

Submissions by The Law Society of Hong Kong on The Chief Executive's 2018 Policy Address

1. The Law Society's submissions are based on three broad aspects:
 - (a) Facilitating the development of the legal profession to support Hong Kong's social and economic development as a whole (within "One Country, Two Systems")
 - (b) Promoting access to justice
 - (c) Creating an environment that is conducive to the retention of legal talent in Hong Kong
2. On facilitating the development of the legal profession, the Law Society submits the following:

Promotion of the use of technology

- (a) Technology is evolving rapidly. To remain competitive in the global market, the smart use of technology can be a decisive factor. The Government should allocate more resources to enable the implementation of appropriate technological tools to improve the efficiency of the legal system. An example of strong government leadership in supporting the legal profession on this front is Singapore. To encourage law firms to use technology to improve their productivity, the Singaporean Government has allocated up to S\$2.8 million to law firms as funding support of up to 70% of the firms' first-year's cost for technology products in practice management, online research and online marketing.
- (b) The Government should put in place long-term education planning to properly prepare the next generation to master and take advantage of the rapid evolution of information technology.

Belt and Road Initiative and Great Bay Area (Guangdong-Hong Kong-Macau Bay Area)

- (c) The Central Government reiterates the direction of enhancing cooperation with countries and regions along the route of the Belt and Road Initiative as well as the cities in the Guangdong-Hong Kong-Macau Bay Area.
- (d) There is obviously huge potential for economic development and opportunities for expansion of legal services to these regions to support the economic development.
- (e) The Government is urged to proactively engage in securing a role for the Hong Kong legal sector in the Initiative and the Great Bay Area by the following:
 - (i) Actively promote Hong Kong as an international legal service hub to the international community, in particular to the countries along the Belt and Road and the cities in the Great Bay Area;
 - (ii) Provide more market information with reference to the official policy direction of the Central Government in the development of the Initiative and the Great Bay Area to the legal service industry to assist its evaluation on how the legal service sector should position itself to benefit from the development;
 - (iii) Provide guidance, having regard to the official policy direction, on the priority jurisdictions in the areas covered by the Belt and Road Initiative and the development of the Great Bay Area that the legal service sector should focus its efforts in exploring expansion opportunities;
 - (iv) Provide resources to reinforce the following qualities of the Hong Kong legal profession on the basis that the cross border element is a very crucial feature in any participation in the Belt and Road Initiative and the development of the Great Bay Area:
 - international connections;
 - expertise in handling cross border transactions;
 - (v) Allocate financial resources to improve and modernise Hong Kong's capability to host international conferences because international conferences create a good opportunity for legal practitioners to reach out for multiple purposes - professional development and training as well as strengthening connections worldwide;
 - (vi) Allocate space to the Law Society in the West Wing of the former Central Government Offices to enable the Law Society to organise more legal trainings (e.g. arbitration, mediation and dispute resolution related topics) and to reinforce the importance Hong Kong places in nurturing talent in this area by allowing a presence of the professional body of solicitors in Hong Kong in the Legal Hub;

- (vii) Provide financial assistance to the more junior practitioners to gain international exposure in various ways e.g. by attending international professional exchanges or internship in law firms in other jurisdictions, to prepare the next generations of the legal profession for the demands arising from the development of the Belt and Road Initiative and the Great Bay Area.

Intellectual Property (“IP”)

- (f) The annual budget increase for the Intellectual Property Department (IPD) since 2015 was around 7.25%, 6% and 6.4%. There was an approval to invest \$23 million spread over three years from 2016 to 2018 to promote IP trading in Hong Kong and that was included in the IPD budget.
- (g) The annual average civil service pay adjustment since 2015/16 was 4.4%, 4.52% and 2.59%. Salary pay accounts for about 60% of IPD's expenditure. Since 2016, IPD had set up a patent and design back office in Cheung Sha Wan and the annual rent is around HK\$4 million. In 2017, IPD incurred around HK\$2 million to carry out a IP Manpower Survey the results of which shall be announced soon this year. Taking the above into consideration, there is actually very little increase in budget to enable IPD to properly deal with many of the initiatives, the most urgent being the setting up of the infrastructure for the Original Grant Patent which hopefully can commence by late 2019. This includes improving the electronic platform, hiring and training personnel (particularly examiners) for the patent office. More resources need to be allocated to IPD to help promote IP trading in Hong Kong.

Personal Injuries (“PI”)

- (h) A provision was introduced in 2002 requiring a plaintiff who seeks relief payment from the Employees Compensation Assistance Fund to first obtain a judgment at his own expense when the financial position of the Fund was weak.
- (i) As a matter of policy, such a requirement is unfair to the plaintiff. With the current strong financial position of the Fund, the Government should consider reinstating the pre-2002 position.

Practising law in English and Chinese

- (j) Parallel with globalisation and internationalisation of legal practice in Hong Kong, there is increasing expansion of the legal service market in the Mainland, in particular with the development of the Great Bay Area. In addition to the need to have proficiency in English in the practice of law in Hong Kong, there is a growing demand for ability to practise law in Chinese. Most Hong Kong solicitors are Chinese and are expected to have an advantage in cases involving transactions in Chinese. However, legal education is predominantly English based.

- (k) The Government must put forward a long term plan to strengthen the bilingual capability of students from early schooling (N.B. without diminishing the importance of English). To be able to truly practise law in both English and Chinese, a solid foundation of both Chinese and English language skills built prior to entering law school is essential.
- (l) Sufficient resources must be allocated to provide necessary support and training for practising law in English and Chinese and long term proposals must be formulated to build up a comprehensive supply of resources with respect to law books, precedents and judgments in Chinese.

One Country Two Systems

- (m) The Government should allocate funds to continue organising effective public relations campaigns to promote and publicise Hong Kong SAR's "One Country, Two Systems" concept to the international community to highlight the unique position of Hong Kong SAR and to dispel any misconception that the legal and judicial systems in Hong Kong SAR are the same as that in Mainland China after 1997.
- (n) The Government should provide financial resources to organisations like the Law Society to generally promote legal education as well as core values like the rule of law which is the cornerstone of Hong Kong's prosperity and stability.

3. On the promotion of access to justice,

Judicial resources

- (a) In facilitating access to justice, it is important to ensure that the public can access justice at reasonable speed.
- (b) However, the shortage of judicial resourcing, which has resulted in long waiting time for trial dates and for handing down written judgments in civil actions, is causing concern. With respect to the waiting time for handing down written judgments in civil actions and the efficiency of the Probate Registry to Probate Practitioners, for the most part, it is not a reflection on judges and the Registrars, Deputy Registrars and Probate Masters at the High Court Registry, who are required to case manage more, both in court and in their private chambers. It is primarily a resourcing issue.
- (c) The Judiciary requires more manpower in terms of judicial officers and more resources should be allocated to it. Although remuneration for judges by itself is not the main attraction for private practitioners to join the bench, 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.

- (d) These undesirable delays resulting from a lack of sufficient judiciary resourcing will also prejudice Hong Kong's hard won reputation as an international dispute resolution centre.

Modernisation of technology in the justice system

- (e) The Government is encouraged to allocate sufficient resources to implement appropriate technological advancement in the legal system, e.g. electronic filing of court documents, to improve the efficiency of the administration of justice.

4. On retention of legal talent, the Law Society submits that:

Environmental protection

- (a) Hong Kong is an international financial centre. Foreign legal capability is an asset. To retain talent, the quality of Hong Kong living must be maintained at an attractive level.
- (b) The Government should put forward robust environmental protection measures to attract people to stay in Hong Kong for long-term commitment.

**The Law Society of Hong Kong
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