A NEW OFFICE TO COORDINATE INCLUSIVE DISPUTE AVOIDANCE AND RESOLUTION INITIATIVES

The Inclusive Dispute Avoidance and Resolution Office (IDAR Office) has been established in DOJ to lead the coordination of initiatives to promote Hong Kong as a leading hub for international legal and dispute resolution services.

Headed by its inaugural Commissioner Dr James Ding, the IDAR Office will capitalize on the opportunities offered by the Belt and Road Initiative and the Guangdong-Hong Kong-Macao Greater Bay Area plan.

By improving access to justice and promoting inclusive growth and sustainable development, the IDAR Office aims to contribute to the United Nations 2030 Sustainable Development Goals, in particular Goal 16, which promotes the rule of law, peace, justice and strong institutions.

“Our rule of law and common law system have together formed a solid foundation for Hong Kong’s status as the leading centre for international legal and dispute resolution services in the Asia-Pacific region. The establishment of the IDAR Office will help better coordinate and implement various initiatives that the Department has been undertaking in the areas of dispute avoidance and resolution.”

Secretary for Justice Teresa Cheng SC in her speech at the Ceremonial Opening of the Legal Year 2019 on 14 January

continued on pages 4 and 5
THE SECRETARY’S ARTICLE ON SPECIAL ECONOMIC ZONES


LEGISLATIVE UPDATES

National Anthem law
The Bill seeks to implement the Law of the People's Republic of China on National Anthem in Hong Kong by way of local legislation in accordance with Article 18 of the Basic Law of the HKSAR of the People's Republic of China.

New retirement age for judges
The Judicial Officers (Extension of Retirement Age) (Amendment) Bill 2019 extends the statutory retirement age for specified judicial officers by five years and allows serving judicial officers to opt for the new retirement age arrangement.

Arbitration can be funded by third parties
Provisions under the Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance 2017 on third party funding of arbitration commenced on 1 February. It is complemented by a Code of Practice on Third Party Funding of Arbitration which provides minimum standards of good practice expected of third party funders and safeguards for funded parties.

Charges for dumping waste
To encourage recycling and reduce waste, the Waste Disposal (Charging for Municipal Solid Waste) (Amendment) Bill 2018 seeks to establish a charging scheme for disposing of the city’s solid waste.

Smoking ban on e-Cigarettes
E-Cigarettes, herbal cigarettes and other alternative smoking products are to be banned in Hong Kong. The Smoking (Public Health) (Amendment) Bill 2019, being scrutinised by LegCo, seeks to prohibit the import, manufacture and sale of the products, and to restrict their use, advertising and promotion.
SECRETARY FOR JUSTICE’S ACTIVITIES
OCTOBER 2018 TO MARCH 2019

Tokyo, Japan, 31 October to 2 November
Visit to Tokyo to speak at the session “From Deal Making to Dispute Resolution: Legal Risk Management for Enterprises in Japan” at the “Think Global, Think Hong Kong” symposium organized by the Hong Kong Trade Development Council. The Secretary met with senior government officials and representatives from legal and business associations in Japan to promote professional exchanges and Hong Kong’s legal services.

Shenzhen, 2 to 3 November
Visit to Shenzhen to give a speech on the topic of “The Contribution of ‘One Country, Two Systems’ to the Sustainable Development of International Commercial Dispute Settlement” at the 3rd Qianhai Legal Intelligence Forum.

Beijing, 24 to 26 February
Visit to Beijing to meet with the Supreme People’s Court and Ministry of Foreign Affairs to discuss matters relating to dispute resolution services in the Guangdong-Hong Kong-Macao Greater Bay Area and Belt and Road related regions.

Bangkok, Thailand, 6 to 7 March
Visit to Bangkok to meet with the President of the Supreme Court of Thailand Cheep Jullamon, and Deputy Prime Minister and Minister of Justice of Thailand Prajin Juntong to explore collaboration opportunities between Hong Kong and Thailand. The Secretary also briefed representatives from the business sector on Hong Kong’s latest developments.

RECIPROCAL RECOGNITION OF CIVIL AND COMMERCIAL JUDGMENTS

Beneficial legal ties between Hong Kong and the Mainland continue to strengthen with the conclusion of a new arrangement on mutual legal assistance in civil and commercial matters, making a total of six arrangements to date. Secretary for Justice Teresa Cheng SC and Vice-President of the Supreme People’s Court Yang Wanming signed the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters between the Courts of the Mainland and of the Hong Kong Special Administrative Region on 18 January in Beijing. The arrangement aims to establish a clear and certain bilateral legal mechanism to recognize and enforce civil and commercial judgments between the two jurisdictions. Implementation in Hong Kong will be by legislation.
Agreements and Promotion

The IDAR Office has undertaken many initiatives since its establishment on 2 January. One has been to pursue and conclude co-operation agreements with other jurisdictions and international organizations. On 9 January, at the Office’s first formal event, Secretary for Justice Teresa Cheng SC and the Minister of Justice of Japan H.E. Takashi Yamashita signed a Memorandum of Co-operation in Hong Kong to strengthen collaboration on international arbitration and mediation.

Next the IDAR Office helped to arrange the signing of very significant legal assistance arrangements with the Mainland. The Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters between the Courts of the Mainland and of the Hong Kong Special Administrative Region was signed on 18 January in Beijing (see p.3 for more).

Other IDAR Office initiatives have been to arrange international meetings and promote DOJ activities widely. Secretary for Justice Teresa Cheng SC, with the support of the IDAR Office, has been active overseas in promoting Hong Kong as a major legal and dispute resolution services centre in the Asia-Pacific region. From 6 to 7 March, she met with Thailand’s President of the Supreme Court Cheep Jullamon as well as Deputy Prime Minister and Minister of Justice Prajin Juntong, where she explored signing memoranda of co-operation with Thailand (see p.3 for more). Similar trips were organized in April for the Secretary to meet counterparts in France and Austria, and the IDAR Office is exploring opportunities to enhance collaboration with the United Nations Commission on International Trade Law (UNCITRAL) by memoranda of arrangements or other means.

Breakthrough in allowing interim measures in the Mainland for HK arbitrations

Another significant agreement in which the IDAR Office was involved was the Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the Hong Kong Special Administrative Region. This was signed on 2 April in Hong Kong.

It is of enormous significance, attracting the following favourable remarks from international experts:

“This is a momentous development in the growth of international commercial arbitration in both [the Mainland] and Hong Kong as it is the first time that such a mechanism has been put in place to allow [Mainland] courts to render interim relief to support arbitrations seated outside of the [Mainland].”

Matthew S. Erie
Associate Professor of Modern Chinese Studies and Fellow at St. Cross College, University of Oxford

“This is a game changer for Hong Kong arbitration and will provide an even stronger incentive to choose Hong Kong as the seat and a Hong Kong arbitral institution such as Hong Kong International Arbitration Centre (HKIAC) in arbitrations involving Mainland Chinese parties. This is another example of Hong Kong being at the cutting edge of arbitral innovation.”

Neil Kaplan CBE, QC, SBS
Honorary Chairperson of HKIAC
“The reason why the IDAR Office uses ‘inclusive’ in its name is to highlight our commitment to facilitate access to justice and provide equitable opportunities—without borders—for people from all walks of life and for all sectors of the economy, in this region and beyond.”

Dr James Ding
Commissioner of the IDAR Office

Events organized or supported by the IDAR Office

The IDAR Office has also assisted in organizing important international events in Hong Kong to provide capacity building and promote international law development.

From 16 to 17 January, DOJ partnered with the United Nations Commission on International Trade Law (UNCITRAL) and the Asian Academy of International Law (AAIL) to organize the Public-Private Partnerships Conference and on 13 February DOJ and AAIL hosted the Investor-State Dispute Settlement (ISDS) Reform Conference—Mapping the Way Forward, attended by world-renowned ISDS experts and representatives from UNCITRAL and the International Centre for Settlement of Investment Disputes.

Shortly after this, from 19 to 22 February, meetings of two Working Groups under the Hague Conference on Private International Law (HCCH) Judgment Project were held in DOJ.

Hong Kong events supported by the IDAR Office included:

- Joint legal seminar by the Asian Infrastructure Bank and the Hong Kong International Arbitration Centre on 21 February
- Global Legal Hackathon–Hong Kong 2019 from 22 to 24 February
- Hong Kong Vis East Moot Annual Lecture on “Interim Measure in Arbitration: Surprise Attack or Offensive Defence?” delivered by Ms Cheng on 31 March.

Overseas events organized by the IDAR Office to raise Hong Kong’s international profile included:

- a capacity-building workshop on online dispute resolution under the Asia-Pacific Economic Cooperation (APEC) in Santiago, Chile from 2 to 3 March
- a seminar promoting Hong Kong’s role as deal maker and dispute resolver on 11 April in Paris, with the Hong Kong International Arbitration Centre and the International Chamber of Commerce.

The IDAR Office will continue to organize, support and encourage events and initiatives in Hong Kong and overseas to further enhance Hong Kong as an ideal hub for deal making and dispute resolution in the region and beyond.
A STANDALONE APPELLATE MECHANISM AS AN OPTION FOR ISDS REFORM: A LECTURE BY SIR CHRISTOPHER GREENWOOD

A number of international forums such as the United Nations Commission on International Trade Law (UNCITRAL) and the International Centre for Settlement of Investment Disputes (ICSID) of the World Bank Group are currently debating the way forward for the reform of investor-State dispute settlement (ISDS).

To contribute meaningfully to the important discussion on ISDS reform, DOJ invited Sir Christopher Greenwood GBE, CMG, QC, current Judge of the Iran–United States Claims Tribunal and former Judge of the International Court of Justice, to give a lecture titled “A Standalone Appellate Mechanism as a Reform Option for ISDS Mechanism” on 21 November 2018. The lecture was attended by government officials of the HKSAR, legal practitioners, representatives of arbitration institutions and academics.

During the lecture, Sir Christopher observed that there were not many successful examples of appellate mechanisms in international courts and tribunals. In particular, a key issue was that sometimes there might not be a real distinction in the quality of adjudication and judgment between the first instance adjudicators and the appellate adjudicators, which raised the question why the judgment of the appellate body should command a higher authority than that of the first instance.

Noting the concerns that had been expressed on ISDS in recent years, Sir Christopher considered that a standalone ISDS appellate mechanism was a reform option that was worth further consideration and it was perhaps a better option than a full-fledged multilateral investment court. Nevertheless, he considered that, to ensure the standards and qualities of the ISDS awards, a standalone ISDS appellate mechanism would only be effective in addressing the issues of inconsistencies and incorrectness if it was widely adopted. Furthermore, he reminded the audience that a standalone appellate mechanism had its own limitations in that it might not be able to address existing concerns over high costs and the duration of ISDS, nor please critics who simply disliked foreign direct investments or perceived ISDS as constituting an infringement of State sovereignty.
Sir Christopher also shared his thoughts on the design of a standalone ISDS appellate mechanism. He considered that the mechanism should not grant automatic rights of appeal and appeal should only be permitted with leave. He said the grounds of appeal should be limited and not be treated as a “re-hearing” of the cases. In this regard, he referred to the example of the English Arbitration Act 1996 which provided for a limited right to appeal on points of law. In addition, Sir Christopher considered that the ISDS appellate mechanism should apply to older generations of investment treaties.

Last but not least, Sir Christopher remarked that the selection and qualification of the adjudicators of the standalone ISDS appellate mechanism were crucial, and the adjudicators should have a good understanding of public international law. Speaking from his experience, he observed that while attracting the right sorts of lawyers with the right sorts of knowledge should be the objective in the composition of the adjudicators of the standalone ISDS appellate mechanism, the nationality of a candidate might often, in reality, be the decisive factor if an election system is adopted.

Judge Liu discussed the implications of the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY) on the contemporary architecture of international criminal justice. In particular, Judge Liu remarked that prior to the establishment of these two pioneering ad hoc tribunals, which were set up in the 1990s to prosecute people responsible for serious international crimes committed during the 1994 genocide in Rwanda and in the armed conflicts in the former Yugoslavia, there was no mechanism for the enforcement of the concept of international humanitarian law.

Judge Liu, who previously served as Vice-President of the ICTY, discussed the tribunals’ profound legacy in ushering in a new era of accountability and in paving the way for the delivery of justice both internationally and in regions ravaged by war. In his talk, he quoted United Nations Secretary General António Guterres speaking at a ceremony for the official closing of the ICTY in December 2017, who said: “The creation of [the ICTY] demonstrated a newfound and serious commitment by the international community that those responsible for perpetrating the most serious crimes of international concern should be held accountable for their actions.”

The ICTY closing ceremony at The Hague marked the symbolic handover of the tribunals’ operations to the International Residual Mechanism which now carries out the essential functions of the tribunals, using procedures developed during the course of their work.

Judge Liu’s talk gave the audience valuable insights into the operation of the two ad hoc tribunals. The tribunals’ responsibilities included tracking and bringing to trial fugitives, protecting witnesses and victims, helping countries seeking to try cases in their own courts, and supervising the enforcement of sentences of the convicted criminals. In more than 24 years of operations, the ICTY handled 10,800 trial days and 4,650 witnesses, and brought to justice each one of its 161 accused.

Judge Liu observed that the United Nations tribunals have greatly enhanced the development of international law and international criminal law, and their jurisprudence has significant influence on the legislation and practice of many States, as well as on other international criminal tribunals. For example, it is widely regarded that the success and credibility of the tribunals owed much to the role of the robust legal defence teams in ensuring the right of the accused to a fair trial.

Judge Liu concluded the talk by noting that the development of international criminal law is a long journey and the work of ICTY and ICTR was a major step on that journey. No doubt, his talk gave attendees a fascinating and insightful glimpse into his vast experience in the international criminal law system.

Judge Liu had a distinguished career in academia and foreign ministry appointments in the PRC before his appointment to the International Residual Mechanism alongside judges from 24 countries.
WEST KOWLOON MEDIATION CENTRE OPENS

Vice-President of the Court of Appeal Mr Justice Johnson Lam (4th from L), Secretary for Justice Teresa Cheng (5th from L), JMHO Chairman Antony Man (6th from L) and Law Officer (Civil Law) Christina Cheung (7th from L) officiating at the opening ceremony pictured with other officials and special guests.

Hong Kong’s first facility dedicated to mediation—the West Kowloon Mediation Centre—opened on 8 November 2018. A Pilot Mediation Scheme launched the same day provides mediation services for a nominal, all-inclusive application fee of $200 to litigants in appropriate cases, including Small Claims Tribunal cases, and is run by the Joint Mediation Helpline Office (JMHO), an independent coordinator appointed by the Government.

The new centre and pilot scheme are significant milestones and evidence the Government’s commitment to promoting the use of mediation and enhancing public awareness of its benefits.

INTERNATIONAL COMMERCIAL MEDIATION COMPETITION

University students competed at Justice Place and the offices of various HK law firms.

The inaugural ICC International Commercial Mediation Competition—Hong Kong held from 12 to 15 October 2018 brought together 16 university teams from eight jurisdictions to be judged in simulated commercial mediation. More than 50 top-notch local and overseas mediators and judges assessed the simulations. After emerging as the winner, the City University of Hong Kong team (Oliver Lam and Jeffrey Chan, 1st and 2nd on L) was funded to compete in February at the ICC Mediation Competition in Paris, the world’s leading mediation competition for university students.
In October 2018, Asia’s first Investment Law and Investor-State Mediator Training took place with the aim of building a team of specialist mediators in Asia to handle investment disputes. The training is DOJ’s latest initiative to develop Hong Kong into a skills training base for investment law and investment dispute resolution. It builds on the investment agreement made under the Mainland and Hong Kong Closer Economic Partnership Arrangement in 2017 which provides for mediation as a means of dispute resolution. DOJ co-organized the training with the International Centre for Settlement of Investment Disputes (ICSID) and the Asian Academy of International Law.

The week-long training comprised an impressive panel of trainers with experts from ICSID and the Centre for Effective Dispute Resolution, as well as experienced practitioners and academics in the field. Participants engaged in investment mediation role play and explored topics such as the fundamentals of investment arbitration and its reform for investor-State dispute settlement, an analysis of main investment treaty cases, and a study of mediation in the context of investor-State disputes.

The training was enthusiastically received by some 50 participants—including government officials from the Mainland, ASEAN countries, the Middle East, Africa, South America and Hong Kong, as well as local and overseas dispute resolution practitioners—who greatly appreciated the professional exchange. DOJ expects to organize similar training going forward.
LATEST EFFORTS IN PROMOTING LEGAL BILINGUALISM

Legal bilingualism is a fundamental feature of our legal system and the Law Drafting Division strives to enhance the reader-friendliness of HKSAR's bilingual statute book.

Deputy Law Draftsman (DLD) Fanny Ip and Acting DLD Lawrence Peng visited the Office of Legislative Counsel of Ontario and the Legislative Services Branch of the Department of Justice of Canada in November 2018 to learn more about the Canadian bilingual co-drafting process. There the Anglophone and Francophone drafters work as a team to draft the proposed legislation in English and French simultaneously on the instructions of Anglophone and Francophone policy officers during drafting sessions in specially designed 4-screen drafting rooms.

“We observed a number of initiatives in the Canadian bilingual drafting process that are worth exploring in our drive to improve the quality of our bilingual drafting,” Lawrence Peng said.

One of these was the use of computer software to assist drafting counsel in preparing the most basic or mechanical aspects of bilingual drafts of legislation more efficiently and effectively. Another was for the Chinese and English drafts to be prepared independently with frequent moderation.

Also, in November 2018 and January, as part of the continuing professional development for all counsel in the division, the First Legislative Counsel of the Office of the Legislative Counsel in Wales Dylan Hughes and the Chief Legislative Counsel of the Ontario Office of Legislative Counsel Mark Spakowski were respectively invited to the division to share their experience and the challenges their jurisdictions face in drafting legislation bilingually.

DOJ is not only focusing on enhancing the quality of Hong Kong’s bilingual legislation. For some time, DOJ has been working on the development of Combined English-Chinese and Chinese-English Glossaries of Legal Terms, with a view to publishing the glossaries for public use from Q4 of 2020. The electronic glossaries will contain entries from all DOJ divisions, link to legislative examples and be easily searchable. In March, the project’s Editorial Board launched an enhanced internal prototype to seek users’ feedback on IT and editorial aspects that will guide the development of the final version for public release. The Editorial Board consists of representatives from DOJ Divisions. They are (pictured L to R) Acting Senior Government Counsel Grace Wu, Senior Law Translation Officer Janet Yau, Senior Government Counsel Angela Ho, Senior Assistant Law Draftsman Monica Law, DLD Fanny Ip (Chairperson), Government Counsel Wallace Ng, Senior Law Translation Officer Kelvin Fung, Law Clerk Ida Leung, Acting Senior Government Counsel Queenie Ho and Senior Government Counsel Sze Yick Suen (absent).
Clarity 2018 was the largest conference yet for plain-language organization Clarity International, with over 500 lawyers, judges and communication experts convening in Montreal from 25 to 27 October 2018 to discuss latest thinking in how to communicate clearly in legal documents.

Eamonn Moran QC, the then president of Clarity International and former Hong Kong Law Draftsman, gave opening and closing speeches at the bilingual event. The conference, which comprised 70 workshops and roundtable discussions, was also attended by Elizabeth Grindey, Legislative Editor of the Law Drafting Division.

According to conference speakers, plain language is now considered to be best practice in legal communications with the public because empirical evidence has proven that it saves money for organizations and that people overwhelmingly prefer it.

A communication is in plain language if its wording, structure and design are so clear that the intended audience can easily find what they need, understand what they find, and use that information.

International Plain Language Federation’s definition of plain language

In fact, new data shows that the preference for plain language increases with a person’s education level, according to law Professor Christopher Trudeau of the University of Arkansas who presented the results of his survey The Public Speaks, Again: An International Study of Legal Communication. “This debunks the argument that higher-educated people will not mind traditional legal language as much as others do,” said Professor Trudeau.

The survey results showed that no matter what sector—law, government, business, or healthcare—for lawyers and non-lawyers who had to interpret legal information frequently in their work, reading plain-language legal documents made their work more efficient, while reading traditionally drafted legal documents hurt workplace productivity.
User-testing was consistently upheld by presenters to be the key to measuring how well a document could be understood.

Mr Moran noted that plain language is at the forefront of many excellent initiatives to improve access to justice and create a fairer, more transparent legal system. It was reported by the large number of Canadian judges present—including Chief Justice Richard Wagner of the Supreme Court of Canada—that the International Union of Judicial Officers, comprising over 90 countries, now recommends that judgments be drafted in plain language as much as possible, with a short summary of key facts and findings of the case.

Increasingly, the responsibility to clearly communicate the law is being taken up by legal practitioners, who are being trained to write in a contemporary, inclusive and user-friendly style.

The mantra “be short, be simple, be human”, originally proposed by author Ernest Gowers in the 1940s, remains highly relevant today. Gowers was among the first to encourage writers and civil servants to use plain English, writing in his guide Plain Words: “I have suggested certain elementary rules—be short, be simple, be human—for officials to follow in the duties that I have described as ‘explaining the law to the millions’.”

There were also presentations on initiatives to make US civil servants more accountable. Communication expert Susan Kleimann (pictured L) spoke about the “Federal Report Card” she helped devise to grade US government agencies on their language use. Following the 2010 Plain Writing Act, all federal agencies are required to use plain language when communicating with the public, but the requirement lacks enforcement. The annual report card, which receives top media attention, holds the agencies accountable.

At the conference’s conclusion, an initiative to create an international plain language Standard was announced by Annetta Cheek and Christopher Balmford of the International Plain Language Federation (pictured 2nd and 3rd from L). With an initial application already in progress at Standards Australia, the goal is to establish a standard that works in all languages and can inform clear communications everywhere. The DOJ will monitor this development with a view to supporting the future adoption of a plain language standard for Hong Kong.

“We must extend the right of every citizen to be heard to the right to understand their rights and obligations.”

Nathalie Drouin
Deputy Minister of Justice and Deputy Attorney General of Canada
DOJ’S GLOBAL CONNECTIONS — OCTOBER 2018 TO MARCH 2019

*N Secretary for Justice’s activities (see p.3)

Source of map: https://ui-ex.com/explore/svg-map-open-source-world/
Nanjing, 8-13 October
National Studies Programme at Nanjing University (see p.16 for more).

Paris, France
15-19 October
Acting Deputy Director of Public Prosecutions Maggie Yang attended the Financial Action Task Force (FATF) plenary and working group meetings where delegates were briefed on updated financing methods employed by ISIL, Al Qaeda and its affiliates. The plenary also approved a report on disrupting the financial flows on which terrorists rely.

17-22 February
Deputy Director of Public Prosecutions William Tam SC and Acting Senior Assistant Director of Public Prosecutions Denise Chan attended FATF’s first plenary and working group meetings of 2019. The issues dealt with included strengthening the governance and accountability of the FATF and strategic initiatives such as mitigating risks from virtual assets and combating the financing of terrorism. FATF holds plenary and working group meetings three times a year.

Shanghai, 22 October-2 November
Attachment of Senior Government Counsel Vickie Man of Civil Division to the Shanghai Bureau of Justice (see p.16 for more).

Montreal, Canada, 25-27 October
Clarity 2018 conference on Plain Language in Modern Times attended by Legislative Editor Elizabeth Grindey of Law Drafting Division (see pp.12-13 for more).

Jakarta, Indonesia, 12-15 November
Senior Public Prosecutor Jasmine Ching and Acting Senior Public Prosecutor Fergus Chau shared Hong Kong’s perspective on fighting the illicit drug trade and met with Indonesia’s Attorney General at the Integrated Training of Prosecutors, Military Prosecutors, Police/National Narcotics Board Investigators and Prosecutors from Thailand, Russia, Singapore, Hong Kong, Malaysia and Australia on Handling Cross-Border Narcotics Crimes.

London, UK, 12-23 November
Middle Temple Advocacy Training Course attended by Acting Senior Public Prosecutors Marcus Lee and Andy Lo and Public Prosecutor Ivan Shiu.

Nairobi, Kenya, 19-21 November
Senior Public Prosecutor Jonathan Lin attended the Wildlife Inter-Regional Enforcement Meeting organized by the United Nations Offices on Drugs and Crime to explore how states perceived threats by environmental crimes and to improve regional and inter-regional law enforcement co-operation.

Beijing
18-23 November
6th Mainland Legal Studies Course for HKSAR Counsel (see p.16 for more).

23-25 January
Visit to the Supreme People’s Court and the Ministry of Justice led by Senior Assistant Director of Public Prosecutions Derek Lai with representatives from all five legal divisions of DOJ. The delegation also visited the Beijing Intellectual Property Court, Beijing Internet Court and China Court Museum.

Ontario, Canada, 23-28 November
Deputy Law Draftsman Fanny Ip and Acting Deputy Law Draftsman Lawrence Peng visited bilingual legislative drafting offices in Toronto and Ottawa (see p.11 for more).

Macao, 3 January
Senior Public Prosecutor Betty Fu attended a seminar on The Criminal Prosecutorial System in Hong Kong.

Carolina, Puerto Rico, 17-18 January
Senior Public Prosecutors Andrew Li and Chan Sze Yan attended the Global Conference on Human Trafficking organized by the National Attorney General Training and Research Institution in collaboration with the International Association of Prosecutors. The focus of the conference, attended by prosecutors, law enforcement agencies and government officials worldwide, was on practical investigative and prosecutorial techniques in light of current and emerging issues and trends.

Tokyo, Japan, 27 February-1 March
The 6th Asia Pacific Regional Forum Biennial Conference, organized by the International Bar Association, was attended by Senior Government Counsel Alyssa Lau and Cindy Tang of Civil Division and Senior Assistant Solicitor General Peggy Au-Yeung of Legal Policy Division. Themed Unified Asia, the event covered arbitration, mediation, human rights, litigation and international trade.

The Hague, the Netherlands, 5-8 March
Deputy Law Officer Peter Wong and Acting Deputy Principal Government Counsel Lorraine Chan of the Treaties and Law Unit of the International Law Division attended the Meeting of the Council on General Affairs and Policy of the Hague Conference on Private International Law.

Guangzhou, 22 March
Visit to Guangzhou Court of the Internet, organized by the Liaison Office of the Central People’s Government and attended by 19 counsel from all five legal divisions of DOJ.
PROFESSIONAL DEVELOPMENT — PROGRAMMES OUTSIDE HONG KONG

HKSAR Counsel attend 6th Mainland Legal Studies Course in Beijing

The 6th Mainland Legal Studies Course for HKSAR Counsel from 18 to 23 November 2018 in Beijing was attended by 22 counsel from the DOJ, Official Receiver’s Office, Companies Registry, Lands Department, Lands Registry, LegCo Secretariat, Legal Aid Department and Intellectual Property Department. Organized by the Liaison Office of the Central People’s Government, the course consisted of seminars at the Chinese Academy for Governance and visits to the Supreme People’s Court, HKSAR Basic Law Committee of the National People’s Congress, and Hong Kong and Macao Affairs Office of the State Council.

National Studies Programme at Nanjing University

Acting Senior Government Counsel Katherine Chan of Civil Division (pictured 2nd row, 5th from R) attended the National Studies Programme at Nanjing University from 8 to 13 October 2018. The programme covered the latest socio-economic and political developments in the Mainland, with special focus on the Belt and Road initiative, and included visits within Nanjing to the Imperial Examination Museum, Confucius Temple and High Speed Railway train factory.

Shanghai Bureau of Justice attachment

Senior Government Counsel Vickie Man (pictured L) of Civil Division was attached to the Shanghai Bureau of Justice from 22 October to 2 November 2018, where she observed the legal system and judicial administration in Shanghai and shared her experience of Hong Kong. Ms Man exchanged views with officials, lawyers and judges on judicial review, environmental protection, dispute resolution and mediation and arbitration in Hong Kong. She also visited the Shanghai People’s Procuratorate, Shanghai Higher People’s Court, Shanghai International Arbitration Center, Tilanqiao Prison and a drug rehabilitation centre.
PROFESSIONAL DEVELOPMENT — JUSTICE PLACE TALKS

Talk on the latest development in international law

Then Director-General Dr Xu Hong of the Department of Treaty and Law of the Ministry of Foreign Affairs of the PRC, delivered an insightful lecture on the latest developments in major international law issues on 26 November 2018.

Dr Xu Hong (4th from L) and Secretary for Justice (5th from L)

Talk on special needs trust

Professor Lusina Ho, Harold Hsiao-Wo Lee Professor in Trust and Equity of the University of Hong Kong gave a talk on “Special Needs Trust” on 9 November 2018, in which she introduced the concepts of private family trusts and shared her experience and insights with reference to real-life examples. The talk also examined the key features of a special needs trust to be set up by the Government for the benefit of persons with special needs (e.g. children with intellectual disabilities) and the likely challenges ahead.

Talk on developments in company law

Dr Stefan Lo, Acting Senior Assistant Law Officer of Civil Division, gave a talk on Recent Legislative and Case Law Developments in Company Law on 29 November 2018, providing an overview of recent amendments to the companies legislation relating to the winding up of companies and to the new requirements for companies to maintain a significant controllers register. He also discussed recent case law dealing with the corporate veil and parent company liabilities, directors’ liabilities and corporate attribution, and shareholders’ rights and remedies.

Civil Division in-house briefings

As part of its commitment to continuing legal education, Civil Division hosts monthly in-house briefings to broaden the legal knowledge and exposure of its counsel and enhance their career development with emphasis on a series of practical subjects. From January to March, six briefing sessions, each given by two in-house counsel, were held on Public Interest Immunity, Overseas Admissions, Construction Arbitrations, Adverse Possession, Disclosure of Information and Part II of the Mental Health Ordinance.

Each briefing begins with an overview of relevant legal principles, discusses latest practice and procedure in handling the subject, and ends with Q&A.
STAFF NEWS

COMINGS AND GOINGS AT ADMINISTRATION AND DEVELOPMENT DIVISION

Selene Tsoi (3rd row, 1st on L) joined as the new Deputy Director (Special Duties) to replace Apollonia Liu who left DOJ for the Security Bureau in December 2018.

DOJ colleagues said farewell to Alan Siu (centre) as Director of Administration & Development in April.

Becky Hung (seated on 2nd L), the secretary of the Newsletter Editorial Board, was posted to the Civil Service Bureau in December 2018 and DOJ welcomed Patricia Yeung (seated on 1st L) as the new secretary.

Alan Siu and Secretary for Justice Becky Hung (seated on 2nd L), the secretary of the Newsletter Editorial Board, was posted to the Civil Service Bureau in December 2018 and DOJ welcomed Patricia Yeung (seated on 1st L) as the new secretary.

Alan Siu and Gracie Foo, the new Director of Administration & Development.
STAFF ACTIVITIES

The winning performer Lucas Lai at the DOJ Christmas Dinner and Revue 2018 with Secretary for Justice

Rayne Chai (1st on L) organised Chinese New Year playgroup for Law Drafting Division colleagues

DOJ Staff Club president Peter Sze (1st on L) with DOJ heads raised a toast at the Spring Dinner
STAFF ACTIVITIES (CONTINUED)

Secretary for Justice joined new Government Counsel and Legal Trainees for Hong Kong Government Counsel Association Welcoming Drinks on 8 March

CORPORATE GAMES 2018

The DOJ basketball team, comprising 18 of our most athletic and tallest (up to 192 cm!) colleagues, proudly represents the Department in basketball competitions around Hong Kong. Last year, it took part in the Corporate Games 2018 with Director of Public Prosecutions David Leung SC and Senior Assistant Director of Public Prosecutions Eddie Sean cheer-leading its first match (pictured above). A friendly game with the Law Society of Hong Kong team was also organized and the team looks forward to this becoming a regular event. The team would also like to thank its sponsors—the Directorate Officers, Staff Club and HK Government Counsel Association—for their greatly appreciated support.

DOJ colleagues competing with the Law Society of Hong Kong in a friendly game
Kenny Chan joined DOJ as Assistant Librarian at Justice Place in January. He is pictured here at the State Library Victoria in Melbourne, Australia.

What inspires you most about your work?
Using the skills I learned in public libraries to help colleagues find what they need.

How do you like to relax?
Brewing and drinking tea relaxes me, especially when served in beautiful tea sets.

If you could time travel, when and where would you go?
I enjoyed studying history at school and wish I could go back to the Tang dynasty to experience the exotic culture of that time.

What do you consider is the best advice you’ve ever been given?
Never fail to do an act of kindness however small.

What is your most treasured possession?
Overseas postcards sent by my friends and by myself. Among them, I treasure a pair of postcards from Singapore. I sent one when I visited Singapore as a child. That was the first time I travelled by plane with my family. After 25 years, I mailed another postcard from the same place in Singapore! It’s interesting to see how I’ve changed by comparing the two postcards.

Vennis Cheung is a senior personal secretary in Civil Division where she has worked for almost 25 years. She is pictured here at Frederiksborg Castle in Denmark.

What inspires you most about your work?
Recognizing what has been achieved through legal support to the Government in important matters. I have also learnt a great deal from working with lawyers from diverse cultural backgrounds and maintained friendships with colleagues, old and new.

How do you like to relax?
I sometimes go out with friends after work. I enjoy the chit chat and catching up on their news and try to do so once a week—although there may be some last-minute cancellations!

If you could time travel, when and where would you go?
I would love to travel back in time with my whole family to places where we never went before in the world so long as we could be together and have fun. This is what family time is about.

What do you consider is the best advice you’ve ever been given?
Do not be afraid of work challenges as we have many helpful and experienced colleagues who stand ready to help.

What is your most treasured possession?
I love spending time with my sister’s seven-month old baby Ho Ho (皓皓). He is a bundle of joy and reminds me a lot of my Dad who left us two years ago.
ALERT — Calendar of Legal and Dispute Resolution Events
A year-round calendar of key professional development and networking events is now available at https://www.legalhub.gov.hk/eng/events.html

KEY FIGURES AND STATISTICS 2018

STAFF ESTABLISHMENT (as at 31 December 2018)

<table>
<thead>
<tr>
<th>DIVISION</th>
<th>DIRECTORATE</th>
<th>NON-DIRECTORATE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Government Counsel</td>
<td>Other Staff</td>
</tr>
<tr>
<td>Secretary for Justice's Office</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>Civil Division</td>
<td>24+1*</td>
<td>-</td>
</tr>
<tr>
<td>International Law Division</td>
<td>8</td>
<td>-</td>
</tr>
<tr>
<td>Law Drafting Division</td>
<td>15+1*</td>
<td>-</td>
</tr>
<tr>
<td>Legal Policy Division</td>
<td>11</td>
<td>-</td>
</tr>
<tr>
<td>Prosecutions Division</td>
<td>27</td>
<td>-</td>
</tr>
<tr>
<td>Administration &amp; Development Division</td>
<td>-</td>
<td>4</td>
</tr>
<tr>
<td><strong>Sub-total</strong></td>
<td><strong>85+2</strong>*</td>
<td><strong>5</strong></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>90+2</strong>*</td>
<td></td>
</tr>
</tbody>
</table>

* Court Prosecutors, Law Translation Officers and Law Clerks
* Supernumerary posts

PERFORMANCE INDICATORS

<table>
<thead>
<tr>
<th>CIVIL DIVISION</th>
<th>2017</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of pieces of legal advice given</td>
<td>15 387</td>
<td>15 587</td>
</tr>
<tr>
<td>Number of contracts, tenders and other legal documents drafted / vetted</td>
<td>692</td>
<td>828</td>
</tr>
<tr>
<td>Total number of current civil litigation cases</td>
<td>36 778</td>
<td>38 193</td>
</tr>
<tr>
<td>Number of civil proceedings instituted by government</td>
<td>1 582</td>
<td>1 614</td>
</tr>
<tr>
<td>Number of civil proceedings instituted against government</td>
<td>1 707</td>
<td>2 174</td>
</tr>
<tr>
<td>Civil litigation cases with hearing(s) at all levels of court</td>
<td>2 063</td>
<td>2 489</td>
</tr>
<tr>
<td>(a) Court of Final Appeal</td>
<td>36</td>
<td>12</td>
</tr>
<tr>
<td>(b) Court of Appeal</td>
<td>28</td>
<td>188</td>
</tr>
<tr>
<td>(c) Court of First Instance</td>
<td>311</td>
<td>257</td>
</tr>
<tr>
<td>(d) Other Courts, Tribunals, Council and Boards</td>
<td>1 688</td>
<td>2 032</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>INTERNATIONAL LAW DIVISION</th>
<th>2017</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of international agreements initialled</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Number of pieces of legal advice provided</td>
<td>19 821</td>
<td>25 271</td>
</tr>
<tr>
<td>Number of new requests dealt with in various categories of mutual legal assistance</td>
<td>490</td>
<td>542</td>
</tr>
</tbody>
</table>
### LAW DRAFTING DIVISION

<table>
<thead>
<tr>
<th>Category</th>
<th>2017</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of pieces of legal advice given</td>
<td>5,283</td>
<td>5,776</td>
</tr>
<tr>
<td>Number of Bills gazetted</td>
<td>30</td>
<td>28</td>
</tr>
<tr>
<td>Number of pages of bilingual text (as gazetted)</td>
<td>3,068</td>
<td>2,362</td>
</tr>
<tr>
<td>Number of pieces of subsidiary legislation</td>
<td>187</td>
<td>269</td>
</tr>
<tr>
<td>Number of pages of bilingual text (as gazetted)</td>
<td>5,502</td>
<td>6,492</td>
</tr>
<tr>
<td>Number of Ordinances enacted</td>
<td>12</td>
<td>37</td>
</tr>
<tr>
<td>Number of pages of bilingual text of Committee Stage Amendments incorporated into Ordinances</td>
<td>61</td>
<td>193</td>
</tr>
</tbody>
</table>

### LEGAL POLICY DIVISION

<table>
<thead>
<tr>
<th>Category</th>
<th>2017</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of pieces of legal advice (including legal policy work) given</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Overall legal policy matters</td>
<td>2,525</td>
<td>4,241</td>
</tr>
<tr>
<td>Basic Law matters</td>
<td>1,535</td>
<td>1,762</td>
</tr>
<tr>
<td>Human rights issues</td>
<td>897</td>
<td>1,153</td>
</tr>
<tr>
<td>Constitutional development and election matters</td>
<td>572</td>
<td>797</td>
</tr>
<tr>
<td>Mainland law and related matters</td>
<td>561*</td>
<td>861</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>6,090</strong></td>
<td><strong>8,814</strong></td>
</tr>
</tbody>
</table>

* This figure for 2017 did not include legal policy work.

### PROSECUTIONS DIVISION

<table>
<thead>
<tr>
<th>Category</th>
<th>2017</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of pieces of legal advice given</td>
<td>13,790</td>
<td>13,105</td>
</tr>
<tr>
<td>Criminal cases with hearing(s) at all levels of court</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) Court of Final Appeal: appeals concluded</td>
<td>101</td>
<td>148</td>
</tr>
<tr>
<td>(b) Court of Appeal: appeals heard</td>
<td>380</td>
<td>382</td>
</tr>
<tr>
<td>(c) Court of First Instance (Magistracy Appeals): appeals heard</td>
<td>620</td>
<td>532</td>
</tr>
<tr>
<td>(d) Court of First Instance: indictments</td>
<td>156</td>
<td>140</td>
</tr>
<tr>
<td>(e) District Court: charge sheets</td>
<td>1,157</td>
<td>1,183</td>
</tr>
<tr>
<td>(f) Magistrates Court: applications for review under section 104 of the Magistrates Ordinance (Cap 227)</td>
<td>20</td>
<td>27</td>
</tr>
<tr>
<td>Caseload of Court Prosecutors</td>
<td>150,387</td>
<td>146,352</td>
</tr>
<tr>
<td>Percentage of criminal cases conducted in Chinese</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) Court of Final Appeal and related applications</td>
<td>92.9%</td>
<td>80.7%</td>
</tr>
<tr>
<td>(b) Court of Appeal</td>
<td>40.3%</td>
<td>36.7%</td>
</tr>
<tr>
<td>(c) Court of First Instance (Magistracy appeals)</td>
<td>77.3%</td>
<td>74.8%</td>
</tr>
<tr>
<td>(d) Court of First Instance</td>
<td>30.4%</td>
<td>28.6%</td>
</tr>
<tr>
<td>(e) District Court</td>
<td>73.6%</td>
<td>75.3%</td>
</tr>
<tr>
<td>(f) Magistrates' Courts</td>
<td>84.5%</td>
<td>79.5%</td>
</tr>
</tbody>
</table>
### NOTABLE JUDICIAL DECISIONS INVOLVING THE GOVERNMENT

Listed below are notable judicial decisions from October 2018 to March 2019 in cases involving the Government. These cases either involve important or significant legal principles or issues of public interest, or are of general interest to the community. Links to these decisions in the Judiciary website can be found in the e-version of this Newsletter at [http://www.doj.gov.hk/eng/public/pdf/2019/newsletter01_e.pdf](http://www.doj.gov.hk/eng/public/pdf/2019/newsletter01_e.pdf)

<table>
<thead>
<tr>
<th>Case Number</th>
<th>Case Name (Subject Matter Involved)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>CRIMINAL CASES</strong></td>
<td></td>
</tr>
<tr>
<td>1. <strong>FACC 20/2018</strong></td>
<td>HKSAR v. CHU TSUN WAI (Misuse of computer)</td>
</tr>
<tr>
<td>2. <strong>CACC 237/2015</strong></td>
<td>HKSAR v. YU LIK WAI WILLIAM &amp; Another (Interception of Communications and Surveillance Ordinance)</td>
</tr>
<tr>
<td>3. <strong>FACC 19/2018</strong></td>
<td>HKSAR v. SHUM WAI KEE (False declaration)</td>
</tr>
<tr>
<td>4. <strong>FACC 18/2018</strong></td>
<td>HKSAR v. CHAN CHI HO LINCOLN (Reversal of guilty plea)</td>
</tr>
<tr>
<td>5. <strong>FACC 16/2018</strong></td>
<td>HKSAR v. SO PING CHI (Misconduct in public office)</td>
</tr>
<tr>
<td>6. <strong>CACC 186/2016</strong></td>
<td>HKSAR v. LAI CHUN HO (Gross negligence manslaughter)</td>
</tr>
<tr>
<td>7. <strong>FACC 16/2018</strong></td>
<td>HKSAR v. SPECIAL VIEW LIMITED (Fish farm licence)</td>
</tr>
</tbody>
</table>

| **CIVIL CASES** |                                      |
| 1. **HCB 11341/2002** | RE LEUNG KWAN TSAN KELVIN (Constitutionality of s.85(5) of the Education Ordinance, Cap. 279) |
| 2. **HCIA 1/2017** | KOO MING KOWN AND ANOTHER v. THE COMMISSIONER OF INLAND REVENUE (Additional tax against an agent of a corporate taxpayer) |

| **JUDICIAL REVIEW CASES** |                                      |
| 1. **CAVC 200-201/2017** | SECRETARY FOR JUSTICE v. LEUNG KWOK HUNG; CHIEF EXECUTIVE OF THE HKSAR & SECRETARY FOR JUSTICE v. CLERK TO THE LEGISLATIVE COUNCIL AND LEUNG KWOK HUNG (Legislative Council Oath-taking Validity) |

*The summaries of judicial decisions contained in this section are prepared by the Department of Justice (DoJ) based on DoJ's own interpretation and understanding of the decisions of the courts concerned. The summaries are not legal advice and should not be relied upon by anyone as such. The summaries have no legal effect and are not intended to be cited as authorities of any kind. To fully understand the legal effect of the courts' decisions, the whole judgments of the courts concerned should be looked at.*

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**Department of Justice**

G/F, Main Wing, Justice Place, 18 Lower Albert Road, Central, Hong Kong

Phone: (852) 2867 2198; Fax: (852) 3918 4249; E-mail: dojinfo@doj.gov.hk; Website: [https://www.doj.gov.hk](https://www.doj.gov.hk)

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