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Replies to initial written questions raised by Legislative Council Members in examining the Estimates of Expenditure 2022-23

Director of Bureau : Secretary for Justice

Session No. : 2

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CONTROLLING OFFICER'S REPLY

SJ001

(Question Serial No. 0295)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (-) Not Specified

Controlling Officer: Director of Administration and Development (Gracie Foo)

Director of Bureau: Secretary for Justice

Question:

In order to enhance students' law-abiding awareness and cultivate their law-abiding spirit, the Department of Justice has organised a number of activities for primary and secondary school students under the "Vision 2030 for Rule of Law" initiative, including interactive live drama performances and the Law Quiz Competition Series for primary school students, the "Rule of Law Enlightenment" Programme for secondary school students and the Pilot Scheme on Rule of Law Education for Secondary School Students. Would the Administration inform this Committee of the estimated expenditure for the promotion and operation of those activities?

Asked by: Hon CHEUNG Kwok-kwan (LegCo internal reference no.: 1)

Reply:

One of the main objectives of the "Vision 2030 for Rule of Law" initiative of the Department of Justice (DoJ) is to enhance the proper understanding and practice of the rule of law amongst members of the community through promotion, education and capacity building. Under the initiative, various public education and promotional activities have been rolled out, including the "Engagement" project targeting the general public, the "Empowerment" project targeting youths and the "Enrichment" project targeting professionals.

Among the various projects, DoJ has organised a number of rule of law education programmes for primary and secondary schools, attracting the participation of over 38 000 students thus far. In addition, rule of law trainings and an e-resources platform have been launched for teachers, with over 3 000 page views and over 900 teachers who have attended so far. The "Studio DoJ", which is for the general public, has also uploaded 34 episodes of animations (with the hit rate of the most viewed episode exceeding 6 000) so far. The promotion and operating expenses for the above-mentioned activities in 2021-22 are partly absorbed by the existing resources of DoJ, with additional expenses listed in the table below.

To further enhance the law-abiding awareness and cultivate the law-abiding spirit, DoJ will continue to organise various projects for teachers, primary and secondary school students and the general public in 2022-23. The expenses involved are estimated to be similar to those for 2021-22.

<u>Item</u>	<u>Expenses for 2021-22</u> <u>(Approx.)</u>
Projects for primary and secondary school students, including : (1) “Rule of Law through Drama” (2) “Law Quiz Competition Series” (3) “Rule of Law Enlightenment” Programme (including law talks, “Rule of Law Journey”, and short video competition) (4) “Pilot Scheme on Rule of Law Education for Secondary School Students”	HK\$4,800,000
Projects for teachers, including : (1) “e-Resources for Rule of Law and the Basic Law” (2) Training course entitled “Respecting the Law, Reinforcing the Rule of Law”	HK\$1,800,000
Projects for the general public, such as “Studio DoJ”	HK\$400,000
Total:	HK\$7,000,000

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CONTROLLING OFFICER'S REPLY

SJ002

(Question Serial No. 0297)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (1) Prosecutions

Controlling Officer: Director of Administration and Development (Gracie Foo)

Director of Bureau: Secretary for Justice

Question:

What training programmes on public prosecutions have been provided for counsel since the implementation of the Hong Kong National Security Law? Please set out the specific programmes, expenditures and numbers of participants.

In this financial year, has the Administration made any preparation for enhancing the standard of advocacy in criminal cases in which the Hong Kong National Security Law is involved? If yes, please set out the programmes and the estimated expenditures involved.

Asked by: Hon CHEUNG Kwok-kwan (LegCo internal reference no.: 4)

Reply:

The Department of Justice (DoJ) is committed to providing professional training for its counsel to broaden their horizons, improve their skills in different areas of work and keep them abreast of the latest development in law. DoJ has continued with such professional training after the enactment of The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (Hong Kong National Security Law).

With the support of the Hong Kong and Macao Affairs Office of the State Council, DoJ has thrice co-organised with Tsinghua University a webinar course entitled "The Fundamental Principles of Chinese Law" in October 2020, and March and November 2021 to enhance its officers' knowledge and understanding of the latest national development in legal and judicial systems, socio-economic conditions and development direction. The course covers 9 areas, including the Constitution, the Basic Law, the Hong Kong National Security Law in the context of rule of law for national security, and the national judicial system. To date, over 200 Government Counsel have completed the course. All Government Counsel joining DoJ after 2017 are required to complete the course within their probation period. Since November 2021, the course has been open to lawyers in private practice.

DoJ also endeavours to promote proper understanding of the Hong Kong National Security Law among the legal sector and the public. On 5 July 2021, DoJ organised a Hong Kong

National Security Law Legal Forum themed “Security Brings Prosperity”, of which the video recording is available online and the proceedings will be published soon. Moreover, DoJ and the Security Bureau co-published the “Articles and Reference Materials on the Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (HKSAR)”, a compilation of reference articles in relation to the Hong Kong National Security Law, and legislative reference materials on the “Decision of the National People’s Congress on Establishing and Improving the Legal System and Enforcement Mechanisms for the HKSAR to Safeguard National Security” and the Hong Kong National Security Law. DoJ plans to organise a Hong Kong National Security Law Legal Forum themed “Thrive with Security” on 28 May this year. Prominent officials and legal experts will be invited to discuss the construction and application of the Hong Kong National Security Law and various topical issues, as well as the latest HKSAR’s progress in safeguarding national security in different areas and the way forward. The forum aims to enhance awareness and understanding in the discharge of HKSAR’s constitutional duty to safeguard national security.

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CONTROLLING OFFICER'S REPLY

SJ003

(Question Serial No. 0215)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (-) Not Specified

Controlling Officer: Director of Administration and Development (Gracie Foo)

Director of Bureau: Secretary for Justice

Question:

As regards incidents of unlawful disruption of social order, such as cases relating to “disturbances arising from opposition to the extradition law amendments” in Hong Kong since 2019 and the National Security Law, would the Administration inform this Committee of the following:

1. What are the most updated situations, including but not limited to the numbers, status and outcome of cases being tried and cases that have been concluded in various courts? What are the sentences upon conviction (if any)? What is the overall conviction rate?
2. It has been years since the Occupy Central movement in 2014. Are there any cases still pending for trial? If yes, how many? What are the reasons for not being able to dispose of such cases? Is there a timetable for their disposal? Are there any dedicated judges or judicial officers to follow up those cases?
3. Does the Administration have any specific plans to enhance the case management?

Asked by: Hon HO Kwan-yiu, Junius (LegCo internal reference no.: 2)

Reply:

1. According to the information provided by the Police Force, as at 31 January 2022, a total of 10 277 persons were arrested in connection with the “anti-extradition law amendments” incidents in 2019. Of the 1 858 arrestees who have undergone judicial proceedings, 1 465 have to bear legal consequences (including 1 158 convicted, 297 bound over by court, 6 subject to “care or protection order” and 4 convicted of “contempt of court” in civil proceedings). 952 arrestees are undergoing judicial proceedings. The sentences imposed on the convicted persons include fines ranging from \$100 to \$41,000, compensations from \$120 to \$230,000 payable to the victimised person(s) or organisation(s) concerned, suspended sentences from 12 to 24 months, community service from 60 to 240 hours, probation orders, detention centre orders, training centre orders, rehabilitation centre orders, imprisonment from 4 days to 12 years, etc.

It must be emphasised that cases referred to the Department of Justice (DoJ) by the Police are handled immediately, which includes providing legal advice and making prosecutorial decisions. That said, the Police does not refer all their cases to DoJ for the following reasons: (1) some cases are still under police investigation; (2) no follow-up action is considered necessary for some cases for the time being; and (3) the evidence of some cases is considered insufficient, hence no referral is made to DoJ.

DoJ handles prosecutions in an expeditious, impartial, independent and professional manner at all times. A case in point is the riot at the Polytechnic University on 18 November 2019. Over 200 persons were arrested on the following day and DoJ provided significant amount of oral advice to the Police on the same day. Prosecutions were initiated on 20 November 2019. Those cases have been listed for trial, with the earliest trial scheduled for March this year and the latest for October next year.

The Police Force does not have a breakdown of the status, sentencing and conviction rate of the cases with respect to the Hong Kong National Security Law.

2. The judicial proceedings for all cases with respect to the unlawful incidents in relation to the Occupy Central movement in 2014 have been completed.
3. We seek to enhance the efficiency and professionalism of our in-house prosecutors in handling prosecutions and case management through various means, including the following –
 - (a) reviewing from time to time the volume of work and staff establishment of the Prosecutions Division (PD), and applying for additional resources to meet its daily operational needs according to the established mechanism when appropriate;
 - (b) refining the structure of PD so that each section is required to handle work related to provision of legal advice and preparation for cases, and to conduct appeals and reviews derived therefrom, in order to hone and consolidate the advisory and advocacy knowledge and skills of our in-house prosecutors;
 - (c) arranging for our in-house prosecutors to work in other legal divisions in order to gain experience in different areas of work, further their legal knowledge, broaden their horizons and enhance their overall ability to handle various matters or cases;
 - (d) keeping our in-house prosecutors abreast of the latest developments of cases involving important or significant legal principles or issues through the established mechanism and preparation of summaries of notable judgments for their reference;
 - (e) sustaining the provision of local training programmes for our in-house prosecutors;
 - (f) resuming the arrangement for our in-house prosecutors to attend overseas advocacy training courses offered by experienced judges and legal practitioners when the pandemic subsides;

- (g) providing guidance to prosecutors from time to time through the issue and updating of circulars and reference materials;
- (h) designating co-ordinators or specific units for handling particular types of cases to allow for better development of expertise within the Division in such areas of laws, and hence more effective and efficient handling of those cases;
- (i) maintaining close communication with the Police, proactively providing legal advice on their investigations and reviewing from time to time the prosecution workflow, with a view to expediting the prosecution process;
- (j) enhancing the efficiency in management of simple cases through the quick advisory system known as “FAST”;
- (k) appealing opportunely to the Court of Appeal (CA) by way of case stated and, when appropriate, referring significant questions of law to CA for clarification of the legal principles involved for speedy handling of relevant pending cases;
- (l) fully complementing court arrangements and proactively exploring and following up ways to expedite case management, such as consolidating cases where facts and evidence permit and agreeing on facts and evidence with the defence before trial as far as possible to reduce the number of witnesses to be called and the length of trial; and
- (m) deploying manpower to focus on provision of legal advice for law enforcement agencies during the General Adjourned Period implemented by the Judiciary amid the pandemic for speedy and effective follow-up of the relevant cases.

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CONTROLLING OFFICER'S REPLY

SJ004

(Question Serial No. 0743)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (2) Civil

Controlling Officer: Director of Administration and Development (Gracie Foo)

Director of Bureau: Secretary for Justice

Question:

Regarding the work of the Department of Justice (DoJ) on promoting arbitration and mediation and proactively facilitating Hong Kong's participation in the Guangdong-Hong Kong-Macao Greater Bay Area (GBA) development, please advise:

1. What are the objectives and details of the work on the development of the wider use of mediation to resolve disputes in Hong Kong? Please list the establishment, ranks and estimated expenditure involved.
2. On promoting and developing the dispute resolution services of Hong Kong in the context of the GBA, what are the performance indicators and details of work as well as the establishment and ranks involved? Has manpower been deployed to the Hong Kong Economic and Trade Office in Guangdong or the GBA to promote Hong Kong's arbitration and mediation services in the GBA? If yes, what are the establishment and estimates concerned?
3. DoJ has indicated that it would strive to implement in the GBA the mechanism for wholly owned Hong Kong enterprises to adopt Hong Kong law and choose for arbitration to be seated in Hong Kong. Please state the promotion work carried out by the Administration with the business associations and enterprises in the GBA; whether contract samples and guidelines are provided for enterprises to set the terms of dispute resolution in Hong Kong in drawing up contracts; the ranks of staff responsible for the work; and whether it is necessary to seek legal advice from outside the Government in preparing sample contract terms, and the estimated expenditure involved.
4. How many of the existing staff of DoJ have passed the Guangdong-Hong Kong-Macao Greater Bay Area Legal Professional Examination (GBA Examination) or acquired Mainland lawyer qualifications? For a department responsible for formulating strategies for the development of Hong Kong's judicial system, familiarity of its staff with the laws of both places will help their daily work. What are the measures in place to enhance the knowledge of DoJ staff on national law? Will DoJ encourage and support its staff to take

the GBA Examination by providing training resources, granting paid study leave, assisting in the arrangement of internships in the GBA, etc.?

5. Following the establishment of the Greater Bay Area Mediation Working Group last year, the Government anticipates that the Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Bill will be introduced shortly. This will further shape Hong Kong as a leading centre for international legal and dispute resolution services in the Asia Pacific Region. At present, what are the establishment and ranks of DoJ staff involved in publicity and promotion? What are the details of the publicity and the major target areas? How does DoJ participate in its collaborations with organisations such as the Hong Kong Trade Development Council and InvestHK?

Asked by: Hon KAN Wai-mun, Carmen (LegCo internal reference no.: 5)

Reply:

1. It is the long term policy of the Government of the Hong Kong Special Administrative Region (HKSAR) to promote and develop the wider use of mediation to resolve disputes. The Department of Justice (DoJ) has been working closely with the legal professional bodies and the dispute resolution sector to promote Hong Kong as a regional centre for international legal and dispute resolution services. The promotion work has been primarily undertaken by the Mediation Team of the Civil Division, supplemented by resources deployed from time to time as necessary from other units of DoJ.

Initiatives taken to promote the use of mediation to resolve disputes in 2021-22

Local promotional initiatives

1. “Mediate First” Pledge Campaign

DoJ has been organising the biennial “Mediate First” Pledge Event since 2013, with the aim of encouraging all sectors of the community to first explore the use of mediation to resolve disputes before resorting to other means of dispute resolution or litigation. In 2017, DoJ launched the “Mediate First” Pledge Star Logo Award Scheme to encourage pledgees to continue to fulfil their “Mediate First” pledge and to actively consider mediation in resolving disputes. As at 28 February 2022, there are 708 pledgees and 56 Star Logo awardees, including small and medium enterprises, law firms, counsel chambers and accounting firms. DoJ will continue to assist different sectors of the community to build up a mediate first culture through talks and sharing of experience.

The “Mediate First” Pledge Event 2021 was organised on 28 May 2021 in virtual mode. The theme of the “Mediate First” Pledge Event 2021 was “Mediate First – Anchoring the Future”. It took the form of an online forum featuring a diversity of speakers, who discussed the use of mediation for resolving disputes in the areas of private wealth management, healthcare and employees’ compensation. The event concluded with a signing ceremony for the new “Mediate First” pledgees together with the presentation ceremony for the Star Logo awards.

2. Social media platforms

DoJ has launched 3 dedicated social media platforms (Facebook, LinkedIn and Weibo) since 2019 to connect directly with the public in promoting the use of alternative dispute resolution services and other initiatives. The 3 dedicated social media platforms have around 4 000 followers.

3. West Kowloon Mediation Centre

The West Kowloon Mediation Centre (WKMC) commenced operation on 8 November 2018, and the pilot mediation scheme for cases referred by the Small Claims Tribunal and other suitable cases (Pilot Mediation Scheme) was launched on the same day. The Joint Mediation Helpline Office (JMHO) was appointed by the Government as the independent coordinator to implement the Pilot Mediation Scheme, and the implementation is overseen by a supervisory committee established under the Steering Committee on Mediation chaired by the Secretary for Justice (SJ). According to the information provided by JMHO, for the period from 8 November 2018 to 31 October 2021, WKMC received a total of 856 applications for mediation, among which mediation was conducted for 587 cases. Settlement was reached during mediation sessions in 293 cases out of those mediated cases. The Pilot Mediation Scheme shall continue to operate until 30 June 2022. DoJ and the Judiciary support the continuation of this WKMC initiative, and will announce the future arrangement at a suitable juncture.

4. Mediation-related seminars

To further promote the extensive use of mediation for dispute resolution, DoJ organises mediation-related seminars from time to time. A recent one was the Seminar on Cross-boundary Family Mediation held on 16 February 2022, during which representatives of the legal and family mediation sectors from the Mainland and Hong Kong were invited to examine the changes brought about by the implementation of the new mechanism under the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance on cross-boundary family litigation and related mediation, in order to raise public awareness of using mediation in cross-boundary family disputes.

DoJ organised a webinar entitled “Private Wealth Management in Hong Kong - the Best Option” with the Financial Services and the Treasury Bureau and InvestHK on 18 October 2021. Distinguished representatives from local wealth management and legal sectors discussed the latest policy initiatives of the local private wealth management industry and Hong Kong’s legal services in this aspect.

5. Mediation Essay Competition and School Mediation Seminar

The Mediation Essay Competition aims to raise public awareness on the use of mediation as an amicable means to resolve conflicts, whether in school, at home, in business context or in general, and to promote the use of mediation skills as life skills. It is hoped that through the competition, students will be encouraged to develop a positive and constructive mindset in dispute resolution, thereby understanding the importance of resolving conflicts amicably and maintaining harmonious relationships in their lives. The second Mediation Essay Competition is open for entry from November 2021 until July 2022, with the Prize

Presentation Ceremony tentatively scheduled for the fourth quarter of 2022. The School Mediation Seminar on the use of mediation to resolve conflicts in school will be held in May 2022 during the Mediation Week.

6. Mediation Week and Mediation Conference

To promote and encourage the wider use of mediation in Hong Kong, DoJ has been organising the Mediation Week biennially since 2012, featuring a full range of activities including a carnival, demonstrations, seminars and the Mediation Conference. DoJ will organise the Mediation Week 2022 and the Mediation Conference 2022 in May this year to further promote and encourage the public to use mediation to resolve different kinds of disputes.

Promotional initiatives outside Hong Kong

7. Establishment of Greater Bay Area (GBA) Mediation Platform

The “Outline Development Plan for the Guangdong-Hong Kong-Macao Greater Bay Area” (the Outline Development Plan) was promulgated on 18 February 2019. It explicitly supports Hong Kong to establish itself as the centre for international legal and dispute resolution services in the Asia-Pacific region. It also encourages the promotion of the development of a multi-faceted dispute resolution mechanism that is based on extensive consultation, joint contribution and shared benefits; and the provision of quality, effective and convenient judicial and legal services and safeguards for the development of the GBA. The Guangdong-Hong Kong-Macao Bay Area Legal Departments Joint Conference (Joint Conference) has so far held 3 meetings in September 2019, December 2020 and December 2021. The Joint Conference endorsed in December 2020 the establishment of the GBA Mediation Platform, which aims to promulgate a set of unified qualification, accreditation and relevant standards for mediators in the GBA and facilitate the establishment of a local panel of qualified GBA mediators in each of the 3 places. It will also study the formulation of best practices for mediation rules applicable to cross-boundary disputes and best practices for mediators’ code of conduct. Please refer to part 2 of the reply for details.

8. “Mediate First” Pledge Event

DoJ has been proactively promoting the “Mediate First” Pledge Event overseas. The first overseas “Mediate First” Pledge Event series was held in Shanghai and Qianhai in 2019. These overseas promotional activities shall continue to be held depending on the pandemic situation.

9. Hong Kong Mediation Lecture

To enhance Hong Kong’s status as the leading centre of international legal and dispute resolution services in the Asia-Pacific region and to generate intellectual exchange and networking opportunities for mediation practitioners in Hong Kong, DoJ has been organising a series of Hong Kong Mediation Lecture since 2019. The Hong Kong Mediation Lecture 2021 was co-hosted by Herbert Smith Freehills and DoJ, with Ms Sala Sihombing, Specialist Family Mediator and Conflict Management Consultant, invited as the

speaker at the 3rd Meditation Lecture to discuss the topic of “Modern Mediation: Equity’s Heir?”.

10. Promotion of the use of mediation in investor-state disputes

Under the mediation mechanism established in accordance with the Investment Agreement signed on 28 June 2017 under the framework of the Mainland and Hong Kong Closer Economic Partnership Arrangement, the Mainland and Hong Kong have each designated certain mediation institutions and mediators for handling investment disputes involving investors of the other side. Against this background, DoJ has been working towards developing Hong Kong into an international investment law and investment dispute resolution skills training base with the goal of building up a team of investment mediators in Asia to handle international investment disputes. Co-organised by DoJ, the International Centre for Settlement of Investment Disputes under the World Bank Group and the Asian Academy of International Law, the first Investment Law and Investor-State Mediator Training Course in Asia was held in Hong Kong in 2018. Due to the pandemic, the 3rd Training Course, divided into 2 parts, was conducted virtually. The Investment Law Module was held in October 2021 and the Mediation Module in March 2022, with over 40 participants from Hong Kong, the Mainland, Association of Southeast Asian Nations countries and beyond.

11. Other promotion initiatives on international mediation

DoJ and the United Nations Commission on International Trade Law (UNCITRAL) successfully co-organised the UNCITRAL Working Group III Inter-Sessional Meeting - The Use of Mediation in Investor-State Dispute Settlement (ISDS) in Hong Kong in October 2021 to explore the possible reform of ISDS. The meeting also acknowledged the importance of active participation in mediation involving international investment disputes, examined the synergy of employing online dispute resolution (ODR) with the aid of mediation in ISDS, set out the directions for promoting the use of mediation and initiated a study on the reform options for investment mediation.

In addition, DoJ promotes ODR in various fronts, including international mediation, such as collaborating with UNCITRAL in establishing the Inclusive Global Legal Innovation Platform (iGLIP) to examine international developments with regard to ODR and explore related issues, co-organising the Workshop on Online Dispute Resolution with ASEAN in the Hong Kong Legal Week 2021, and opting in the APEC Online Dispute Resolution Framework in 2020. These initiatives are conducive to the provision of speedy and cost-effective dispute resolution services (including mediation) so as to keep abreast of the global trend.

The soon-to-open Asian-African Legal Consultative Organization Hong Kong Regional Arbitration Centre will proactively perform its many tasks, including the promotion of international mediation and the development and improvement of ODR services.

The above key promotion work has been primarily undertaken by the Mediation Team of the Civil Division, with assistance from the Inclusive Dispute Avoidance and Resolution (IDAR) Office and the International Organizations and Legal Cooperation Team under other divisions of DoJ from time to time as necessary. The establishment and estimated annual

expenditure on emoluments of the units involved in the promotion work for 2022-23 are tabulated below:

Units involved in the promotion work	Establishment for 2022-23	Estimated annual expenditure on emoluments for 2022-23 (notional annual mid-point salary)
Mediation Team	1 Deputy Principal Government Counsel (DPGC), 3 Senior Government Counsel (SGC), 4 Government Counsel (GC), 2 Law Clerks (LC), 1 Personal Secretary (PS) I and 1 Assistant Clerical Officer (ACO)	\$12,774,420
IDAR Office	1 Principal Government Counsel, 2 SGC, 1 GC, 1 LC, 1 PS I and 1 ACO	\$7,951,380
International Organizations and Legal Cooperation Team	1 DPGC, 1 SGC, 3 GC, 1 LC and 1 PS I	\$7,936,980

Note: As the promotion work is undertaken by the above officers among their other duties, the manpower/expenditure actually involved in the relevant work cannot be separately identified.

2. DoJ is committed to promoting Hong Kong as a regional centre for international legal and dispute resolution services and promoting mediation within the GBA. In this connection, the legal departments of Guangdong, Hong Kong and Macao proposed to establish the GBA Mediation Platform at the first Joint Conference in September 2019 and the proposal was officially endorsed at the second Joint Conference in December 2020.

The GBA Mediation Working Group, comprising the representatives of the legal departments of Guangdong, Hong Kong and Macao, was established under the GBA Mediation Platform in August 2021 to support the operation of the GBA Mediation Platform and the discharge of its functions.

At the third Joint Conference held on 10 December 2021, (1) the GBA Mediator Accreditation Standards and (2) the GBA Mediator Code of Conduct Best Practice promulgated by the GBA Mediation Platform were endorsed. The same were officially released and came into effect on 30 December 2021 (https://www.doj.gov.hk/en/legal_dispute/mediation.html).

Looking ahead, the GBA Mediation Platform will be tasked with the drafting of mediation rules applicable to cross-boundary disputes within the GBA and the panel of GBA mediators. In respect of arbitration, the three parties will set up the GBA Arbitration Working Group through the Joint Conference to take forward matters such as the establishment of a list of GBA arbitrators to promote the development of arbitration in the GBA as well as to facilitate users of arbitration in the GBA to choose arbitrators from

different institutions across the three regions in resolving their disputes. The fourth Joint Conference, planned to be held in the fourth quarter this year, will be hosted by Hong Kong.

The Joint Conference is organised by the legal departments of Guangdong, Hong Kong and Macao, with the participation of all three. The Hong Kong side is co-ordinated by the IDAR Office and supported by, inter alia, the Mediation Team. The Hong Kong representatives of the GBA Mediation Working Group, including officers of the IDAR Office and the Mediation Team, i.e. 1 Deputy Principal Government Counsel, 1 Senior Government Counsel and 1 Government Counsel, serve to support the implementation of the proposals made by the GBA Mediation Platform.

On promoting Hong Kong's arbitration and mediation services in the GBA, DoJ has not deployed any manpower to the Hong Kong Economic and Trade Office in Guangdong or the GBA at present.

3. The National 14th Five-Year Plan and the Outline Development Plan for the Guangdong-Hong Kong-Macao Greater Bay Area both support Hong Kong's development as a centre for international legal and dispute resolution services in the Asia-Pacific region. With the support of national policies, DoJ has been actively working with the legal departments of the Mainland to promote in the GBA the mechanism for wholly owned Hong Kong enterprises (WOKEs) to adopt Hong Kong law and choose for arbitration to be seated in Hong Kong.

Mechanism for WOKEs to adopt Hong Kong law and choose for arbitration to be seated in Hong Kong

Possessing the characteristics of "one country, two systems, and three jurisdictions" and the important qualities of a high level of opening-up and internationalisation, the GBA is a testing ground for exploring the interface of different legal systems and cross-boundary legal rules. At present, on the choice of law, the Regulations of the Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone of the Shenzhen Special Economic Zone allow WOKEs and foreign-invested enterprises established in Qianhai to, on an "early and pilot implementation" basis, freely agree on choosing Hong Kong law as the applicable law for their civil and commercial contracts in the absence of "foreign-related elements". On the choice of the seat of arbitration, the Opinions of the Supreme People's Court on Providing Judicial Guarantee for the Building of Pilot Free Trade Zones allow WOKEs in the China (Guangdong) Pilot Free Trade Zone to, as parties to civil and commercial contracts, freely agree with other parties to the contracts to choose Hong Kong as the seat of arbitration, thereby demonstrating the feasibility of the mechanism of WOKEs to adopt Hong Kong law and choose for arbitration to be seated in Hong Kong.

The Plan for Comprehensive Deepening Reform and Opening Up of the Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone promulgated last September directed to further explore and improve the mechanism for WOKEs to adopt Hong Kong law and choose for arbitration to be seated in Hong Kong. We consider the mechanism should be implemented first in Shenzhen and then extended to the entire GBA in an "early and pilot implementation" mode to allow enterprises, in the absence of foreign-related elements, to freely choose the law of any jurisdiction in the GBA as the applicable law for their contracts and any arbitral institution or any jurisdiction in the region

as the seat of arbitration. This is conducive to the promotion of international investment, comprehensive opening-up and fully reflects the internationally accepted principle of party autonomy in the GBA. In the long run, parties to a contract or a civil and commercial matter in the GBA can have more choices of the applicable law and dispute resolution, thereby enhancing the development of a multi-faceted dispute resolution mechanism based on extensive consultation, joint contribution and shared benefits in the region and contributing significantly to the promotion of the rule of law in the GBA.

On the other hand, the three jurisdictions in the GBA cover the major legal systems in the world. The above measures will enable Mainland enterprises engaged in partnership with foreign-invested enterprises to have access to extraterritorial laws in a lower risks situation without being overwhelmed by the opening up and hasty use of such laws. This will progressively facilitate Chinese enterprises to better adapt to extraterritorial laws when “going global”, which will, in turn, help to sustain their long-term development.

Promotion work for chambers of commerce and enterprises

DoJ has been continuously promoting Hong Kong’s arbitration services as a means of dispute resolution to chambers of commerce and enterprises around the world. This includes promoting to the business sector the convenience and strengths brought to the GBA by the mechanism for WOKEs to adopt Hong Kong law and choose for arbitration to be seated in Hong Kong. Relevant events attended and/or held recently include the meeting of the General Committee of the Chinese Manufacturers’ Association of Hong Kong, entitled “Why Hong Kong in GBA”, held on 27 May 2021; the China Forum on International Legal Cooperation held on 12 November 2021; and the 11th Session of the South China In-house Counsel Forum, entitled “International Arbitration in the Bay Area: The Choice of Chinese Enterprises” (「灣區國際仲裁：中國企業的選擇」), held on 7 December 2021.

Sample contract terms

Model clauses are available on the websites of various arbitration institutions in Hong Kong, such as the Hong Kong International Arbitration Centre¹ and the Hong Kong Arbitration Center of the China International Economic and Trade Arbitration Commission². These succinct model clauses are readily accessible, subject to agreement by all parties concerned, they can be directly adopted to facilitate the submission of disputes to such institutions for resolution by applying Hong Kong law and choosing Hong Kong as the seat of arbitration.

Staff responsible for the work

The Advisory Committee on Promotion of Arbitration, chaired by the Secretary for Justice and comprising representatives from the legal, arbitration and relevant sectors in Hong Kong, advises and assists DoJ in respect of the promotion of arbitration in Hong Kong. DoJ will consult the Advisory Committee on such work as and when appropriate.

¹ <https://www.hkiac.org/arbitration/model-clauses>

² http://www.cietachk.org.cn/portal/showIndexPage.do?pagePath=\en_US\index&userLocale=en_US

The work in respect of the promotion of arbitration in Hong Kong is primarily undertaken by the Arbitration Team under the Civil Division. The establishment and estimated annual expenditure on the emoluments of the staff of the Arbitration Team for 2022-23 are set out below:

Arbitration Team	
Establishment for 2022-23	Estimated annual expenditure on emoluments for 2022-23 (notional annual mid-point salary)
1 Deputy Principal Government Counsel, 3 Senior Government Counsel, 4 Government Counsel, 1 Law Clerk, 1 Personal Secretary I, 1 Personal Secretary II and 1 Assistant Clerical Officer	\$12,622,080

Note: As the promotion work is undertaken by the Arbitration Team among their other duties, the manpower/expenditure actually involved in the relevant work cannot be separately identified.

4. DoJ does not maintain any statistics on the number of staff who have passed the Guangdong-Hong Kong-Macao Greater Bay Area Legal Professional Examination (GBA Examination) or acquired Mainland lawyer qualifications. DoJ organises training courses regularly to enhance officers' knowledge and understanding of our country's latest development, including its legal and judicial systems, socio-economic conditions and development direction. With the support of the Hong Kong and Macao Affairs Office of the State Council, DoJ has thrice (i.e. in October 2020, and March and November 2021) co-organised with Tsinghua University a course entitled "The Fundamental Principles of Chinese Law", which covers 9 areas, including the Constitution, the Basic Law, the Hong Kong National Security Law and our country's judicial system. In addition, our counsel may apply for reimbursement of the fees of the GBA Examination under Civil Service Regulation (CSR) 1010. DoJ will grant full-pay study leave of up to 3 days for its counsel to prepare and sit for the one-day GBA Examination under CSR 1002.

5. DoJ actively facilitates legal exchanges between the 2 places by signing cooperation and exchange documents with various government departments in the Mainland to foster the integration and professional exchanges between the 2 places. Such efforts include legal projects on exchanges and collaboration launched under the framework arrangement on exchange and mutual learning in legal aspects in the GBA signed with the High People's Court of Guangdong Province in September 2019 and the signing of 4 cooperation arrangements with a number of government departments in the Mainland in July 2021 to foster professional development of the legal sectors in both places and to further promote Hong Kong's legal, dispute resolution and deal-making services. A diversity of activities have also been organised under these arrangements.

Upon the passage of the Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Bill by the Legislative Council, DoJ will step up its publicity and promotion work to support the exchange of professional experience in implementing the new mechanism between practitioners in Hong Kong and the Mainland and strengthen the practice and co-operation between stakeholders in both places in this regard.

Our preliminary plan is to organise/co-organise seminars or workshops on the new mechanism with the relevant bodies, thereby providing a platform for stakeholders (including judges and the legal sector) in both places to engage in professional exchanges, discuss specific issues on implementing such mechanism (e.g. preparation of applications or relevant documents) and better understand the implementation procedures and the content of the relevant law of the other side.

In light of the increasingly close exchanges and co-operation between Hong Kong and the GBA and in anticipation of a greater number of Hong Kong- and foreign-related civil and commercial cases to be tried in the GBA than elsewhere in the Mainland, DoJ will actively seek exchanges with stakeholders in the GBA first regarding the implementation of the new mechanism.

DoJ also collaborates proactively with various government departments and agencies, such as the Trade Development Council (TDC) and InvestHK, to promote Hong Kong as a “leading centre for international legal and dispute resolution services in the Asia-Pacific region” by, inter alia, co-organising various webinars with InvestHK in 2021 (including the “Why Hong Kong” webinar series held between March and June to showcase Hong Kong’s strengths as an international legal hub, the “‘Success through Synergy’ Seminar on Opportunities for Hong Kong’s Legal Industry in the Greater Bay Area” held in August and the “Private Wealth Management in Hong Kong – the Best Option” webinar held in October), and co-organising with the TDC the Hong Kong Legal Services Forum on a regular basis and the thematic breakout session at the Belt and Road Summit in 2021. DoJ and TDC are actively preparing for the Mediation Conference 2022 to be held later this year and the annual Business of Intellectual Property Asia Forum to be held in December.

The above work will be absorbed by DoJ within its existing establishment. As such work is undertaken by the above officers among their other duties, the manpower/expenditure actually involved cannot be separately identified.

- End -

CONTROLLING OFFICER'S REPLY

SJ005

(Question Serial No. 0747)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (2) Civil

Controlling Officer: Director of Administration and Development (Gracie Foo)

Director of Bureau: Secretary for Justice

Question:

Regarding civil cases brought against the Government, would the Government please advise on the following:

1. The number of cases brought against the Government, including the cumulative number of cases as well as the numbers of new cases and decided cases last year, by using the table below.

Level of Courts	Court of Final Appeal	Court of Appeal of the High Court	Court of First Instance of the High Court	District Court	Lands Tribunal	Others
Type of Cases						
Basic Law and Bill of Rights						
Administrative law						
Immigration						
Revenue						
Charities and trusts						
Contempt of court						
Election matters						
Contractual/ commercial disputes						
Personal injuries and other damages claims						
Land						
Building						

Town planning						
Environmental						
Others						

2. The number of staff and total expenditure on remuneration and allowances involved in handling litigation cases brought against the Government in the past 3 years, including their ranks and the numbers of overtime hours in respect of which allowance was incurred and vacancies.
3. For cases brought against the Government, the percentage of such cases represented by briefed out counsel at different levels of courts, the legal expenses involved, as well as the respective success rate of such cases and those cases represented by counsel of the Department of Justice.

Asked by: Hon KAN Wai-mun, Carmen (LegCo internal reference no.: 9)

Reply:

1. In 2021, the Civil Division handled a total of 2 642 new cases brought against the Government. We do not maintain statistics on the breakdown of these cases by subject matter, nor do we maintain any breakdown of the cumulative number of cases and the number of decided cases.
2. As officers handling these cases are also responsible for other duties, the number of staff and expenditure on remuneration and allowances involved cannot be separately identified.
3. For cases brought against the Government, we do not maintain a breakdown of the percentage of cases represented by briefed out counsel at different levels of courts, the legal expenses involved, the respective success rate of such cases or those cases represented by counsel of the Department of Justice.

- End -

CONTROLLING OFFICER'S REPLY

SJ006

(Question Serial No. 0134)

Head: (92) Department of Justice

Subhead (No. & title): (000) Operational expenses

Programme: (1) Prosecutions

Controlling Officer: Director of Administration and Development (Gracie Foo)

Director of Bureau: Secretary for Justice

Question:

The estimated expenditure of \$964.4 million for the Prosecutions Division for 2022-23 represents a fairly significant increase over the expenditure for 2020-21. What are the reasons and what is the breakdown of the increased estimate?

Asked by: Hon LAI Tung-kwok (LegCo internal reference no.: 6)

Reply:

The 2022-23 Estimates for Programme (1) under Head 92 represent an increase of around 14.8% (around \$124 million) over the actual expenditure for 2020-21. Briefing-out costs and court costs account for around three quarters of the increase, while other expenses including emoluments, contributions to Mandatory Provident Fund and Civil Service Provident Fund, and general departmental expenses account for the rest. The 2022-23 Estimates were made based on information available at the time of preparing the estimates, having taken into account many factors including the number of cases involved, their complexity and progress. The 2020-21 actual figures reflected a corresponding reduction in briefing-out costs and court costs required in the year as a result of the Judiciary implementing the General Adjourned Period and only handling certain cases or urgent business in 2020-21 in view of public health considerations. Consequently the actual expenditure for 2020-21 was significantly lower than the Original Estimates. By comparing the 2022-23 Estimates against the 2020-21 Original Estimates, there is an actual decrease of around 1.3% (around \$13 million).

- End -

CONTROLLING OFFICER'S REPLY

SJ007

(Question Serial No. 0759)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (-) Not Specified

Controlling Officer: Director of Administration and Development (Gracie Foo)

Director of Bureau: Secretary for Justice

Question:

Regarding the work on upholding Hong Kong's rule of law and judicial independence, please advise on the following:

1. the numbers of public clarification and rebuttal that the Government made in 2019, 2020 and 2021 respectively in response to unfounded allegations about Hong Kong's rule of law and judicial independence initiated by foreign institutions and media, and the additional expenditures (such as newspaper advertising cost) involved, if any; and
2. the measures taken by the Department of Justice to minimise the impact of the COVID 19 pandemic on its work in relation to the "Vision 2030 for Rule of Law" initiative and other promotions of the rule of law in the community, and its plans of work for the coming year.

Asked by: Hon LEUNG Mei-fun, Priscilla (LegCo internal reference no.: 2)

Reply:

1. The rule of law and judicial independence are cornerstones of Hong Kong's success. The Government is committed to safeguarding the rule of law and judicial independence of Hong Kong and will promptly refute any unfounded attacks from local or overseas politicians, organisations, media and individuals. The Department of Justice (DoJ) has frequently refuted false allegations against Hong Kong's rule of law, judicial independence and the Hong Kong National Security Law through various channels. From 2019 to end of March this year, DoJ published over 90 press releases, articles and blogs by the Secretary for Justice (SJ), and SJ also conducted 48 media interviews, delivered speeches on 40 different occasions and wrote to overseas media on 6 occasions to refute some unwarranted statements and to set the record straight. These works did not involve additional expenses from DoJ.

During this period, there were over 10 occasions that the Government refuted and clarified false allegations made in the ranking indices or reports related to the rule of

law or those containing indicators of the rule of law published by some overseas ranking agencies.

2. DoJ has been actively promoting the rule of law to the public on various fronts with a view to strengthening the community's proper understanding of the rule of law and fostering the development of the international rule of law. One of the main objectives of the "Vision 2030 for Rule of Law" (Vision 2030) initiative is to enhance the understanding and practice of the rule of law amongst youth and proper rule of law education through promotion, education and capacity building. The projects for promoting the rule of law under Vision 2030 include the launch of the Vision 2030 website and Hong Kong's Rule of Law Database, and a series of activities covering rule of law education, capacity building, secondment exchange, etc., organised by DoJ or co-organised with different institutions targeting members of the public, youth, teachers and legal professionals. Examples of these activities are the "Studio DoJ" serial animated short videos produced for the general public; interactive live drama performances, school talks and "Rule of Law Journey" guided tours offered to primary and secondary students; the "Respecting the Law, Reinforcing the Rule of Law" training course targeting teachers; and secondment arrangements to international organisations and International Youth Legal Exchange Conference for legal professionals. Details of our rule of law promotional plan in the coming year, and the latest development of the relevant projects can be found in LC Paper No. CB(4)46/2022(01) of the Panel on Administration of Justice and Legal Services of the Legislative Council.

In light of the COVID-19 pandemic and the latest anti-epidemic measures announced by the Government, DoJ has, after taking into account the nature and content of different events, conducted the relevant rule of law promotion and education events online or using hybrid mode, so as to reduce the impact of the pandemic on the work of DoJ. For instance, the interactive drama performances, various events of the Hong Kong Legal Week 2021 and the Vision 2030 Taskforce meetings, etc. were organised in hybrid mode in the second half of 2021; whereas school talks and the teacher symposium, etc. were held virtually early this year. For public events that are not suitable to be held due to the severe pandemic situation, such as the Inter-School Law Quiz Competition for Primary Students and "Rule of Law Journey", DoJ has communicated with the relevant schools or organisations and rescheduled the event dates. Other rule of law projects that are not affected by the pandemic, such as the "Studio DoJ" and e-Resources for Rule of Law and the Basic Law, are proceeding as scheduled.

- End -

CONTROLLING OFFICER'S REPLY

SJ008

(Question Serial No. 0208)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (4) Law Drafting

Controlling Officer: Director of Administration and Development (Gracie Foo)

Director of Bureau: Secretary for Justice

Question:

The Matters Requiring Special Attention in 2022-23 under Programme (4) include monitoring closely the demand of the new term of LegCo regarding scrutiny of legislation and making available resources needed for the legislative schedule, which is expected to be heavy. In this connection, please inform this Committee of the following:

1. With reference to past analysis of financial and staffing provision, the Department of Justice (DoJ) had a net decrease of 4 posts in 2021-22 under the programme of Law Drafting; and in 2022-23, there will be a net decrease of 1 post. Please advise on the details of the posts deleted and expected to be deleted, as well as the expenditure involved.
2. Has DoJ assessed the impact of the deletion of the relevant posts on how the heavy legislative schedule can be coped with?
3. Regarding the estimated provision of \$181.3 million for 2022-23, how much will be used for providing training to legislative drafters and what is the content of the training?

Asked by: Hon LIAO Cheung-kong, Martin (LegCo internal reference no.: 9)

Reply:

1. There was a net decrease of 4 posts in 2021-22 in the Government Counsel Grade and the Calligraphist Grade. There is a reduction in expenditure of \$1.97 million. The net decrease of 1 post in 2022-23 will be in the Clerical and Secretarial Grade. There will be a reduction in expenditure of \$460,000.
2. The Law Drafting Division (LDD) of the Department of Justice (DoJ) reviews from time to time its establishment and staff resources to ensure that it can cope with the heavy legislative schedule. The net decrease of 5 posts in 2021-22 and 2022-23 are mainly attributed to the lapse of 3 time-limited posts and the deletion of 2 Calligraphist posts due to retirement. LDD has redeployed staff internally to handle its workload, and will employ Contract Counsel and Contract Legal Clerks to assist in law drafting as operational needs require.

3. DoJ will earmark about \$160,000 in its estimated provision for 2022-23 for the provision of training courses to legislative drafters, including law drafting courses and statutory interpretation courses.

- End -

CONTROLLING OFFICER'S REPLY

SJ009

(Question Serial No. 0211)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (2) Civil

Controlling Officer: Director of Administration and Development (Gracie Foo)

Director of Bureau: Secretary for Justice

Question:

Regarding the estimates and work matters of Programme (2) Civil, please inform this Committee of the following:

1. The estimated provision for this Programme in 2022-23 is 26.7% higher than the revised estimate for the preceding year, representing the highest increase among the 5 Programmes. One of the main reasons for the increase is the anticipated increase in court costs. What is the anticipated increase in court costs and what are the reasons for this estimation?
2. Promoting the extensive use of mediation in the Greater Bay Area (GBA) can optimise the multi-faceted dispute resolution mechanism in the GBA. The Matters Requiring Special Attention in 2022-23 under this Programme include the establishment and implementation of a mediation platform in the GBA. What is the latest progress of this matter? What is the timetable for the establishment of the platform?

Asked by: Hon LIAO Cheung-kong, Martin (LegCo internal reference no.: 10)

Reply:

1. The estimate for court costs of civil cases for 2022-23 is \$136 million, which is 13.6% (or \$16.23 million) and 89.4% (or \$64.16 million) higher than the original and revised estimates for 2021-22 respectively.

The anticipated overall increase in court costs payment for 2022-23 is mainly due to provisions that need to be made for the amount likely to be required for new cases that will/may arise, as well as possible expenditure required for a number of cases handled in 2021-22. Besides, the increasing complexity of the cases has also led to higher court costs payment for individual cases.

While the said estimate was worked out based on information available at the time of preparing the estimate, the actual expenditure to be incurred in 2022-23 would ultimately depend on subsequent development and outcome of the cases concerned and the amount of unanticipated expenditure (arising from cases which could not have

been anticipated when the estimate was prepared and are not entirely within the control of the Department of Justice (DoJ)).

2. DoJ has been working closely with legal professional bodies and the dispute resolution sector to promote Hong Kong as a regional centre for international legal and dispute resolution services. In furtherance of legal co-operation and promotion of mediation within the Guangdong-Hong Kong-Macao Greater Bay Area (GBA), the legal departments of Guangdong, Hong Kong and Macao proposed to establish, the GBA Mediation Platform at the first Guangdong-Hong Kong-Macao Bay Area Legal Departments Joint Conference (Joint Conference) in September 2019, and the proposal was officially endorsed at the second Joint Conference in December 2020.

The GBA Mediator Accreditation Standards and the GBA Mediator Code of Conduct Best Practice promulgated by the GBA Mediation Platform were endorsed at the third Joint Conference held on 10 December 2021. The same were officially released and came into effect on 30 December 2021 (https://www.doj.gov.hk/en/legal_dispute/mediation.html). Looking ahead, the GBA Mediation Platform will be tasked with the drafting of mediation rules applicable to cross-boundary disputes within the GBA. The rules are expected to be endorsed at the fourth Joint Conference to be hosted by Hong Kong in the fourth quarter this year.

As an authoritative platform for high-level exchange and co-operation among the legal departments of the three governments in the GBA to promote mediation work, the GBA Mediation Platform will play a role in laying down mediation standards, but it will not serve as a mediation service provider in the GBA. The various mediation standards promulgated by the GBA Mediation Platform, which set out the fundamental principles and best practices applicable to the GBA for guidance purpose, will be voluntarily adopted and widely used by mediation institutions in the GBA. These standards will also facilitate the establishment of a panel of qualified GBA mediators.

- End -

CONTROLLING OFFICER'S REPLY

SJ010

(Question Serial No. 0201)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (2) Civil

Controlling Officer: Director of Administration and Development (Gracie Foo)

Director of Bureau: Secretary for Justice

Question:

Under Matters Requiring Special Attention in 2022-23, the establishment and implementation of a mediation platform in the Guangdong-Hong Kong-Macao Greater Bay Area (GBA) is mentioned. Please inform this Committee of the following:

What are the manpower and expenditure allocated to the establishment and implementation of the mediation platform in the GBA by the Department of Justice? What is the current progress of the establishment and implementation of the said platform, and when will the effectiveness of the plan be reviewed? What are the specific plans to address the competition from competitors in the region with similar platforms?

Asked by: Hon YUNG Hoi-yan (LegCo internal reference no.: 10)

Reply:

Officers responsible for the establishment and implementation of the Guangdong-Hong Kong-Macao Greater Bay Area (GBA) Mediation Platform also undertake other duties, hence the manpower and expenditure allocated to this area of work cannot be separately identified.

DoJ has been working closely with legal professional bodies and the dispute resolution sector to promote Hong Kong as a regional centre for international legal and dispute resolution services. In furtherance of legal co-operation and promotion of mediation within the GBA, the legal departments of Guangdong, Hong Kong and Macao proposed to establish the GBA Mediation Platform at the first Guangdong-Hong Kong-Macao Bay Area Legal Departments Joint Conference (Joint Conference) in September 2019, and the proposal was officially endorsed at the second Joint Conference in December 2020.

The GBA Mediation Working Group, comprising the representatives of the legal departments of Guangdong, Hong Kong and Macao, was established under the GBA Mediation Platform in August 2021 to support the operation of the platform and the discharge of its functions.

The GBA Mediator Accreditation Standards and the GBA Mediator Code of Conduct Best Practice promulgated by the GBA Mediation Platform were endorsed at the third Joint Conference held on 10 December 2021. The same were officially released and came into effect on 30 December 2021¹. Looking ahead, the GBA Mediation Platform will be tasked with the drafting of mediation rules applicable to cross-boundary disputes within the GBA. The fourth Joint Conference, planned to be held in the fourth quarter this year, will be hosted by Hong Kong.

The Joint Conference is organised by the legal departments of Guangdong, Hong Kong and Macao, with the participation of all three. The Hong Kong side is co-ordinated by the Inclusive Dispute Avoidance and Resolution Office and supported by, inter alia, the Mediation Team. The Hong Kong representatives of the GBA Mediation Working Group, including 1 Deputy Principal Government Counsel, 1 Senior Government Counsel and 1 Government Counsel, serve to support the implementation of the proposals made by the GBA Mediation Platform.

In recent years, with the rapid development of mediation internationally, the opening up and development of the rule of law in the GBA will help Hong Kong consolidate its edge as a regional centre for international legal and dispute resolution services. As an authoritative platform for high-level exchange and co-operation among the legal departments of the three governments in the GBA to promote mediation work, the GBA Mediation Platform will play a role in laying down various mediation standards and principles applicable to the GBA. Under the framework of “one country, two systems, and three jurisdictions”, the mediation standards formulated by the GBA Mediation Platform will be voluntarily adopted and widely used by mediation institutions in the GBA to achieve the goal of interfacing legal rules and mechanisms within the GBA.

- End -

¹ https://www.doj.gov.hk/en/legal_dispute/mediation.html

CONTROLLING OFFICER'S REPLY

SJ011

(Question Serial No. 0202)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (3) Constitutional and Policy Affairs

Controlling Officer: Director of Administration and Development (Gracie Foo)

Director of Bureau: Secretary for Justice

Question:

It is mentioned under Matters Requiring Special Attention in 2022-23 that the Secretary for Justice's Office (including the IDAR Office and the Law Reform Commission Secretariat) and the Constitutional and Policy Affairs Division will continue to explore further opportunities for Hong Kong legal and dispute resolution professionals to provide services in the Mainland. In this connection, please inform this Committee of whether the Department of Justice has set any schedule or phased targets for its plans to explore further opportunities for Hong Kong legal and dispute resolution professionals to provide services in the Mainland, so as to review if the target goals are met. If yes, what are the details? If not, what are the reasons? What has been achieved so far? What are the establishment and expenditure involved in the effort to secure such service opportunities?

Asked by: Hon YUNG Hoi-yan (LegCo internal reference no.: 11)

Reply:

The Department of Justice (DoJ) endeavours to explore further opportunities for local legal and dispute resolution professionals to provide services in the Mainland and has been monitoring the progress of the relevant plans on a regular basis to assess if the target goals are met. In this regard, DoJ maintains regular meetings with the Hong Kong legal profession and stakeholders to review the results of the initiatives implemented and listen to their views. DoJ also reports the latest progress and achievements to the Legislative Council Panel on Administration of Justice and Legal Services (AJLS Panel) in a timely manner. Using last year as an example, relevant reports were made to the AJLS Panel in March, May and August respectively.

Major achievements of the plans

DoJ's major initiatives on exploring further opportunities for local legal and dispute resolution professionals to provide services in the Mainland and the achievements are set out below.

Practising in the Mainland

- (a) Guangdong-Hong Kong-Macao Greater Bay Area (GBA) Legal Professional Examination
- (i) Over 650 Hong Kong legal practitioners enrolled in the inaugural examination which was held on 31 July 2021. The examination results were also released on 30 September the same year. After completing intensive training and passing the assessment by the Guangdong Lawyers Association, Hong Kong solicitors and barristers who passed the examination may apply to the Department of Justice of Guangdong Province for the relevant lawyer's practice certificates and provide legal services in the 9 Mainland municipalities in the GBA on specified civil and commercial matters to which the Mainland laws apply.
 - (ii) The second GBA Legal Professional Examination will be held on 11 June this year in Shenzhen.
- (b) National Unified Legal Professional Qualification Examination
- (i) According to the information provided by the Ministry of Justice (MoJ), since 2004, Hong Kong candidates have been allowed to sit the National Unified Judicial Examination (i.e. predecessor of the National Unified Legal Professional Qualification Examination). From then on until the National Unified Legal Professional Qualification Examination in 2021, a total of 815 Hong Kong candidates have obtained a pass.
 - (ii) As to practising lawyers, according to the information provided by the MoJ, as at August 2021, a total of 191 Hong Kong residents have obtained National Unified Legal Professional Qualification and have been allowed to practise as lawyers in Guangdong Province.

Initiatives for wholly-owned Hong Kong enterprises to adopt Hong Kong law and choose for arbitration to be seated in Hong Kong

To increase development opportunities for Hong Kong's legal and dispute resolution services in the GBA, DoJ has been actively striving to implement in the GBA the initiatives for wholly-owned Hong Kong enterprises (WOKEs) to adopt Hong Kong law and choose for arbitration to be seated in Hong Kong. One of the breakthroughs is the commencement of section 57 of the Regulations of the Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone of the Shenzhen Special Economic Zone in October 2020, which allows WOKEs and other foreign-invested enterprises registered in the Qianhai Cooperation Zone to agree on the choice of applicable law, including Hong Kong law, in their civil and commercial contracts. This adapts the requirement of "foreign-related elements" under Mainland laws in favour of wider use of Hong Kong law by the enterprises in the GBA. It means that this initiative can benefit over 11 500 WOKEs registered in Qianhai and enable wider application of Hong Kong law by the enterprises in Qianhai.

In terms of the choice of the seat of arbitration, DoJ has been seeking to allow parties to a civil and commercial contract to freely agree on the designation of Hong Kong as the seat of arbitration in the dispute resolution clause of the contract where one of the parties is a WOKE registered in the GBA, and such designation clause will not be considered invalid despite the absence of foreign-related elements. The Opinions of the Supreme People's Court on Providing Judicial Guarantee for the Building of Pilot Free Trade Zones published

in January 2017 also demonstrates the feasibility for foreign-invested enterprises (including WOKEs) registered in the pilot free trade zones to choose for arbitration of their contract disputes in a place outside the Mainland (including Hong Kong).

The Plan for Comprehensive Deepening Reform and Opening Up of the Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone expands the total area of the Qianhai Cooperation Zone 8 times. The number of registered WOKEs will definitely be higher than the present number of about 11 500, meaning the number of enterprises that can benefit from the initiative will correspondingly increase, thereby creating more opportunities for the legal and dispute resolution sectors in Hong Kong.

DoJ is actively communicating with the Mainland to explore the possibility of further extending the initiative to allow “WOKEs to adopt Hong Kong law and choose for arbitration to be seated in Hong Kong” to Shenzhen as well as all the 9 Mainland municipalities in the GBA, in order to allow WOKEs to adopt Hong Kong law as applicable law and to choose Hong Kong as the seat of arbitration in the absence of “foreign-related elements”.

Partnership associations

- (a) In September 2014, Hong Kong and Mainland law firms started to set up partnership associations in 3 pilot areas. Since March 2019, partnership associations between Hong Kong and Mainland law firms can be set up in the entire Mainland.
- (b) In August 2019, Guangdong Province implemented further liberalisation measures for partnership associations, including the removal of the minimum capital injection ratio of 30% by Hong Kong partner firms in partnership associations set up between Hong Kong and Mainland law firms, allowing partnership associations to handle and undertake administrative procedure legal work, as well as allowing partnership associations to employ Mainland and Hong Kong lawyers directly in their own name. Since June 2020, the measure to remove the minimum capital injection ratio has been extended to the whole of the Mainland.
- (c) Within the 3 years from August 2020, 28 provinces or municipalities (or regions) including Beijing, Tianjin, Shanghai, etc. have been implementing the Pilot Program for Comprehensively Deepening the Innovative Development of Trade in Services by allowing Mainland lawyers working in partnership associations to handle and undertake administrative procedure legal work to which the Mainland laws apply and partnership associations to employ Mainland and Hong Kong lawyers in their own name.
- (d) As at 14 March 2022, a total of 15 partnership associations have been set up in Guangdong Province, with 6 in Shenzhen, 5 in Zhuhai, 3 in Guangzhou and 1 in Dongguan. According to the information provided by the Department of Justice of Guangdong Province, as at 14 March 2022, 64 Hong Kong lawyers were stationed in and employed by these partnership associations.
- (e) Other than Guangdong Province, areas such as Hainan Province, Hunan Province, Shaanxi Province and Shandong Province have also seen the setting up of partnership associations.

Representative offices in the Mainland

Eligible Hong Kong law firms may apply for establishing representative offices in the Mainland to handle, among other things, Hong Kong legal matters. Hong Kong representatives stationed in the Mainland are not required to reside in the Mainland for a prescribed period of time, thus they can have greater flexibility in attending to their work in both areas. According to the information provided by the Law Society of Hong Kong, as at January 2022, over 70 Hong Kong law firms have established representative offices in the Mainland.

Facilitating legal exchanges between the 2 places

DoJ actively facilitates legal exchanges between the 2 places by signing cooperation and exchange documents with various government departments in the Mainland to foster the integration and professional exchanges between the 2 places. Such efforts include legal projects on exchanges and collaboration launched under the framework arrangement on exchange and mutual learning in legal aspects in the GBA signed with the High People's Court of Guangdong Province in September 2019 and the signing of 4 cooperation arrangements with a number of government departments in the Mainland in July 2021 to foster professional development of the legal sectors in both places and to further promote Hong Kong's legal, dispute resolution and deal-making services. A diversity of activities have also been organised under these arrangements.

Training course for Government Counsel entitled "The Fundamental Principles of Chinese Law"

With the support of the Hong Kong and Macao Affairs Office of the State Council, DoJ has co-organised with Tsinghua University a course entitled "The Fundamental Principles of Chinese Law" for Government Counsel and lawyers in private practice to enhance their knowledge and understanding of the latest national development. The course covers 9 areas, including the Constitution, the Basic Law, the Hong Kong National Security Law, and the national legal and judicial systems, socio-economic conditions and development direction. To date, the course has been conducted thrice (October 2020, and March and November 2021), and over 200 Government Counsel have completed the course. Since November 2021, the course has been open to lawyers in private practice with the first batch totalling 11. DoJ plans to continue to organise the course for Government Counsel and lawyers in private practice.

Furthering legal cooperation with the Mainland in civil and commercial matters

DoJ is committed to furthering legal cooperation with the Mainland in civil and commercial matters to boost the competitiveness of Hong Kong as a regional centre for international legal and dispute resolution, as well as increase business development opportunities for the legal and dispute resolution sectors.

Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region

The Supreme People's Court and the Hong Kong Special Administrative Region (HKSAR) Government signed the *Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region* on 18 January 2019. The *Arrangement* seeks to

establish a more comprehensive mechanism for reciprocal recognition and enforcement of judgments in civil and commercial matters between the two places, thereby reducing the need to re-litigate the same disputes, offering better protection for parties' interests and enhancing Hong Kong's competitiveness as a regional centre for legal and dispute resolution services.

DoJ has formulated a bill for implementing the *Arrangement* and completed a public consultation exercise on the bill in January 2022. The majority of stakeholders indicated support for the bill and some further remarked that they hoped that the bill would take effect as soon as possible. In February 2022, DoJ submitted a paper to the AJLS Panel setting out the key features of the bill and the results of the public consultation. DoJ plans to introduce the bill to the LegCo in the second quarter of 2022 so as to bring the *Arrangement* into operation as soon as possible, thereby enhancing judicial protection for the socio-economic development and the people of both places.

Supplemental Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the Hong Kong Special Administrative Region

DoJ and the Supreme People's Court signed the *Supplemental Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the Hong Kong Special Administrative Region (Supplemental Arrangement)* on 27 November 2020. The *Supplemental Arrangement* can clarify and further refine the enforcement arrangement of arbitral awards between the Mainland and the HKSAR, provide a simple and effective mechanism in both places on reciprocal enforcement of arbitral awards and further foster legal and judicial cooperation in civil and commercial matters. It also facilitates the development of Hong Kong's legal and dispute resolution services in the GBA, thereby promoting coordinated regional economic development and enhancing Hong Kong's status as an international legal hub for legal, deal-making and dispute resolution services.

Mutual recognition and assistance in insolvency and debt restructuring matters

On 14 May 2021, the Supreme People's Court and the HKSAR Government signed the "*Record of Meeting of the Supreme People's Court and the Government of the Hong Kong Special Administrative Region on Mutual Recognition of and Assistance to Bankruptcy (Insolvency) Proceedings between the Courts of the Mainland and of the Hong Kong Special Administrative Region*", which establishes a new cooperation mechanism for cross-boundary corporate insolvency and debt restructuring matters between both places. We understand that since the implementation of the aforementioned cooperation mechanism, there has already been a case in which the Shenzhen Intermediate People's Court, pursuant to the mechanism, recognised Hong Kong insolvency proceedings and the liquidators appointed therein. There have also been 2 cases in which the Hong Kong court recognised orders made by respectively the Hainan High People's Court and the Beijing First Intermediate People's Court in bankruptcy reorganisation procedures and granted assistance to the relevant bankruptcy administrators. DoJ will continue to support practitioners in both places in the implementation of the new cooperation mechanism and the enrichment of their professional experience in this regard, and will pursue further cooperation through the expert group on insolvency matters formed in 2019.

Establishment and expenditure

Support for such Mainland-related plans and work is mainly provided by the China Law Unit under the Constitutional Affairs Sub-Division of the Constitutional and Policy Affairs Division and the Inclusive Dispute Avoidance and Resolution (IDAR) Office under the Secretary for Justice's Office. The establishment and estimated annual expenditure on emoluments of the China Law Unit for 2022-23 are tabulated below:

China Law Unit	
Establishment for 2022-23	Estimated annual expenditure on emoluments for 2022-23 (notional annual mid-point salary)
1 Deputy Principal Government Counsel, 2 Senior Government Counsel (SGC), 3 Government Counsel (GC), 1 Law Clerk (LC), 1 Personal Secretary (PS) I and 2 PSs II	\$10,029,300

The establishment and estimated annual expenditure on emoluments of the IDAR Office for 2022-23, in relation to its involvement in the above work, are tabulated below:

IDAR Office	
Establishment for 2022-23	Estimated annual expenditure on emoluments for 2022-23 (notional annual mid-point salary)
1 Principal Government Counsel, 2 SGC, 1 GC, 1 PS I, 1 LC and 1 Assistant Clerical Officer	\$7,951,380

Note: As the officers of the China Law Unit and the IDAR Office are also responsible for other duties, the manpower/expenditure actually involved in the relevant work cannot be separately identified.

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