



GOVERNMENT BUDGET 2022-2023 LAW SOCIETY SUBMISSION

1. From the Legal sector we set out important initiatives that are essential to the Hong Kong economy.
2. In preparing its Budget 2022-2023, the Government should in our views pay close fiscal attention to the following matters.

Enhancing the Competitiveness of Hong Kong SAR

3. This embraces the following.

Promoting Asset and Wealth Management Industry

4. We note a policy directive in the Policy Address 2020, which aims to “strengthen the capital raising function of Hong Kong as a premier asset and wealth management centre”¹.
5. We also note that small-to-medium enterprises (“SMEs”) constitute more than 98% of Hong Kong’s business establishments and employ over 45% of the workforce in the private sector. This also applies to the capital markets and wealth management sector. Their vitality and business performance are of crucial importance to the development of Hong Kong as a premier asset and wealth management centre. SMEs in Hong Kong, including the capital markets and wealth management services sector are severely hit by the pandemic.

¹ See para 44, 2020 Policy Address

6. Following from the above, and also in echoing this policy directive as we note in the above, we urge the Government to
 - (i) promote the use of trusts managed by Hong Kong trustees as part of the ecosystems of attracting family offices to Hong Kong
 - (ii) clarify the taxation treatment of trust structures and trust parties
 - (iii) consider changes to the law allowing flexibility in the creation, transfer and termination of trusts, in line with other jurisdictions
 - (iv) 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
 - (v) carefully review the regulatory regime for professional trustees
 - (vi) provide assistance and support to the SME capital markets and wealth management service providers (including SME law firms) to fight through the hard economic times.
 - (vii) provide incentives for SMEs to engage in capital raising and wealth management activities through the use of SME capital markets and wealth management service providers in Hong Kong.
7. We have prepared a detailed paper on improving the trust regime for Hong Kong, and we are sending the paper to the various government departments and stakeholders. We invite attention to the paper.

Improvement to the Insurance Law and the Corporate Rescue Regimes

8. In one of our previous submissions, we have stated that it is of strategic importance that the insurance law regime in Hong Kong is to be updated and overhauled. Among other things, the Marine Insurance Ordinance (Cap. 329) received little or no amendment of substance in the past 50 years. In this period of time, there are far-reaching and substantial changes in the related UK legislation. These, together with keen

competition from our neighbours, accentuate the need for a substantive reform to the above Ordinance.

9. On the other hand, with grave concern we note the lack of legislative progress on the Companies (Corporate Rescue) Bill (“the Bill”). There is an urgent need for Hong Kong as a major financial centre to have in place a set of corporate rescue procedures and an insolvent trading regime. So far there is no reassuring sign for the Bill to be put on a legislation timetable.
10. The above matters are legally and financially relevant to corporations and entities operating a business in Hong Kong. Obviously, they need to be looked into closely and promptly.

Intellectual Property

11. As we have previously submitted to the Government, Hong Kong should dovetail with 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”*, which includes a policy directive to establish Hong Kong SAR as a regional intellectual property trading centre. We expect the Intellectual Property Department to be closely involved in this regard. On the other hand, the Department is working on a number of IP-related initiatives, such as amendment to the copyright legislation, review of the international registration system under the Madrid Protocol etc. To cope with the above, there must be sufficient fiscal support to the Department.

Upholding Rule of Law

12. This is of cardinal importance to Hong Kong, and we repeat the following.

Legal Aid

13. Access to Justice is a fundamental human right and is protected under the Basic Law of Hong Kong. Legal aid plays a critical role in this regard. We are keen to see that the legal aid system in Hong Kong is continually

improved by way of regular examination and improvement of legal aid practices. For that purpose, it is amply evident that sufficient resources should be allocated to the legal aid portfolio in the Government Budget.

14. With respect to the criminal legal aid rates, the current rates are derisory and do not assist to attract legal talent. A review (now arranged on a biennial basis) should not be merely mechanical and it should not be linked only to Consumer Price Index. There are structural issues that call for an overall review.

Resources for the Judiciary

15. Sufficient resources must be allocated to the Judiciary for its
 - recruitment, and
 - development and deployment of court-technology.
16. In respect of court technology, the need to embrace the same is underscored by the continual covid pandemic that punctuates court hearings. Interruption of court processes and hearings could prejudice Hong Kong as an international dispute resolution centre.
17. The court-technology to be developed should embrace the full and easy use of digitized documents with consideration of appropriate amendments to the Electronic Transactions Ordinance to allow for the above use, with acceptance of the same in evidence.
18. In any event, wider use of modern court technology benefits not only the legal profession but also the general public, as it helps enhance access to justice.

Belt and Road Initiative and Greater Bay Area

19. The Central Government has been reiterating the importance 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 (the Greater Bay Area). There is obviously huge

potential for economic growth and opportunities for expansion of legal services to these regions to support the economic development.

20. We urge the Government to proactively engage in the following, in order to secure and to strengthen the roles of the Hong Kong legal profession in the Belt and Road Initiative and in the Greater Bay Area:
- (a) Provide resources for capacity building for the Hong Kong legal profession by reference to the following attributes, noting that the cross-border element is a crucially important feature in any participation in the Belt and Road Initiative and the development of the Greater Bay Area:
 - international connections of the legal profession; and
 - their expertise in handling cross border transactions.
 - (b) Allocate financial resources to improve and modernize Hong Kong's capability to host international conferences (so that Hong Kong could better and in a timely fashion prepare herself and that the requisite facilities could readily be available, when the pandemic abates and conferencing is possible). It goes on without saying that international conferences create good opportunities for the legal profession to reach out for multiple purposes - professional development and training as well as strengthening connections worldwide.
 - (c) Provide financial assistance to the more junior branch of the legal profession, for them to gain international exposure by e.g. attending international professional exchanges or internship in law firms in other jurisdictions. This helps prepare the next generations of the legal profession for the growing demands arising from the rapid development of the Belt and Road Initiative and the Great Bay Area.

Pandemic Relief Measures for the profession

21. The Government has supported the legal profession by approving the LawTech Fund and the Legal Talent Recruitment Scheme (Trainee

Solicitors) in 2020/2021. This was well-received, but the impact of the prolonged pandemic on the local and worldwide business environment and economy as a whole continues to present challenges to the legal service market. Like other sectors, the legal profession is hit by the covid pandemic, as the profession has to face the consequences from travel restrictions and social distancing measures. We appeal for more and continual support from the Government including, for example, extension of subsidy of the LawTech Fund to widen the net of support for more legal practices to upgrade their technological setup to cope with the pandemic; and extension of the employment support scheme for law firms.

Conclusion

22. The above are important to the continual maintenance of the Rule of Law in Hong Kong and the fair administration of Justice which are the foundations of a vibrant economic environment.

**The Law Society of Hong Kong
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