



GOVERNMENT BUDGET 2018-19

LAW SOCIETY SUBMISSION

SYNOPSIS

1. In respect of the Government Budget 2018-19, The Law Society of Hong Kong makes the following proposals.
2. The proposals below aim to further improve access to justice for Hong Kong in various areas, viz. family law, intellectual property, insolvency law and revenue law.
3. In the following paragraphs, we have identified the issues of concerns and set out our recommendations. Additionally, we consider that, with a huge financial surplus, the Administration should comfortably revisit the terms of appointment for judges and judicial officers. This would help attract and retain talents, thereby maintain a robust and strong Judiciary for Hong Kong.

RECOMMENDATIONS

FAMILY LAW

4. The recent spate of child abuse incidents (including the tragic death of the five-year old girl Chan Sui Lam) speaks volume of the problems faced by children of Hong Kong. These sad cases of child abuses demonstrate the problems of domestic violence, child neglects, as well as the lack of cohesive and effective legal and community resources to help children and families in need.

5. Attempts to address the above problems will require appropriate policies to be implemented and adequate resources to be made available. The Administration should consider allocation of resources to the following:
- (a) re-housing arrangements for separated families in public housing. This is relevant and important in response to the Children Proceedings (Parental Responsibility) Bill, the enactment of which is long overdue. Hong Kong is desperately in need of modernizing our child law in order to properly recognize the rights of a child and responsibility of parents, and changing outdated terminology and orders, to include, inter alia, introducing a range of new court orders (e.g. Child Arrangements Orders) to replace the existing custody and access orders;
 - (b) deployments of additional manpower to streamline and coordinate efforts, whether preventive or remedial, in combating child abuses (for example, for Multi-Disciplinary Case Conferences in child abuse cases);
 - (c) deployment of support services to separated families to facilitate contact with both parents, receipt of spousal or child maintenance, public education of children's rights and parental responsibility; and
 - (d) resources allocation for the Legal Aid Department (LAD) in its oversight of legal aid assignments for the purpose of the Domestic and Cohabitation Relationships Violence Ordinance (Cap 189) and related matters. It is important that after all, the Department should be more prepared to and be pro-active to process and to grant (if appropriate) emergency domestic violence injunctions.

On resources allocation to matrimonial cases by the LAD, we take note of a trend on decreasing departmental expenditures spent on matrimonial cases (as a share of the overall government budget) despite the yearly increase of divorce petitions. The following table is compiled from various annual reports of the LAD¹ showing the share of the expenditure of matrimonial cases in the departmental budgets in various years.

¹ See: http://www.lad.gov.hk/documents/annual_rpt_2013/eng/pdf_eng/2013_Eng.pdf
http://www.lad.gov.hk/documents/annual_rpt_2014/eng/pdf_eng/2014_Eng.pdf
http://www.lad.gov.hk/documents/annual_rpt_2015/eng/pdf_eng/2015_Eng.pdf

Table 1

Analysis of Expenditure for Civil Cases by Types of Cases

Years	2012-13	2013-14	2014-15	2015-16
Type of Cases: Matrimonial (expressed as % of the overall department budget)	21.2%	19.1%	16.5%	16.1%

On this point, we notice with concern that there has been no significant increase in the LAD budgets in the past few years. We have similarly compiled a table from the various annual reports of the LAD²:

Table 2

Expenditures of the LAD

Years	2012-13	2013-14	2014-15	2015-16
Total Expenditures (\$M)	771.0	841.5	849.1	860.5

We ask the Administration to take full note of the above trends and deploy resources accordingly.

6. Enforcement of matrimonial judgments and orders is another challenge for parties and practitioners. The Family Law Committee of the Law Society is now revisiting a proposal to set up a Maintenance Board for Hong Kong. We ask the Administration to take advance notice of the above proposal, and its financial implications. Resources will be required by the Administration to set up any organization to practically assist recipients in enforcing such orders.
7. We note enforcement of matrimonial orders often include a cross-border

² See the references in footnote 1 above

dimension. In this regard, we welcome the signing of the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil Matrimonial and Family Cases by the Courts of Mainland and of the HKSAR last year. As a result, we expect increases in applications for and the disposal of the reciprocal enforcement of judgments by the courts. The Administration should consider resources implications arising therefrom.

8. We also seek resources to improve the services of our family courts. Members of our Family Law Committee have advised that it is not uncommon for parties to wait months to obtain a time slot for a simple directions hearing, or to deal with urgent matters such as interim child arrangements or interim financial support. Such long period of waiting time creates additional burdens on the parties who are already emotionally vulnerable and are often in distress. The effect of such delays is intolerable when it comes to children's matters where the child's welfare deserves a prompt resolution. We need additional suitably experienced family judges to deal with the heavy caseload of our Family Court.
9. The family court services should at the same time be improved at the registry or the counter-levels. In this regard, the Family Law Committee is made aware of a worrying problem of non-professionals touting matrimonial cases at the reception areas of the Family Courts. These non-professionals in the counter area are offering to "help" unrepresented parties with their proceedings. They try to explain the legal procedures and help fill in forms. The touts are not legally trained and are not subject to any disciplinary codes. They offer their service (usually in the guise of a counselor or a consultancy firm) in return for a fee. This is unacceptable. Furthermore, when the court forms are incorrectly filled in or proper procedures are not followed, court hearings would need to be adjourned. More manpower should be devoted at the counters of family courts to combat this problem of unethical touting.
10. In respect of judiciary hierarchy, we ask the Administration to take note of the important, sensitive and ever increasing workload of the Family Court. This distinct area of law dealing with the most vulnerable members of our society, namely the children of Hong Kong, and litigating parties who are placed at what is often the most difficult time of their lives, requires specialist attention and calls for its own set of rules and procedures. The above calls for a serious consideration of the setting up of a unified / single Family Court in Hong Kong. We will later write to the Bureau and/or the Judiciary with

detailed proposal on the above. At this juncture of time, the Administration's attention should be drawn to this repeated request.

INTELLECTUAL PROPERTY

11. Our Intellectual Property Committee is considering a similar proposal to have an "IP list" or an "IP court" with "IP judges" who are familiar with the intellectual property law and practices. The IP list or IP Court is dedicated to the hearing of IP cases. We will later revert with a full submission on this intended proposal. At this moment, we ask the Administration to take due notice of the above and any resources and manpower implications possibly arising therefrom.

INSOLVENCY LAW

12. There is an urgent need to reform the insolvency law regime for Hong Kong. The reform is long overdue, notwithstanding requests repeated time and again from practitioners and the market. For one thing, the current regime could not meet the growing demands for debt restructuring and cross-border insolvency cases. It pales in comparison with Hong Kong's competitors in the Asian hub notably Singapore, who has decisively updated its insolvency law and capably marketed itself to the international community. Urgent updates to our regime are required.
13. As long ago as 1996 (i.e. 22 years ago) the Law Reform Commission (LRC) recommended in its Report on Corporate Rescue and Insolvent Trading the introduction of a corporate rescue procedure to provide, amongst other reforms, a provisional supervision procedure to provide a moratorium on legal action for companies facing financial difficulties³. As a major financial centre, it is an anomaly, and something of an embarrassment, that Hong Kong does not have these basic safeguards in place to meet any challenges of a

³ See <http://www.hkreform.gov.hk/en/docs/rrescue-e.pdf>

financial crisis⁴. According to the Secretary for Justice's Annual Report to the LegCo Panel on Administration of Justice and Legal Services meeting on 26 June 2017 on Implementation of the recommendations from LRC⁵, the target was to introduce the amendment bill to LegCo in 2018⁶. The Financial Services and the Treasury Bureau has already completed the consultation process as long ago as 2010. The legislative proposals for the purposes of preparing an amendment bill were formulated in 2014. A substantive part of the amendment was modelled on the earlier Companies (Corporate Rescue) Bill 2001, subject to suggested modifications, particularly as regards employees' claims in the context of provisional supervision. These reforms are desperately needed. We already have the full support of the Companies' Judge and, we trust, the rest of the Judiciary, for the above reform.

14. Apart from drawing up a statutory provisional supervision regime to function as a restructuring tool and the provision for automatic stay provisions within the scheme of arrangement regime, reforms must also embrace the enactment of a conventional cross-border insolvency provision (similar in nature to section 426 of the UK's Insolvency Act 1986). At the moment, insolvency law practitioners and the Companies Court have to resort to common law principles to overcome this problem. This certainly is unsatisfactory.
15. We ask that adequate resources be allocated to put the requisite reforms in place without further delay. The legislative amendments should be prioritized, in consultation with the views of the professionals⁷ and the market.
16. Another area which causes grave concerns to practitioners is the dire lack of judicial manpower hearing bankruptcy and insolvency law cases. Members of the Insolvency Law Committee of the Law Society find that they have to wait for some 3 to 4 months before they could have a hearing date of 1 day for their matters. The delays in the fixing of dates, coupled with time required for

⁴ It has been reported that HK's World Bank ranking has dropped because of the lack of progress in reform of insolvency law. See <http://www.scmp.com/news/hong-kong/economy/article/2117984/world-bank-ranks-hong-kong-no-5-list-easiest-places-world-do>

⁵ LC Paper No. CB(4)1255/16-17(05): <https://www.legco.gov.hk/yr16-17/english/panels/ajls/papers/ajls20170626cb4-1255-5-e.pdf>

⁶ See item 44 of <https://www.legco.gov.hk/yr16-17/english/panels/ajls/papers/ajls20170626cb4-1255-5-e.pdf>

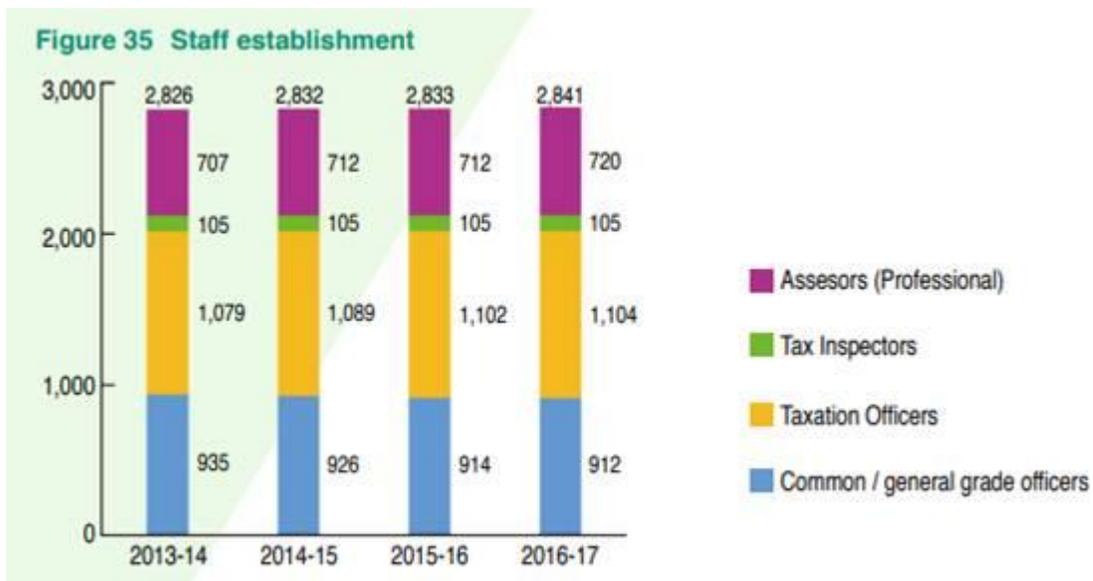
⁷ See, e.g. a recent submission by the *Company and Insolvency Law Society* on "Urgent Reform to Hong Kong's Insolvency Law" in 2017

the delivery of judgments and in the approving of the release of trustee-in-bankruptcy, causes substantial injustice. By way of illustration, in some cases, the trustee-in-bankruptcy needed to wait for 6 to 9 months for approval or comment on their applications for release

17. The Insolvency Law Committee has been advised that the main cause of the delays is that the Judiciary has to deal with a very substantial number of files. The delays have been aggravated by the fact that some of the applications require clarifications. As a result, the Judiciary needs to laboriously send off a number of requisitions to parties to seek rectifications and clarifications.
18. There is a clear need to increase the number of judges hearing and handling insolvency and bankruptcy cases.

REVENUE LAW

19. We note the department budget and headcounts for the Inland Revenue Department (IRD) has remained stagnant for a number of years, despite a dramatic increase in the number of tax treaties and in the volume of new tax-related legislation. See for example the following chart which is taken from Chapter 8 of IRD's Annual Report 2016-17.



20. Among other things, the new transfer pricing legislation released at the end of 2017 will of itself dramatically increase the compliance burden for companies in Hong Kong. Additionally, the volume of new legislation plus treaty considerations, transfer pricing, common reporting standards, country-by-country reporting, small business tax rates and so on will mean increased complexity for the IRD. The department cannot adequately cope with these workloads on existing resources, without an unavoidable decrease in service levels.
21. In the light of the above, we recommend the Administration to allocate more and adequate resources to the IRD.

CONCLUSION

22. The Law Society asks the Administration to carefully consider the concerns raised in this submission.
23. Apart from the above-mentioned, we would like to draw the attention of the Administration to (1) the needs for upgrades on technology for the courts and for the court users; (2) the extremely heavy caseloads the Judiciary is having and (3) the complexity of the cases the judges are to dispose of. As for the technology upgrades which should embrace initiatives such as e-filing and e-payment and which calls for resources allocation, we may send in further submissions later.
24. As for the resources and manpower, we are aware of a recent news report that “Judges will get a pay rise of 2.95 per cent, the lowest in eight years, as Hong Kong’s judiciary seeks to bring salaries to competitive levels to tackle a manpower shortage that has left more than 20 per cent of posts on the bench vacant” (SCMP report dated 4 October 2017).
25. Although remuneration for judges by itself is not the main attraction for private practitioners to join the bench, we consider the widening gap in earnings between private practice and the bench could on occasions serve as a disincentive to aspiring practitioners. Furthermore and importantly, the issue is not and should not be merely a matter of headcounts; it is vital to attract and to retain bright, skilled and experienced judges and judicial officers.

When the Administration is having a huge finance surplus for the upcoming fiscal year, they should consider asking the Standing Committee on Judicial Salaries and Conditions of Service to have a thorough review on the conditions of service for judges, as well as the mechanism for the evaluation of their terms⁸. This review should be comprehensive, and should be *on top of* the annual adjustment exercise. In addition, there should also be a serious consideration to recruit more judicial assistants and officers to help with the caseloads of the Judiciary. These recruitments and deployments should be for different levels of courts.

The Law Society of Hong Kong

13 February 2018

⁸ See paragraph I(b) of the Terms of Reference of the Standing Committee on Judicial Salaries and Conditions of Service: <http://www.jsscs.gov.hk/en/jscs/jscs.htm#terms>