



THE CHIEF EXECUTIVE'S 2021 POLICY ADDRESS LAW SOCIETY SUBMISSION

1. The Law Society is responding to the Public Consultation on the Chief Executive's 2021 Policy Address with this Submission.
2. In this Submission, we set out our brief views on the policy initiatives to entrench Hong Kong SAR as the regional trading hub for intellectual property, promote her asset management industry, prepare for an ageing society, and address the mental health of the Hong Kong people amid COVID-19 pandemic.

INTELLECTUAL PROPERTY – THE 14th FIVE-YEAR PLAN

3. On 11 March 2021, the fourth session of the 13th National People's Congress approved the "Outline of the 14th Five-Year Plan for National Economic and Social Development of the People's Republic of China and the Long-Range Objectives Through the Year 2035" (the "14th Five-Year Plan"). The 14th Five-Year Plan maps out the development blueprint and action agenda for our Country in the next five years (2021-2025) and, at the same time, crafts a vision for the long-range objectives through the year 2035.
4. One important initiative raised in the 14th Five-Year Plan is the support to Hong Kong SAR to establish herself as a regional intellectual property ("IP") trading centre. This is one of the various proposals put forward to reinforce and enhance the competitive advantages of Hong Kong SAR, to integrate Hong Kong SAR into the overall development of the country and to proactively take forward the development of the Guangdong-Hong Kong-Macao Greater Bay Area.

5. We welcome the development. To dovetail with the above, we consider the Hong Kong SAR Government should design and put forth her own blueprint on policies and measures to firmly entrench Hong Kong SAR as the IP trading hub in the next 5 years.
6. The above should include a review of legislation and practices on IP and the formulation of policies that could enhance knowledge, commercialisation and protection of IP. Modernisation of the very outdated Copyright Ordinance is essential and we look forward to an upgrading and expansion of the support for the IP industry. In addition, there should be firm policy directives (with mandates) on the following: expansion and optimisation of the services provided by the Intellectual Property Department and existing IP trading platforms, promotion of alternative dispute resolutions such as mediation and arbitration for IP disputes (both local and international) and revisitation on the use of evaluative mediation, development of IP valuation capability (and establishment of guidelines, practices, standard and certification therefor), introduction of further tax incentives to encourage innovation and IP development, encouraging financial institutions to accept and use IP as collaterals, beefing up of training and consolidation of expertise for IP professionals, as well as engagement of the IP community for views and initiatives.
7. We urge the Hong Kong SAR Government to take determined efforts and concrete actions (with time tables) on the above, and shall keenly look forward to engagements and discussions with the relevant bureaux and government departments.

PROMOTING ASSET MANAGEMENT INDUSTRY AND REVISITING THE CHARITIES REGIME

8. In the Policy Address 2020, the Chief Executive stated that

“[The Government] also strive to promote real estate investment trusts (REIT) in Hong Kong to develop Hong Kong into a vibrant REIT market in Asia. This will strengthen the capital raising function of Hong Kong as a premier asset and wealth management centre, and broaden the investment options with a relatively stable return for local investors. To this end, [the Government is] considering various measures through a multi-pronged approach, including relaxing the

investment restrictions of REIT as appropriate, broadening the investor base, facilitating market operation through legislative and regulatory enhancements, and stepping up market promotion and investor education.”ⁱⁱ

9. We welcome this policy initiative and further are in support of promotion of wealth management industry of the Hong Kong SAR. In the light of the rapid economic development in the Mainland market in recent years (in particular the Greater Bay Area) as well as the rise of private wealth, the above are clearly relevant, when we could anticipate strong demands in the services for asset management, private trust, family offices, private collective investment schemes and estate and succession planning.
10. To take advantage of the above growth prospects in the region, there are a number of challenges that the trust industry in Hong Kong SAR needs to meet and overcome. These include, among others, a comprehensive update of the Hong Kong Trust Ordinance and the trust regime.
11. On the other hand, in order to enhance Hong Kong’s attractiveness as a fund domicile, we consider the Hong Kong SAR Government should
 - (a) promote the use of trusts managed by HK trustees as part of the ecosystems of attracting family offices to Hong Kong
 - (b) clarify the taxation treatment of trust structures and trust parties
 - (c) ensure practice guidelines are in place for the family office services, the Wealth Management Connect, Limited Partnership Fund regimes and the Open-ended fund companies - without creating extra compliance burden or tax leakage for the users of the wealth management industry
 - (d) carefully review the regulatory regime for professional trustees.

We would submit a detailed paper on the above in due course.

12. As a corollary to the above, there is also a need to revisit the charities regime for the Hong Kong SAR. Another paper on the above is being finalized and will be submitted to the government shortly.

AGEING SOCIETY

13. We have been working with the Hong Kong Mortgage Corporation Limited (“HKMC”) on its Reverse Mortgage Programme (the “Programme”) since July 2011. Under the Programme, people aged 55 or above could use their residential properties in Hong Kong SAR as security to obtain reverse mortgage loans. That should to a certain extent help address the financial needs of the ageing population of Hong Kong SAR who are to take care of their finance after retirement.
14. With an ageing society for the Hong Kong SAR, we anticipate that the needs in the above regard will be growing. Yet the low take up rate of the Programme at present does not bode well for its reception for the above trend. Seemingly the Programme is not sufficiently popular or well-received. While we are discussing with the HKMC on improvement of the Programme, we consider there should be at the same time a concerted campaign for the publicity of the Programme. The campaign should be more focused and place emphasis on the sector(s) in need. It should also involve the relevant NGOs.
15. We envisage that when more senior citizens could be made aware of the availability of reverse mortgage, they could have a wider choice on, and can better utilize, their own assets to generate income to supplement their living. This message needs to be communicated effectively.
16. There should however be a caveat with the above suggestion; the use of reverse mortgage does not take away or abdicate the responsibility or the commitment of the Hong Kong SAR Government to the aged sector of the society. The Government’s policy on welfare for the old aged should not be affected by the availability (or non-availability) of the Programme, and that there should be a reversal of the current policy or practice that payouts under the Programme is being considered as "income" under the income test for eligibility to any benefit under the Comprehensive Social Security Assistance (CSSA) Schemeⁱⁱⁱ.
17. Also, in consequence of the fact that Hong Kong SAR is having an ageing society, we could expect rises in the numbers of applications for Guardianship Orders and/or Part II Applications under the Mental Health Ordinance. In anticipation of these increases, we would appeal to the Hong Kong SAR Government to consider and to embrace

initiatives on planning and education for NGOs, nursing homes and others in order that, where relevant, there could be better coordination and communication on any requisite arrangements and applications for, for example, guardianship order and/or court orders on mental health committees. The above should be on top of the comprehensive review of the mental health law regime that we, in our submission on Policy Address of last year, have called for.

18. Another matter which is obviously relevant to the needs of the ageing population of Hong Kong SAR is Continuing Powers of Attorney. This matter was discussed more than 3 years ago with a consultation paper released for public views in December 2017. The Law Society responded with its submissions in April 2018. We are keen to see updates of the matter or, more preferably, the proposed legislation.

MENTAL HEALTH

19. In addition to the above, we suggest that, arising from COVID-19 pandemic, policy attention should be drawn to the needs of community on mental health services.
20. The mental well-being of Hong Kong people has suffered - for some people, the COVID-19 pandemic has caused enormous frustration, as they are unable to travel freely (for visitation, business or otherwise) and are required to abide by stern social distancing rules and sudden lockdown of specific areas for compulsory testing. For some other people, long periods of isolation and quarantine caused the anxiety of losing a job and / or running out of support. All these could lead to psychiatric or psychological conditions such as nightmares, flashbacks and feelings of guilt, anxiety or isolation. In some cases, there could also be lingering physical effects such as exhaustion, lack of energy and difficulty in social integration.
21. While vaccination may reduce the risk of infection and can protect the public generally, the mental stress and depression, as well as the anxiety caused by COVID-19, are challenges that have to be carefully canvassed in the Policy Address.
22. The Policy Address should not lose sight of, in particular, the needs of the more vulnerable groups. For these more vulnerable groups, the

social distancing measures have taken away the usual support rendered to them.

CONCLUSION

23. The issues succinctly raised in this Submission are important for, among others, the Hong Kong SAR to fortify her leading position in IP, to strengthen the asset management industry, to prepare the city for resurgence after the pandemic and to care for the elderly. These issues should be underscored by effective policy directives and firm commitments. While there could be other competing initiatives (such as housing issues), from legal policy consideration, the matters we have identified above clearly should be on the top of the policy agenda 2021.
24. Finally, in our submission on Policy Address of last year (2020), we referred to certain issues concerning constitutional and individual rights that merit more in-depth policy deliberation (see paragraph 29 thereof). We do not appear to have received any specific feedback from the Government; therefore, with respect, we draw attention to these matters again.

The Law Society of Hong Kong
15 September 2021

ⁱ See Chapter 61 ["Outline of the Fourteenth Five-Year Plan for the National Economic and Social Development and the Long-Range Objectives Through the Year 2035"](#) (on"保持香港、澳门长期繁荣稳定)

ⁱⁱ See para 44, 2020 Policy Address

ⁱⁱⁱ See 'Impact on social welfare', in 'Section 6 – Legal and other implications', [Reverse Mortgage Programme Counselling Questionnaire](#) (March 2021), p. 8