

**For discussion on
21 June 2021**

**Legislative Council Panel on
Administration of Justice and Legal Services
Professional Development for Legal Profession**

Purpose

This paper seeks to introduce to Members some of the latest initiatives of the Department of Justice (“DoJ”) in promoting professional development for local legal profession, including the proposal to amend the Legal Practitioners Ordinance (Cap. 159) (“LPO”) to enable legal officers (not being barristers) to be eligible for consideration to be appointed as Senior Counsel (“SC”) (see paragraphs 13 to 14 below), and to consult Panel on the legislative proposal.

Policy Objectives

2. The National 14th Five-Year Plan and the Outline Development Plan for the Guangdong-Hong Kong-Macao Greater Bay Area (“GBA”) expressly support Hong Kong to enhance its status as a centre for international legal and dispute resolution services in the Asia-Pacific region. Hong Kong has a solid legal infrastructure consisting of a well-tested common law system, and an open, transparent and independent judiciary. A robust system also needs to be backed by a sufficient amount of professional talents and bodies. In view of this, the Chief Executive announced in the 2020 Policy Address¹ that in order to consolidate Hong Kong’s status as an international legal hub and a centre for dispute resolution services, we need to nurture more legal talents that are experienced, familiar with the Mainland situation, and possess international perspective.

3. Over the years, DoJ has been committed to facilitating professional development for local legal profession (including lawyers in public and private organisations), especially for young lawyers, by providing a wide variety of training opportunities with a view to broadening their horizons, equipping them with the necessary knowledge and skills and enhancing their competitiveness. The ensuing paragraphs give a brief account of some of the latest initiatives of DoJ in promoting professional development for local legal profession.

Initiatives to facilitate professional development for legal profession (public and private sectors)

(a) **International Organisation Secondment Programmes**

¹ Paragraph 135 of the 2020 Policy Address.

4. Exposure to the work in international organisations is important to the sustainable growth of a professional, capable and well-informed legal community and the development of Hong Kong's position as a leading international legal and dispute resolution services centre. To this end, DoJ has been maintaining close liaison with international organisations to arrange secondment for lawyers in both public and private sectors. These opportunities provide valuable on-the-job training for fostering our legal talents in diverse areas of international law.

5. With the efforts in recent years and the strong support from the Central People's Government ("CPG"), DoJ has successfully put in place programmes to second local legal talents to three renowned international organisations on private international law, namely, the Hague Conference on Private International Law ("HCCH"), the International Institute for the Unification of Private Law ("UNIDROIT") and the United Nations Commission on International Trade Law ("UNCITRAL"). Details of these programmes are set out in **Annex 1**.

(b) Young Professionals Overseas Enrichment Programme

6. To encourage and support young legal talents to exchange and share their knowledge and experience with professionals from other jurisdictions, thereby enhancing and consolidating their legal knowledge, and building networks with legal professionals around the world to broaden their horizons, DoJ launches the Young Professionals Overseas Enrichment Programme to sponsor young lawyers and dispute resolution practitioners to participate in overseas international conferences related to law, mediation or arbitration. Once the pandemic subsides, DoJ plans to first arrange for sponsored participants to attend international conferences held in the GBA. Sponsored participants are required to report to DoJ upon their return to Hong Kong and share their valuable experience with other legal professionals.

(c) "Enrichment" project

7. DoJ officially launched the ten-year initiative "Vision 2030 for Rule of Law" in November 2020, and fully implemented the "3E"² projects in 2020/21 targeting at the general public, youths and professionals. Through the "Enrichment" project, DoJ provides a wide range of training, exchanges and capacity building events for legal practitioners and dispute resolution professionals to enhance and enrich their professional knowledge and development in the areas of legal services, dispute resolution services and international law.

(d) Pilot Professional Exchange Programme

8. To broaden the experience and horizons of Government Counsel and lawyers in the private sector, as well as to facilitate the exchange of best practices, DoJ launched the "Pilot Professional Exchange Programme" in September 2019.

² Namely the "Engagement", "Empowerment" and "Enrichment" projects.

Upon completion of a six-month short-term secondment with DoJ by the first young private legal practitioner, we are currently making arrangements for Government Counsel to be seconded to law firms or barrister chambers in the fourth quarter this year. To encourage more young private legal practitioners to participate in the programme, we have recently adjusted the eligibility criteria of the programme to allow qualified private legal practitioners, including those without any post qualification experience, to join.

(e) **Capacity building activities**

9. In order to promote professional exchanges and development in the legal and dispute resolution sectors, DoJ collaborates with various local, Mainland and international organisations to provide a wide variety of capacity building activities for the legal profession. On the other hand, to enhance the legal and dispute resolution skills and knowledge of the legal profession, the Matching Grant Scheme for Skills Upgrading under the second round of the Anti-epidemic Fund provided subsidies for eligible applicant organisations to organise 12 training programmes.

Professional development of legal officers in DoJ

10. DoJ plays a key role in the legal system of Hong Kong and maintaining the rule of law. In recent years, the Government of the Hong Kong Special Administrative Region (“HKSAR”) has to cope with ever-increasing challenges, and particularly in the past two years after restoration of order and stability, and as a result of the impact brought by the pandemic. The challenges faced by DoJ in its legal work are also unprecedented. We have to ensure legal officers shouldering important public functions could properly exercise their duties, and continue to administer justice effectively, efficiently and equitably.

(a) **Continuous professional training and National Studies Programme**

11. DoJ has all along attached great importance to the continuous development of its counsel. Apart from practical knowledge and experience gained through daily work, DoJ regularly arranges job-related legal training, including topical seminars conducted by local, Mainland and overseas guest speakers, work briefings and sharing sessions, and mock hearings. To enable our counsel to focus more on legal analysis and advocacy skills, our Civil Division (“CD”) has also formally established the CD Chambers specialising in civil advocacy work. Its nature of work is akin to that of barristers in private practice. DoJ counsel are also provided with Mainland and overseas training opportunities to enrich their legal knowledge, international horizons and knowledge about the development of our country. For example, CD provides advocacy training for those counsel who are interested in court advocacy work, including overseas advocacy courses and placement in overseas barrister’s chambers.

12. To further improve officers’ understanding and knowledge of our country’s latest development, including its legal and judicial systems, socio-economic

conditions and development direction, DoJ, for the first time, co-organised with Tsinghua University a seminar course entitled “The Fundamental Principles of Chinese Law” in mid-October 2020 which was conducted virtually. The second round of the course was also completed virtually in end of March this year. All Government Counsel joining DoJ after 2017 are required to complete “The Fundamental Principles of Chinese Law” course within probation period.

(b) Proposal to amend section 31A of the Legal Practitioners Ordinance to include “legal officers”

13. According to section 31A(1) of the LPO, only “barristers” are eligible to be appointed as SC provided that the substantive eligibility requirements under section 31A(2) of the same ordinance (including sufficient ability and standing, sufficient knowledge of the law, and requisite no-less-than-10 years’ experience as considered by the Chief Justice of the Court of Final Appeal (“Chief Justice”)) (see relevant provisions in Annex 2) are satisfied. In other words, under the current regime legal officers³ who are not barristers (for example solicitors) are not eligible for the appointment as SC even if they take up a comparable amount of advocacy work as those who are barristers, and satisfy the substantive eligibility requirements stipulated under section 31A(1) of the LPO.

14. DoJ proposes to amend section 31A of the LPO to include “legal officers” to enable legal officers who are not barristers to be eligible for consideration to be appointed as SC. The key justifications are as follows:

- (i) the proposal reflects the fact that there has always been no practical distinction between the duties of legal officers who are barristers and those who are not, and allows those who satisfy the substantive eligibility requirements but are not admitted as barristers could receive a fair recognition.

Section 3 of the Legal Officers Ordinance (Cap. 87) provides that legal officers, regardless of whether they are admitted as a barrister in Hong Kong, shall in respect of the matters mentioned in section 4(1) of the same ordinance (relating to the Government) have all the rights of barristers and solicitors duly admitted under the provisions of the LPO. For example, in DoJ, for all relevant purposes relating to professional duties and work, there is no distinction between barristers and solicitors except that they would be appropriately robed as barristers or solicitors, as the case may

³ “Legal officers” include (i) officers stipulated under section 2 and schedule 1 of the Legal Officers Ordinance (Cap. 87) (i.e. all Government Counsel/ Public Prosecutors, Senior Government Counsel/ Senior Public Prosecutors up to the Secretary for Justice, as well as certain legal professionals in the Lands Department, Companies Registry and Lands Registry); (ii) those who are deemed to be legal officers under section 3(3) of the Director of Intellectual Property (Establishment) Ordinance (Cap. 412) (covering legal professionals in the Intellectual Property Department); and (iii) those deemed to be legal officers under section 75(3) of the Bankruptcy Ordinance (Cap. 6) (covering legal professionals in the Official Receiver’s Office).

be, when appearing at open court hearings in the District Court or above. Therefore, unlike private legal practitioners, there is no practical distinction between the roles and duties of legal officers in DoJ who are barristers and those who are solicitors⁴. We therefore consider that all legal officers should deserve the same treatment and rights, including that legal officers irrespective of whether they are barristers or not should be equally eligible for consideration to be appointed as SC upon satisfying the substantive eligibility requirements under section 31A(1) of the LPO;

- (ii) the proposal aligns with the merit-based selection principle and is in the public interest. According to section 31A(1) of the LPO, the Chief Justice may, after consultation with the chairman of the Bar Council and the president of the Law Society, appoint as SC barristers who satisfy the eligibility requirements.

As pointed out by the Chief Justice at the Ceremony for the Admission of the New Senior Counsel on 29 May this year,

“The power of appointment [of SC], like all public law powers, must be exercised for the furthering of the public interest. Indeed it is this public interest that underscores the unique status and responsibilities of the rank of SC. These responsibilities include...setting and maintaining the highest professional standards of integrity and competence, carrying on the fine traditions of the Bar and its commitment to the rule of law which is a cornerstone of our society, setting an example to and helping pupils and young practitioners, contributing to the affairs of the Bar and making time available for public service when called on.

When making an appointment for silk, the Chief Justice therefore looks for candidates who have by their practice at the junior bar demonstrated not only their depth of expertise and eminence in their areas of practice but also characters, qualities, abilities and potentials that make them suitable persons to discharge the responsibilities I have just outlined in the service of the public interest....As a mark of distinction, it represents a public recognition by the Judiciary and the legal profession of an appointee's achievements to date, of his or her excellence, experience and expertise. As a badge of responsibility, it denotes our community's trust and expectation that an appointee will put his or her excellence and experience to good use by faithfully

⁴ Through appropriately arranging legal officers to perform a variety of duties and different posting arrangements, legal officers could gain exposure to and experience of different levels of legal work. This usual practice is in line with the principle of meritocracy in appointment and could also use public resources effectively.

discharging the responsibilities placed on them, thereby serving the public interest.”

The proposal is in line with the “public interest” referred to by the Chief Justice, and is also conducive to the Chief Justice’s exercise of discretion to appoint, based on ability and merits and in the interest of public, those suitable ones (including eligible barristers in private practice and legal officers) as SC;

- (iii) the proposal does not affect any rights of the legal practitioners in the private sector (including the opportunities for barristers in private practice to be appointed as SC), nor disturb the professional demarcation between the barristers’ and solicitors’ branches as legal services providers, especially when under the proposal a legal officer (non-barrister) appointed as SC is only entitled to use the title of SC when holding office as a legal officer. More importantly, the proposal does not alter the selection mechanism and criteria of appointment of SC. Same as barristers in private practice, legal officers are equally required to satisfy the series of eligibility requirements under section 31A of the LPO, including possessing sufficient ability and standing, sufficient knowledge of the law and have the requisite experience as considered by the Chief Justice, to be appointed as SC by the Chief Justice.

15. DoJ has already briefed the Chief Justice and the legal sector on the above legislative proposal. Organisations from the sector include the Hong Kong Bar Association (“Bar Association”), the Law Society of Hong Kong (“Law Society”), and the other bodies specified for the legal subsector as provided in Annex 6 of the Schedule to the Chief Executive Election Ordinance (Cap. 569). The Law Society and some legal bodies have expressed support to the proposal, while the Bar Association is currently consulting its members.

Way Forward

16. Members are invited to note some of the latest initiatives of DoJ in promoting professional development for local legal profession as set out in this paper, and express views on DoJ’s proposal to amend the LPO. DoJ is in parallel preparing the draft Bill and targets to submit it to the Legislative Council (“LegCo”) shortly with a view to having it passed by the end of the current LegCo term.

Department of Justice
June 2021

**Details of Hague Conference on Private International Law (“HCCH”),
International Institute for the Unification of Private Law (“UNIDROIT”) and
United Nations Commission on International Trade Law (“UNCITRAL”)
Secondment Programmes**

HCCH, UNIDROIT and UNCITRAL are the top international inter-governmental organisations in the field of private international law. Referred to as “the three sisters” of private international law, these three organisations work on global harmonisation of private international law. There is a growing number of cases in civil, commercial and family-related matters which require cross-jurisdictional legal services. Knowledge in private international law becomes an inevitable tool in the practice of law. These secondment programmes pave the way for Hong Kong legal professionals to participate in the work of the three organisations.

2. With the CPG’s support, the Government of the HKSAR signed a memorandum of understanding with the HCCH in December 2020 regarding a standing arrangement to second Hong Kong legal professionals in both the public and private sectors to the Permanent Bureau of the HCCH in The Hague, the Netherlands. The HCCH, a global inter-governmental organisation, enjoys a very prestigious status in the field of private international law. It develops and services multilateral legal instruments in a wide range of areas from commercial law and banking law to international civil procedure, responding to the global needs. While secondment programmes to international organisations are usually confined to government officials, DoJ actively discussed with the HCCH and successfully extended the secondment programme to Hong Kong solicitors and barristers in private practice. This put in place Hong Kong’s very first secondment programme open to local legal professionals in both the public and private sectors for a secondment period of 6 to 12 months. Having started the recruitment process in Q1 of 2021, DoJ received applications from talented local legal professionals in both the public and private sectors and is conducting the selection process. The first secondee is expected to report duty in the second half of 2021.

3. Building on the success of the HCCH secondment programme, the Government of the HKSAR signed a memorandum of understanding with UNIDROIT in May 2021 regarding a standing arrangement to second Hong Kong legal professionals in both the public and private sectors to the Secretariat of UNIDROIT in Rome, Italy. This put in place Hong Kong’s second international organisation secondment programme which is open to local legal professionals in both the public and private sectors. UNIDROIT is an independent inter-governmental institute that works on modernising, harmonising and co-ordinating private and in particular commercial law between States and groups of States. It also formulates uniform law instruments, principles and rules for such purposes in areas like security interests, capital markets, commercial contracts, international sales, and civil procedure. With a secondment period of 6 to 12 months, the secondment programme will provide more

quality training opportunities to local legal professionals. The application period has just closed on 19 June 2021 and the selection process will soon commence. The first batch of secondees is expected to report duty in Q4 of 2021 or Q1 of 2022.

4. After DoJ exploring and discussing the matter with the CPG, the CPG supports young civil servants from DoJ to work at the UNCITRAL Secretariat via the United Nations Junior Professional Officers (“JPO”) Programme. In May 2021, the CPG formally reserved a JPO post at the UNCITRAL Secretariat with the United Nations (“UN”) and a DoJ secondee may take up the post. The secondee is expected to report duty in Q4 of 2021 or Q1 of 2022. UNCITRAL is the core legal body of the UN system in the field of international trade law. It has specialised in commercial law reform worldwide for over 50 years, modernising and harmonising rules on international business. This arrangement will mark the HKSAR sending its very first JPO in the legal field to the UN. It will also have synergy with DoJ’s two existing arrangements with UNCITRAL, being the long-term loan of a legal expert to the Regional Centre for Asia and the Pacific of UNCITRAL since 2015 and the establishment of the DoJ Project Office for Collaboration with UNCITRAL in the Hong Kong Legal Hub on 2 November 2020. The HKSAR will have more comprehensive participation in the work of UNCITRAL and cooperation between the two will be enhanced with respect to projects in which the HKSAR is involved, such as UNCITRAL WG III (Investor-State Dispute Settlement Reform) and WG VI (Judicial Sale of Ships).

5. Looking forward, DoJ will continue to explore and discuss with other international organisations for secondment opportunities to Hong Kong legal professionals in both the public and private sectors. Currently, DoJ is actively liaising a secondment programme with the Asian Infrastructure Investment Bank.

Section 31A of the Legal Practitioners Ordinance (Cap. 159)
Current provisions concerning the appointment of Senior Counsel

“31A. Appointment of Senior Counsel

- (1) The Chief Justice may, after consultation with the chairman of the Bar Council and the president of the Society, appoint as Senior Counsel barristers who satisfy the eligibility requirements of subsection (2).
- (2) A barrister is eligible for appointment as a Senior Counsel if he—
 - (a) has, in the opinion of the Chief Justice, sufficient ability and standing as a barrister, and sufficient knowledge of the law, to be accorded that status; and
 - (b) has the requisite experience; and
 - (c) is practising at the bar in Hong Kong or is practising as an advocate while he holds office as a legal officer within the meaning of the Legal Officers Ordinance (Cap. 87).
- (3) For the purposes of subsection (2)(b), a barrister has the requisite experience for appointment as a Senior Counsel if he has, for not less than 10 years in aggregate, done one or both of the following—
 - (a) practised at the bar in Hong Kong; or
 - (b) practised as an advocate while he holds office as a legal officer within the meaning of the Legal Officers Ordinance (Cap. 87).
- (4) The Chief Justice may, after consultation with the chairman of the Bar Council and the president of the Society, appoint a barrister as honorary Senior Counsel if he—
 - (a) is a member of the academic staff of a faculty or school of law of a university in Hong Kong; or
 - (b) holds office as Director of Legal Aid or as a Deputy Director or Assistant Director of Legal Aid; or
 - (c) holds office as Official Receiver or an office specified in Part I of Schedule 2 to the Bankruptcy Ordinance (Cap. 6); or
 - (d) holds office as Director of Intellectual Property or an office specified in Part I of Schedule 1 to the Director of Intellectual Property (Establishment) Ordinance (Cap. 412),and who has, in the Chief Justice’s opinion, provided distinguished service to the law of Hong Kong.
- (5) The appointment of a person as a Senior Counsel in an honorary capacity does not confer on the person a right to act as an advocate in proceedings before the courts of Hong Kong and will not accord precedence before the courts.”