Jobs”

2. The Hong Kong Special Administrative Region (“HKSAR”) Government endeavours to implement the “One Country, Two Systems” principle, uphold the Basic Law and safeguard the rule of law. And the economic success of the HKSAR is built on our adherence to and respect for the rule of law. We will continue to step up our efforts in consolidating HKSAR’s status as a leading centre for international legal and dispute resolution services in the Asia-Pacific region, and enhancing our reputation in the international legal, dispute resolution and business arenas, with a view to seizing the opportunities arising from the Belt and Road Initiative and the “Guangdong-Hong Kong-Macao Bay Area” (“Bay Area”) development. We will also continue to strengthen our legal infrastructure as well as legal cooperation with the Mainland, while boosting cooperation with international organisations in capacity building work. DoJ actively promotes Hong Kong’s international legal and dispute resolution services overseas and in the Mainland, so as to consolidate Hong Kong’s position as a legal platform for deal making and dispute resolution.

(A) The Belt and Road Initiative and related legal services

(1) Study the desirability and means of establishing a Belt and Road dispute resolution centre, and formulate a set of bespoke Belt and Road dispute resolution rules for the resolution of disputes arising from Belt and Road transactions which will be manifestly

international and multilingual, to overcome geographical distances and language barriers that exist between the Belt and Road economies.

3. Capitalising on the opportunities brought about by the Belt and Road Initiative and in line with DoJ's objective to promote Hong Kong as an international dispute resolution centre, DoJ has set up a taskforce to study the establishment of a Belt and Road dispute resolution centre (the "Centre") in Hong Kong, providing negotiation, mediation and arbitration services for the resolution of various types of disputes under the Belt and Road Initiative, and the formulation of a set of bespoke rules for the resolution of different types of disputes arising from Belt and Road transactions. The taskforce will submit its initial proposal to relevant departments for deliberation.

4. As the Secretary for Justice has pointed out at the Forum on the Belt and Road Legal Cooperation under the theme of "Joining Hands for Building Belt and Road – Rules and Coordination" held on 2 July 2018, the Centre should be a dispute resolution body established through collaboration of participants, credible, and sensitive to cultural diversity, offering one-stop dispute resolution services to parties involved in disputes of Belt and Road projects. Given the nature of the Belt and Road Initiative, any international and cross-border disputes which arise from it typically involve cross-cultural elements and multiple jurisdictions, posing obstacles to resolution through litigation in local courts. Parties in different jurisdictions may also face difficulties in selecting the appropriate forum to conduct litigation. The proposed Centre would overcome cultural and geographical barriers and surmount cross-border legal difficulties by providing sound dispute resolution services to resolve a wide range of Belt and Road disputes, whether commercial, trade or investment-related.

(2) Encourage the development of online dispute resolution, and give policy support to the development of a Belt and Road e-arbitration and e-mediation platform by non-governmental organisation, so that Hong Kong will be able to provide efficient and cost-effective online dispute resolution services. In addition, we also give policy support to the development of a smart contract platform for use by enterprises of countries along the Belt and Road through exploiting developments in LawTech to facilitate transactions and resolve disputes.

5. DoJ encourages the development of online dispute resolution services and gives policy support to the development of a Belt and Road e-arbitration and e-mediation platform. The Government will provide funding for the cost of development of the project. The online dealing-making and dispute resolution platform will provide an efficient, cost-effective and secure platform for resolving disputes between parties in any part of the world, including commercial and investment disputes involving Belt and Road countries. The dispute resolution methods will cover negotiation, mediation and arbitration.

6. DoJ assists with the formulation of the framework of the eMediation Rules for mediation conducted through the e-platform, which will make reference to the United Nations Commission on International Trade Law (“UNCITRAL”) Technical Notes of Online Dispute Resolution.

7. DoJ also supports the development of a smart contract platform to facilitate commercial transactions between enterprises of countries along the Belt and Road, as well as the development of a standard set of dispute resolution rules for the smart contract platform in order to encourage the resolution of transactional disputes on the e-platform.

(3) We will allocate more resources to promote Hong Kong as a platform for providing professional services and a centre for dispute resolution services under the Belt and Road Initiative.

8. DoJ has been organising or participating in, and will continue to organise or participate in, thematic seminars to promote Hong Kong’s international legal and dispute resolution services, both within and outside Hong Kong. These include the Belt and Road legal and arbitration services seminar in Nanning in May 2018; breakout sessions in the Belt and Road Summit in Hong Kong in June 2018 with the theme of “Hong Kong as the Deal Maker and Dispute Resolver”; the “Think Global, Think Hong Kong” event in Tokyo in November 2018 and the Business of IP Asia Forum in Hong Kong in December 2018, co-organised with the Hong Kong Trade Development Council. In addition, DoJ together with the UNCITRAL co-organised a full-day conference entitled “Hong Kong Forum: 60th Anniversary of New York Convention” in Hong Kong in September 2018. Efforts in this direction will continue.

9. In August 2018, the HKSAR Government promulgated a Talent List with a view to attracting high quality talent to the HKSAR to support

our development into a high value-added and diversified economy. Successful applicants will be accorded immigration facilitation under the existing Quality Migrant Admission Scheme operated by the Immigration Department. In support of HKSAR's role as an international legal and dispute resolution services hub, the following categories of professionals are included in the Talent List: (a) dispute resolution professionals specialising in resolving international financial and investor-state disputes; and (b) transactional lawyers, particularly those from developing Belt and Road countries, with specialised knowledge of and experience in cross-border transactions involving investing or host states.

(4) Continue to enhance the overall co-ordination of the Department of Justice's work concerning mediation, arbitration etc. through the Joint Dispute Resolution Strategy Office, and step up the promotion of Hong Kong's international legal and dispute resolution services as well as its status as a regional capacity building centre so that enterprises in the Mainland and in jurisdictions along the Belt and Road will use such professional services of Hong Kong in their business development.

10. The Joint Dispute Resolution Strategy Office ("JDRSO"), since its establishment in September 2016, has been promoting Hong Kong's international dispute resolution services by taking part in various conferences and seminars internationally, and meeting with delegates from overseas as well as in the Mainland through coordination of DoJ's promotional work for mediation and arbitration services.

11. In 2017 and 2018, the Commissioner of the JDRSO ("the Commissioner") promoted Hong Kong's disputes resolution services to international audiences by taking part in the Congress hosted by the UNCITRAL in Vienna to celebrate its 50th anniversary, the Asia-Pacific Economic Cooperation ("APEC") 2017 Third Senior Officials' Meeting and Related Meetings in Vietnam, the "In Style – Hong Kong" Symposium in Malaysia, and the International Council for Commercial Arbitration Congress in Sydney.

12. The work of the JDRSO includes promoting Hong Kong's professional services for use by enterprises in the Mainland and in jurisdictions along the Belt and Road in their business development pursuant to the Belt and Road Initiative. In 2017 and 2018, the

Commissioner delivered a speech at the International Mediation Summit in Hangzhou in 2017 organised by the China Council for the Promotion of International Trade, attended the 9th China Overseas Investment Fair in Beijing, and joined the Belt and Road Seminar and Forum on Belt and Road Legal Cooperation in Beijing in 2018. In September 2018, the Commissioner attended the International Mediation Summit 2018 in Changsha and spoke at the Hong Kong Legal Services Forum 2018 in Guangzhou.

13. Apart from actively participating in conferences and seminars organised by various legal and dispute resolution stakeholders in Hong Kong, the JDRSO has also given talks and briefings on mediation to users of mediation services including Government departments, universities and charitable organisations, as well as speaking at seminars for mediation institutions. DoJ will continue to examine how to enhance and strengthen the role and effectiveness of JDRSO.

(B) Enhance co-operation with the Mainland

- (1) Continue to proactively strive for more liberalisation measures for our professional services when forging trade agreements with the Mainland and overseas governments. And through the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA) and the Guangdong-Hong Kong-Macao Greater Bay Area development, we seek to enhance co-operation and assist the professional services sector in further opening up the Mainland market.*
- (2) Enhance legal co-operation with Guangdong Province pursuant to the Framework Agreement on Hong Kong/Guangdong Co-operation.*
- (3) Enhance co-operation with the Mainland authorities, 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, 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 Greater Bay Area.*

14. Guangdong Province has always been at the forefront in terms of market access commitments in favour of Hong Kong legal professionals under CEPA. As at August 2018, eleven associations in the form of partnerships between the Hong Kong and Mainland law firms have been approved to be set up, with seven in Shenzhen, two in Guangzhou and two in Zhuhai.

15. In May 2018, the State Council promulgated its policy to extend the establishment of partnership associations between the Hong Kong and Mainland law firms to the whole of the Mainland. Further, the State Council also promulgated its policies to allow partnership associations in the China (Guangdong) Pilot Free-Trade Zone to employ Hong Kong lawyers in the name of the partnership associations and to expand the scope of practice that the Mainland lawyers of these partnership associations can undertake. The HKSAR Government will monitor the incorporation of these policies into the CEPA framework as well as the legislation and implementation in the Mainland. In addition, DoJ has also proposed to the Mainland authorities certain measures to allow Hong Kong solicitors and barristers to enhance their cooperation with the Mainland including the aspect of partnership association and legal consultancy.

16. DoJ has also been working closely with the Hong Kong legal professional bodies and the dispute resolution sector to enhance our promotional efforts in the Bay Area and the other areas of the Mainland.

17. For example, we joined hands with the legal and dispute resolution sectors to hold the 5th Hong Kong Legal Services Forum in Guangzhou on 5 September 2018 to promote Hong Kong's professional services as a platform for deal making and dispute resolution, and to enhance legal co-operation between the Mainland and the HKSAR in the Bay Area and the whole of Guangdong Province. The Forum was well received with over 1 200 participants from across the business and legal sectors in Guangzhou and nearby regions, reaching a historical high for the event. This indicates the strong interest of the business and legal sectors of the Guangdong Province in knowing about our international legal and dispute resolution services.

18. We will continue to encourage enterprises in the Mainland seeking to "go global" to fully utilise Hong Kong's international legal and

dispute resolution services. This includes encouraging such enterprises to choose Hong Kong law as the governing law of international transactions, and to choose the HKSAR as the place of dispute resolution for resolving disputes in the relevant commercial and investment agreements.

19. We will also continue to advocate for the appointment of more Hong Kong legal and dispute resolution professionals by the Mainland's dispute resolution and relevant institutions, and promote the HKSAR as a seat of arbitration.¹

20. DoJ is also in discussion with Mainland authorities with a view to establishing a regular platform to facilitate exchanges and exploring development and cooperation opportunities, risks and issues of concern between Hong Kong legal professionals and Mainland enterprises.

21. Moreover, DoJ has established a platform of communication with the two legal professional bodies whereby the Secretary for Justice would meet with the Council of the Hong Kong Bar Association and the Council of the Law Society of Hong Kong respectively on a regular basis (once around every three months) to exchange views on issues of common interest.

(4) With the introduction of the Mediation Mechanism for Investment Disputes in the Investment Agreement made under CEPA, Hong Kong will provide training for mediators in handling international investment disputes with a view to building up a team of international investment dispute mediators in Asia to support resolution of investment disputes through mediation.

22. An Investment Agreement was signed on 28 June 2017 under the framework of CEPA between the HKSAR Government and the Ministry of Commerce ("Investment Agreement") providing for promotion and protection of the increasing volume and scale of investments between Hong

¹ The Shenzhen Court of International Arbitration has 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). Separately, under the 2017 China Nansha International Arbitration Centre General Rules for Arbitration and Proceedings Guidelines on the Three Models for Arbitration Hearing, the Hong Kong International Arbitration Model was introduced. Under the Guidelines, parties adopting the model would be free not only to apply the Hong Kong Arbitration Ordinance and choose Hong Kong as the seat of arbitration, but also to conduct the arbitration hearing in Hong Kong if the parties prefer.

Kong and the Mainland.

23. The Investment Agreement provides for a Mediation Mechanism for settlement of investment disputes. The Mediation Mechanism stipulates that the Mainland and Hong Kong will each designate such mediation institutions and mediators as are mutually agreed by both sides to handle the investment disputes involving investors of the other side. DoJ has drafted a set of mediation rules for adoption by designated mediation institutions and mediators of the HKSAR. Meanwhile, DoJ is liaising with the Ministry of Commerce on the nominated mediation institutions and mediators, and the draft mediation rules.

24. With the Investment Agreement in place, we will work towards developing Hong Kong into an international investment law and international investment dispute resolution skills training base so as to build up a team of investment mediators in Asia to handle international investment disputes.

25. DoJ together with the International Centre for Settlement of Investment Disputes (ICSID) are co-organising the first Investment Law and Investor-State Mediator Training Course in Hong Kong. This is the first investment law cum investment mediation training to be held in Asia. DoJ has invited a number of world-renowned speakers to share and speak on topics about international investment law and mediation of investor-State disputes with coaching and role-playing sessions that involve active participation. The first training session will be launched in October 2018 with participants being government officials and dispute resolution practitioners from the Mainland, ASEAN countries and Hong Kong.

(5) Continue to enhance legal co-operation in civil and commercial matters between Hong Kong and the Mainland, including seeking early introduction of a legislative bill to implement the Arrangement on Reciprocal Recognition and Enforcement of Civil Judgments in Matrimonial and Family Cases by the Courts of the Mainland and of the Hong Kong Special Administrative Region, early conclusion of an arrangement with the Mainland to broaden the mechanism for reciprocal recognition and enforcement of judgments in civil and commercial matters, discussing the enhancement of the existing co-operation on service of judicial documents, etc.

26. On 20 June 2017, the Arrangement on Reciprocal Recognition

and Enforcement of Civil Judgments in Matrimonial and Family Cases by the Courts of the Mainland and of the HKSAR (“Matrimonial Arrangement”) was signed. The Matrimonial Arrangement establishes a mechanism for reciprocal recognition and enforcement of judgments in civil matrimonial and family cases between the HKSAR and the Mainland with a view to 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 Legislative Council (LegCo) in mid-2019.

27. Meanwhile, DoJ is actively taking forward the discussions with the relevant stakeholders on a proposed arrangement with the Mainland on reciprocal recognition and enforcement of judgments in civil and commercial matters (“Proposed Arrangement”) more generally. The Proposed Arrangement aims to widen the scope for reciprocal recognition and enforcement of judgments in civil and commercial matters, thereby offering better legal protection to the relevant parties. It is hoped that the implementation of the Proposed Arrangement can be taken forward as soon as possible.

28. In parallel, DoJ is also reviewing the existing arrangement on mutual service of judicial documents in civil and commercial proceedings between the courts of Hong Kong and the Mainland together with the Supreme People’s Court, with a view to increasing the effectiveness of service. We will also be updating the list of Basic People’s Courts (to be renamed as Primary People’s Courts) under the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597) and it is expected to be published in the Gazette within 2018, thereby updating and widening the scope of Primary People’s Courts which parties to a choice of Mainland court agreement may designate as the court to determine a dispute between the parties.

(C) Capacity building and enhanced co-operation with international organisations

(1) Promote Hong Kong as a regional capacity building centre for international law and dispute resolution through organising and co-organising international conferences and training programmes with international and local bodies.

29. DoJ has been working with international, regional and local

bodies to organise or co-organise various types of conferences and training programmes. Regular events include the UNCITRAL Asia Pacific Judicial Summit (a biennial event held in Hong Kong since 2015, co-organised or supported by DoJ, UNCITRAL and other organisations to enhance the capability of judges from the Asia-Pacific region in interpreting and applying related conventions of UNCITRAL, with the next Summit to be held in Hong Kong in 2019); the biennial Mediation Week (co-organised by DoJ and other organisations since 2012); the biennial “Mediate First” Pledge event; the Criminal Law Conference (organised by DoJ jointly with the two legal professional bodies since 2012 with the next conference coming up in 2019); the legal and dispute resolution services seminar held during the annual Belt and Road Summit (co-organised by DoJ and the Hong Kong Trade Development Council); and the legal and dispute resolution services seminar held during the annual Business of IP Asia Forum (co-organised by DoJ and the Hong Kong Trade Development Council). Moreover, the Asian Academy of International Law (“AAIL”) holds its annual Colloquium in Hong Kong, while the Hong Kong International Arbitration Centre also organises the Hong Kong Arbitration Week every year.

30. Regular events aside, DoJ has also actively organised, participated in, and supported Hong Kong and international organisations in the organisation of, international topical conferences and training programmes. For example, DoJ co-organised with the UNCITRAL and the AAIL the “Hong Kong Forum: 60th Anniversary of New York Convention”; supported the Hague Conference on Private International Law (“HCCH”) in hosting the global conference on “The HCCH 125 – Ways Forward: Challenges and Opportunities in an Increasingly Connected World” in celebration of the 125th anniversary of HCCH in April 2018 in Hong Kong; and supported AAIL in participating in the Hong Kong week held in September 2018 under the China-AALCO (Asian-African Legal Consultative Organization) Exchange and Research Program on International Law.

31. Furthermore, DoJ will also co-organise for the first time the International Colloquium on Public–Private Partnership with UNCITRAL in Hong Kong; training courses on international investment law and international investment mediation skills with ICSID and AAIL (see paragraphs 25 above); and an expert seminar on Investor-State Dispute Settlement Reform with the AAIL, etc.

32. Invited by the People's Procuratorate of the Guangxi Zhuang Autonomous Region, the HKSAR Government nominated a Deputy Director of Public Prosecutions to become a member of the lecturer team of the China-ASEAN Prosecutors Exchange and Training Base, and upon invitation gave lecture in Nanning in June 2018. DoJ has also offered to the Supreme People's Court and the National Judicial College to participate in capacity building work of the China-ASEAN Judges Exchange and Training Base, so as to enhance the role that Hong Kong plays in judicial training at the national level.

33. We will continue to encourage more international conferences and forums to be held in Hong Kong. In April 2018, Hong Kong succeeded in the bid to host the International Council for Commercial Arbitration (ICCA) Congress in 2022. DoJ will provide the event its staunch support. ICCA is a worldwide organisation devoted to promoting the use and improving the processes of arbitration, conciliation and other forms of resolving international commercial disputes.

34. Through the various conferences, forums and capacity building programmes mentioned above, it is anticipated that a network of judicial and legal experts can be established among the participating jurisdictions, which will facilitate further co-operation among the Belt and Road economies. Efforts to promote Hong Kong as a regional training and capacity building centre for international law and dispute resolution through organising and co-organising conferences and training programmes with international and local bodies will continue.

(2) Continue to enhance promotion of Hong Kong's international legal and dispute resolution services through participation in meetings of international organisations and 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 APEC (including its work plan on online dispute resolution).

35. International legal and dispute resolution services are one of the professional services in which Hong Kong has a competitive edge. We will continue to enhance promotion of Hong Kong's international legal and dispute resolution services among emerging economies in the Asia-Pacific region through co-operation with renowned international organisations such

as the HCCH, UNCITRAL and APEC.

36. In addition to the events co-organised in Hong Kong (see paragraphs 29 to 31 above), we also collaborated with these international organisations in organising or supporting a number of international events on various legal subjects outside Hong Kong, including the APEC workshop on “Use of Modern Technology for Dispute Resolution and Electronic Agreement Management (particularly online dispute resolution)” in March 2018 in Papua New Guinea in the margins of the First APEC Senior Officials’ Meeting; as well as a capacity building workshop in Indonesia in July 2018 on SELI and online dispute resolution.

37. We invited prominent speakers from international organisations (including HCCH, UNCITRAL and Institute for the Unification of Private Law) and legal professionals from Hong Kong (including members from the two legal professional bodies) to participate in the above events to share our expertise and experience in the provision of international legal and dispute resolution services. Through such events, the profile of Hong Kong as a regional or international legal services and dispute resolution centre has been further enhanced.

38. With respect to the Work Plan concerning online dispute resolution under APEC, we have been participating very actively in order to carry it forward. In August this year, we successfully organised a policy discussion on online dispute resolution during the plenary meeting of the APEC Economic Committee in Port Moresby and following the deliberation at that meeting, the APEC High Level Structural Reform Officials’ Meeting endorsed the continued implementation of the Work Plan at its meeting in August. The Work Plan aims to develop an APEC-wide co-operative framework for dispute resolution and prevention. Taking the lead in this work, we are planning to organise another APEC workshop on online dispute resolution in early 2019 in Chile during the First APEC Senior Officials’ Meeting. In anticipation of the steady progress of the Work Plan, we will also promote Hong Kong professionals’ active participation in the APEC’s pilot platform for online dispute resolution which may be established under the Work Plan to showcase the attractive attributes of Hong Kong in dispute resolution and our development of Lawtech.

39. In terms of developments on new international instruments, on 26 June 2018, the UNCITRAL approved the final drafts of the Convention

on the enforcement of international settlement agreements resulting from mediation (“Convention”) and corresponding Model Law at its 51st Session. Once finalised and adopted by UNCITRAL, the United Nations General Assembly will adopt the Convention for member states to sign on. It is expected that a signing ceremony will be held in 2019.

40. The draft Convention and Model Law aim to formulate and implement an international framework for the enforcement of mediated settlement agreements. Delegation of the Central People’s Government (“CPG”) was involved in the work of UNCITRAL’s Working Group on the project. DoJ will pay close attention to the development of the work of the UNCITRAL and CPG’s position towards ratification of the Convention and its extension to the HKSAR and consider how similar arrangements can be implemented to enhance the enforceability of mediated settlement agreements made between parties in Hong Kong and those in other jurisdictions including the Mainland.

(D) Groom talent

(1) Actively support legal professionals to enhance co-operation and exchanges with the Mainland and at the regional and international levels.

41. DoJ proactively supports legal talent in enhancing Mainland, regional and international co-operation and exchange, including exploring the possibility of arranging internships or placements for Hong Kong young legal professions in international organisations. In October 2015, the HKSAR Government has entered into an arrangement with the United Nations for secondment of legal experts of DoJ to UNCITRAL’s Regional Centre for Asia and the Pacific (“RCAP”) in the Republic of Korea. Pursuant to that arrangement, DoJ has seconded its third legal expert to RCAP on 24 April 2018 for one year. We are currently exploring the possibility of other short-term internships to the Mainland and international institutions.

(2) Actively consider expanding the existing Understudy Arrangement for less-experienced barristers in prosecution cases, and to promulgate a similar programme for less-experienced barristers to undertake suitable civil work, so as to provide more opportunities for them to gain precious experience and skills in case handling.

42. DoJ will actively consider expanding the existing arrangement whereby counsel with less than 10 years' experience are engaged to act as understudy to Senior Counsel / senior junior counsel who are briefed to prosecute complex or sensitive cases, so as to provide more opportunities for the less-experienced counsel to gain precious experience and skills in handling criminal cases. Our plan includes : (a) to expand the arrangement to other suitable categories of cases; (b) to increase the number of less-experienced barristers in private practice who could benefit from the arrangement; and (c) to consider suitably adjusting the token rate under the arrangement, with a view to attracting more less-experienced barristers in private practice to participate and learn from it.

43. Moreover, DoJ will also promulgate an understudy programme for less-experienced barristers to undertake suitable civil work, so as to provide them with more training opportunities and enhance their exposure. We will also continue to identify suitable areas of civil work for less-experienced barristers and implement measures to provide more opportunities to barristers with fewer than 10 years' experience to undertake Government's civil work.

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

(1) In accordance with the Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance 2017, the Authorized Body will consult members of the public with a view to issuing a code of practice for third party funding.

44. The Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance 2017 ("Amendment Ordinance") was passed by the LegCo on 14 June 2017. It amends 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 Hong Kong law, thereby enabling the Hong Kong'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.

45. Under the Arbitration Ordinance, the Secretary for Justice was appointed as the authorized body on 18 May 2018; and members of the

statutory advisory body were appointed on 24 August 2018. On 30 August 2018, DoJ launched a two-month public consultation on the draft Code of Practice for Third Party Funding of Arbitration and Mediation (“Code”).

46. The remaining provisions of the Amendment Ordinance will be brought into operation upon issue of the Code.

(2) 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 (“SCT”) 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.

47. A pilot scheme for a period not exceeding five years will be implemented 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 (“Pilot Mediation Scheme”). Mediation services may also be provided under the Pilot Mediation Scheme in other appropriate cases in addition to those cases referred by SCT for mediation under the Pilot Mediation Scheme.

48. The construction of the West Kowloon Mediation Centre in the vicinity of the West Kowloon Law Courts Building for the Pilot Mediation Scheme has been completed and a non-profit making independent co-ordinator has been appointed to operate the Pilot Mediation Scheme and the West Kowloon Mediation Centre in due course. The independent co-ordinator’s main functions include matching cases referred to mediation under the Pilot Mediation Scheme with suitable mediators, and providing venues and facilities for the conduct of mediation. It is envisaged that the Pilot Mediation Scheme will come into operation within this year. DoJ and the Steering Committee on Mediation will closely monitor and review the operation of the Pilot Mediation Scheme.

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

49. DoJ will in consultation with the Steering Committee on Mediation and other key stakeholders will specifically study the use of

evaluative mediation techniques in the mediation process, and also consider the possibility of combination with facilitative mediation. A Special Committee on Evaluative Mediation (“Special Committee”) has been formed under the Steering Committee to explore how evaluative mediation techniques could be used in the mediation process to resolve disputes (including those concerning intellectual property rights), so as to provide more choices in terms of mediation techniques to mediators and end-users of mediation in Hong Kong. To this end, the Special Committee will report and make recommendations to the Steering Committee.

(F) Legal Hub

(1) 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 Hong Kong. Measures include providing such institutions with space in the West Wing of the former Central Government Offices and the former French Mission Building.

50. Renovation works for West Wing (“WW”) of the former Central Government Offices (“CGO”) are expected to be completed early next year and space will start to be provided to international and local law-related organisations (“LROs”) from mid-2019. Works for the former French Mission Building (“FMB”) are targeted for completion in mid-2020. By then, other international and local LROs will also be able to move into 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 whole area will form a Legal Hub in the heart of Hong Kong, underpinning the policy objective of consolidating Hong Kong as a leading centre for international legal and dispute resolution services in the Asia-pacific region.

51. So far, 17 reputable LROs selected under the Stage 1 and Supplementary application exercises have confirmed acceptable the space offered in the Legal Hub. A Stage 2 application exercise will be launched later this year.

Policy initiatives relating to “Reinforcing Our Strengths, Enhancing Governance”

52. The rule of law is vital for safeguarding rights and freedoms. It

is also instrumental in promoting Hong Kong's development as an international financial and business centre. We will further refine our legal system and related infrastructure to ensure that the rule of law and justice will continue to be upheld.

(A) Law Reform Proposals

(1) Continue to press ahead with the implementation or study of the Law Reform Commission ("LRC")'s recommendations in its reports on various legal topics, including enduring powers of attorney with regard to personal care, class actions, criteria for service as jurors and double jeopardy.

(a) Implementing the LRC's recommendations on enduring powers of attorney with regard to personal care

53. In July 2011, the LRC published a report on Enduring Powers of Attorney: Personal Care recommending that the scope of an enduring power of attorney ("EPA") under the EPA Ordinance (Cap. 501) be extended from the property and financial affairs of the donor only to include decisions as to the donor's personal care. An inter-departmental working group, set up by DoJ to examine the recommendations in the report, proposed that a new regime of continuing power of attorney ("CPA") be established to implement the LRC's recommendations.

54. On 28 December 2017, DoJ launched a two-month public consultation on the proposed CPA bill. The consultation period was extended to 28 April 2018 upon request from various stakeholders. On 22 January 2018, the Panel on Administration of Justice and Legal Services ("AJLS") was briefed on the consultation and Members generally supported introducing the proposed legislation. DoJ will work with the inter-departmental working group in considering the consultation responses with a view to briefing the Panel on the consultation outcome and the proposed way forward as soon as practicable.

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

55. In May 2012, the LRC published its report on "Class Actions", recommending the introduction of a class action regime in the HKSAR. A Working Group on Class Action chaired by the Solicitor General has been

set up to consider the LRC's proposals in detail. As at the end of September 2018, the Working Group has held 23 meetings and its Sub-committee has held 28 meetings. The Working Group will continue to work through the complex and sensitive issues and carefully consider the implications of the LRC proposals, and to make recommendations to the Government on the way forward.

(c) Conducting public consultation on a bill to implement the LRC's recommendations on criteria for service as jurors

56. 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. DoJ is consulting other departments on the operation and provisions of the proposed bill and aims to conduct a public consultation on the proposed bill in 2019.

(d) Implementing the LRC's recommendations on double jeopardy

57. In February 2012, the LRC published a report on double jeopardy proposing relaxing the rule against double jeopardy, which prevents a person who has been acquitted of an offence from being tried again for the same offence, in exceptional circumstances. DoJ is in the process of preparing a draft bill for public consultation, with a view to implementing the LRC's recommendations in the report.

(2) Render assistance to the LegCo in the scrutiny of the Evidence (Amendment) Bill 2018 for early implementation of the LRC's recommendations in the report on Hearsay in Criminal Proceedings.

58. In November 2009, the LRC published a report on Hearsay in Criminal Proceedings proposing to establish a statutory mechanism allowing the court to admit hearsay evidence in criminal proceedings when certain conditions are met. DoJ briefed the AJLS Panel on progress on 26 February 2018. The Evidence (Amendment) Bill 2018 was introduced into the LegCo on 4 July 2018. We will continue to assist the Bills Committee in its scrutiny of the Bill with a view to securing its early passage through the LegCo.

- (3) *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 light of the observations made in the judgment of the Court of Final Appeal in the W Case (FACV 4/2012).*

59. 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, which was established in January 2014, 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.

60. 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.

61. The IWG published a consultation paper, with a view to seeking the views of the public on recognition issues, on 23 June 2017. The extended consultation period ended on 31 December 2017. The IWG received over 17 500 responses to the consultation paper from a wide range of perspectives. The IWG is in the process of collating and analysing the responses received. In particular, in late August 2018, the IWG was briefed by its Secretariat on a preliminary report in respect of those submissions. The IWG expects to report on the results of the public consultation and the proposed way forward in 2019.

(B) Improving the Legal System and Enhancing the Legal Infrastructure

(i) Prosecutorial functions

- (1) Enhance the quality and effectiveness of criminal prosecution work, including the provision of training programmes and better use of resources, thereby raising the professionalism (including the standard of advocacy) of our prosecutors.*
- (2) Promote co-operation and exchanges among prosecutors at regional and international levels through active participation in regional and international prosecuting organisations.*

62. 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) 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;
- (b) development of expertise within PD for handling particular types of cases by the appointment of co-ordinators or specialised units for such cases/matters, so that they can be handled more effectively and efficiently;
- (c) continued organisation of the conferences on criminal law issues, with the next to be held in around mid 2019, jointly with the two legal professional bodies. Members of the Judiciary, criminal law practitioners and academics will be invited to join the discussion of various topical issues relating to the latest developments in criminal law; and
- (d) continued provision of a variety of relevant training to our in-house prosecutors, including seminars, overseas advocacy training, as well as talks delivered by in-house and distinguished outside counsel.

63. To facilitate our young lawyers in private practice to take up prosecution work, we will continue with the 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 two legal professional bodies 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. As mentioned above (see paragraph 42), we will also actively consider expanding the Understudy Programme for less-experienced counsel so as to provide more opportunities for them to gain precious experience and skills in handling prosecution cases.

64. 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 from other jurisdictions were also arranged during the year. For instance, one prosecutor from Singapore, two officers from the People's Prosecution Service of Guangdong Province and 12 prosecutors from the Republic of Indonesia joined PD on short-term attachment to gain first-hand working experience in the Division.

65. 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. Starting from the 2018/19 school year, "Introduction to the Legal System of the HKSAR" will be an additional topic (to be delivered by Legal Policy Division counsel within DoJ) which could enable our young people to know more about the rule of law and the HKSAR's constitutional order under the Basic Law. As for the annual "Prosecution Week", it was held from 25 to 29 June 2018, and included visits to DoJ and the courts, talks and mock court (with a total of 14 participating schools), as well as the interactive Law Games (with a total of 17 participating schools). These two flagship events will continue to be organised in 2019.

(ii) The DoJ Website

66. DoJ is currently embarking on a revamp of its website to enhance its structure and content. We have, as a first step, started to provide on the website summaries of judicial decisions in respect of cases which are of greater media / public interest.

(iii) Law Drafting

67. As regards law drafting measures, we will –

(1) Prepare for publication on the website of DoJ a combined DoJ English-Chinese Glossary of Legal Terms and a combined DoJ Chinese-English Glossary of Legal Terms, each consisting of glossaries compiled by the five legal divisions of the DoJ.

68. To continue promoting the development of legal bilingualism, DoJ plans to publish on its website, in an electronic format for public use, a Combined DoJ English-Chinese Glossary of Legal Terms and a Combined DoJ Chinese-English Glossary of Legal Terms (collectively “Combined Glossaries”). Each of the Combined Glossaries will consist of glossaries prepared by the different legal divisions. The tentative roll-out times are from Q4 2020.

69. According to our current plan, for each of the Combined Glossaries, there will be a search function to enable users to conduct searches across all glossaries or in one or more selected glossaries, and hyperlinks to the relevant source documents (e.g. legislative provisions) will be provided. It is also envisaged that users will also be able to download each individual glossary in PDF format.

(2) Continue to enhance Hong Kong e-Legislation (“HKeL”)

70. HKeL was launched on 24 February 2017². Since then, operational performance has been improved and we have introduced a number of enhancements to facilitate quicker and more convenient access to legislation³. In parallel, we will continue to provide 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. Evidence Ordinance (Cap. 8), Matrimonial

² The Bilingual Laws Information System (BLIS) was decommissioned on 1 July 2018. An advance notice of the decommissioning was posted on the BLIS website and HKeL website on 13 December 2017. A guide on performing basic BLIS functions in HKeL is available on the HKeL website.

³ 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 and also to go direct to a particular provision.

Causes Ordinance (Cap. 179) and Occupational Safety and Health Ordinance (Cap. 509)), and verified copies of new legislation which commenced operation since the launch of HKeL (e.g. Apology Ordinance (Cap. 631) and Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Ordinance (Cap. 632)).

71. We attach great importance to the views of our users on the future development of HKeL. Consultation will continue with the Hong Kong e-Legislation Liaison Group⁴ on proposed enhancement works to HKeL.

(3) 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.

72. A set of clear legislation which accurately reflects the Government's relevant policy intent 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.

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

74. 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. Other speakers are invited to speak on their area of expertise as well as, for speakers from other jurisdictions, about practices elsewhere. 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

⁴ 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. It was previously known as the Hong Kong Legislation Database User Liaison Group.

knowledge, skills and competencies of our drafters.

Department of Justice
October 2018