

GOVERNMENT BUDGET 2023-2024
LAW SOCIETY SUBMISSION

1. The Law Society of Hong Kong makes the following submission in response to the Government's consultation on the Budget 2023-2024.
2. The Financial Secretary in a press release of 18 December 2022¹ said that

“[In 2022], the COVID pandemic and geopolitical situation have led to global supply chain disruptions, high inflation, interest rate hikes and tightened monetary conditions ... but as [Hong Kong's] connection and exchanges with the Mainland and the rest of the world resume normal gradually, Hong Kong's economy will likely gather steam again. When preparing for the 2023-24 Budget, [the Government] will ... plan for Hong Kong's long-term development and allocate resources appropriately.”

We agree to the above, in particular when Hong Kong is now returning to normalcy. On the other hand, we consider that the measures recently announced by the Government to compete for enterprises and compete for talents need to be underscored by fiscal initiatives that foster and expedite growth of the economy with sustainable development and long-term planning.

3. The above fiscal initiatives in our views should embrace the following.

Intellectual Property (“IP”)

4. Under 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 “National 14th Five-Year Plan”), Hong Kong is to be established, among other goals, as a regional IP trading centre, an international innovation and technology hub and a hub for arts and cultural exchange between Mainland China and the rest of the world².

¹ See: <https://www.info.gov.hk/gia/general/202212/18/P2022121800008.htm>

² See Section 1, Chapter 61

5. Intellectual property plays a pivotal role in the above goals.
6. With the recent passage of the Copyright (Amendment) Bill 2022, the long overdue legislative exercise to tackle those issues that have been raised since 2006 has been completed. Yet Hong Kong needs to pick up fast on other important IP initiatives. The IP Committee of the Law Society has already proposed various initiatives which would help Hong Kong enhance its competitiveness in the IP landscape. One of the proposals is to set up a copyright registration system for Hong Kong. A paper on this proposal has been submitted to the Commerce and Economic Development Bureau and the Intellectual Property Department in April 2022. There are other initiatives such as use of new technology, ownership, authorship and protection issues etc. All these require momentum to be underscored by formulation of the relevant policies and also commitment from the government coffers.

Dispute Resolution

7. Another policy initiative set out in the National 14th Five-Year Plan is for Hong Kong to develop itself into a centre for international legal and dispute resolution services in the Asia-Pacific region³. The Law Society has always been in support of the Government's initiative in the continual development of mediation in Hong Kong. Unfortunately, many mediation service schemes subsidised by the Government require the participating mediators to provide mediation services on a pro bono basis; or that the mediators are remunerated with only a nominal fee from the Government. The above is neither desirable nor helpful to the sustainable development of mediation in Hong Kong. On the other hand, by the grossly inaccurate impression that mediation is free, or the charges are only *de minimis*, the general public could easily be given a misconception that mediation needs no professionalism. This misconception discourages professionals from extending their practice to mediation which will in turn, undoubtedly, affect the status of Hong Kong as an international hub for dispute resolution services.
8. The above arose because in the budgets for the previous years, apparently the Government has accorded an inordinately low priority for mediation. This should not be the case. We ask that mediation be formally recognised as a form of professional service and, more importantly, adequate resources must be provided to the mediation sector to support the development of mediation in a sustainable manner.

³ See footnote 2 above

A Balanced Hong Kong Capital Market

9. Hong Kong has consistently been a top destination for fund raising in the past, whether by way of public listings or private investments. The ability to and certainty of listing on the public markets is one of the most critical considerations for investors to invest in growth stage companies. We are observing a steady trend of the decreasing number of successful IPOs in the small-cap and mid-cap space since 2019. Growth-stage listing applicants are experiencing much longer IPO timetables, rising fees and expenses associated with listing and underwriting and most importantly inconsistent regulatory approach as compared to larger cap applicants which unfortunately cause domino effect on the appetite for pre-IPO investments and potential listing candidates' willingness to choose to list in Hong Kong over other jurisdictions. We believe a balanced market will make the Hong Kong market more attractive and resilient in different cycles, up or down. A healthy mix of differing size and stage of companies will also benefit Hong Kong's overall position as a global financial centre with vibrant activities in pre-IPO and post-IPO space. We believe the current regulations on listings are already extremely robust and will continue to protect the interests of the investor community across all cap listing applicants, regardless of their sizes. We hope the Financial Secretary will encourage and ensure that the Hong Kong regulators will maintain and foster a balanced IPO market with consistent and transparent listing requirements, and not just focusing on larger cap companies. Grooming small and medium-sized companies is a core national and Hong Kong strategy and lies in the interest in the continual success of Hong Kong as a financial hub.
10. Last but not least, Hong Kong should continue to play to its strength as a super conductor in the international arena for China. Historically, we have seen our Hong Kong capital market focusing on PRC companies. Now, we believe it is consistent with national interests for us to facilitate deeper connections with regional players, in particular the ASEAN countries (given the geographic proximity and similarity in heritage roots) and countries in the Middle East and Southeast Asia. We hope the Financial Secretary can implement and maintain favourable policies to encourage ASEAN based companies to list on the Hong Kong Stock Exchange. Such policy will induce a more vibrant early/Pre-IPO stage investments and business collaborations using Hong Kong legal structures and hence facilitate China's deepening of its relationships with neighbouring trading partners.
11. The Law Society is eager to help in providing the industry/profession expertise and sharing comments on the consideration or formulation of any such policies.

Wealth Management/Family Office

12. We note the Government has recently proposed a bill on tax concession for family-owned investment holding vehicles managed by a single family in Hong Kong. We praise the Government for the speedy action and will definitely work constructively with the respective bureau on the legislative process. As the bill will have retrospective effect, we hope the relevant government departments, including the Inland Revenue Department and Immigration Department, may preempt the passing of the bill with draft guidelines so market participants may plan ahead of time. The Law Society is happy to be involved with the relevant government departments in formulating such guidelines.

Green Financing

13. By 2030, global emissions are poised to be cut in half. China is now committed to peaking its emission before 2030 and achieving carbon neutrality before 2060 (the “30-60 Pledge”). This policy direction is now a major focus in China.
14. Carbon neutrality represents an opportunity for Hong Kong, being an established international financial and capital centre, the main gateway to the Chinese market and a hub for human capital.
15. We are keen to see initiatives in the Budget that deepens the Government’s footprint on this front, and integrates Hong Kong’s carbon market development into the overall development and fulfillment of the Chinese Government’s 30-60 Pledge.

Sports Law

16. We have recently seen the remarkably great performance of our athletes on the global stage. To continue the momentum for sports development for Hong Kong, more resources should be put into sports and e-sports fields. Our neighbouring Asian competitors have in the past couple of years already put in a vast amount of resources into these two areas. We need to similarly commit ourselves financially.
17. In terms of legislation, we note that the Mainland has recently amended their sports laws which we understand have been put into effect. Among the various amendments is an amendment to set up a dedicated sports law dispute resolution mechanism and centre in Beijing. This is a major initiative. Matching legislation should be considered for sports dispute arbitration and resolution for Hong Kong.

18. A number of jurisdictions themselves have a dedicated sports and e-sports dispute resolution centre, on top of their general commercial dispute resolution centre. We agree that Hong Kong should also have a dedicated sports dispute resolution centre, given that sports dispute resolution is a very technical and specialized area. Funding should be provisioned in this regard.
19. We note Hong Kong seriously lags behind in the grooming of professionals for sports dispute resolution⁴. Fiscal attention should be given to training for the professionals.

Mental Health Law

20. In our submission on the Chief Executive's Policy Address 2022 of 5 October 2022, we have alluded to the problem of ageing to our society. Among other things, we have highlighted the importance of the enduring power of attorney ("EPA") and a regime of the Continuing Power of Attorney ("CPA") (para 4 – 11 thereof).
21. Faced with an ageing society, the fiscal policy of the Government should embrace initiatives to prepare Hong Kong to combat challenges arising therefrom.
22. EPAs in Hong Kong have been under-utilized. The low take-up rate of EPAs in Hong Kong compares poorly with similar regimes of Lasting Power of Attorneys in Singapore or in the UK. The promotion of the EPAs has in the past seemingly been left to the market itself, but for various reasons that proves not to be working. A more hands-on approach by the Government is required.
23. We suggest fiscal reserves be made for the Government to set up and to maintain a dedicated office for the general public to prepare and to arrange for their EPAs or CPAs. This dedicated office could be a one-stop-shop for the public whereby government officers could be assigned and deployed to help the public to consider, to prepare and to execute the EPAs. Where desirable, legal assistance could be offered. Non-profit making organization could be invited to assist in the preparation of the relevant documents. On the other hand, the office could help educating the public on the EPAs and CPAs and disseminate promotional materials. Furthermore, and subject to logistics consideration, the office could function as a depository of EPAs or CPAs. That would help promote greater and easier use of the EPAs and CPAs.

⁴ Currently, the Mainland and Hong Kong altogether has about 13 Court of Arbitration for Sport (CAS) arbitrators (arbitrators specially dedicated to resolute disputes arising in all Olympic sports).

24. We understand that offices assuming similar roles have been set up in other jurisdictions for their protocols of lasting powers of attorneys. With the support of their respective offices, reportedly their regimes have been working fairly well.

Building a local talent pool

25. When we are facing an ageing society and the looming problems that arise therefrom, the Government should not lose sight of the next generation. They are the natural counter balance to our ageing society. In the past years, the importance to build a local talent pool has seemingly been ignored, partly as the benefit of ensuring a healthy next generation may not be perceived as urgent as other agendas, and partly because there is not an efflux of Hong Kong people to other countries. However, when apparently inadequate policy focus has been placed on the next generation, the implications of the problem of ageing to the society is to intensify. In pursuing the policy of “competing for talents” from abroad, the Government should also take steps to build up a strong local talent pool. This involves proactive policy formulation for the local population to encourage family planning that endorses giving birth.
26. We ask the Government to be innovative in devising fiscal measures for the above. Law should be put in place to promote childbearing. That is a policy area that needs to be studied. The Government should for example consider to set up a working party to consider this matter.
27. For the time being, we do not have any formal legislative proposals on the above. Instead, we ask the Government to consider including provisions to the various existing statutes to assist families to alleviate the stress and pressures of having a family. Such pressures are mainly of money and risks, including but not limited to, expenses of education, health protection, tax reliefs.
28. Having said the above, some quick ideas could be offered for the purpose of brain-storming. For example, a family planning fund may be added under the Public Finance Ordinance Cap. 2; the Surviving Spouses’ and Children’s Pensions Ordinance Cap.79 could be expanded to include coverage for the general public; the Inland Revenue Ordinance Cap. 112 could be supplemented (for example to allow expenses towards children to be tax-exempted), the Stamp Duty Ordinance Cap. 117 could be amended to offer relief of stamp duty for the purchase of the first property by a family of 3 (for a residential unit) for a 600 sq. ft and below, family of 4 for a 800 sq. ft and below, family of 5 for a 1000 sq. ft and below etc.

29. The above carry financial implications, and merit careful consideration in the drawing board of the Government Budget.

Companies (Corporate Rescue) Bill

30. We are supportive of the legislative proposal to introduce a Companies (Corporate Rescue) Bill (“CRP”) to provide for statutory corporate rescue procedures and insolvent trading provisions. We have in the past provided substantive comments on the CRP in response to consultations by the Financial Services and Treasury Bureau (“FSTB”). We have repeatedly stated that there is an urgent need for Hong Kong as a major financial center to have in place a set of corporate rescue procedures and an insolvent trading regime. Such is legally and financially important to corporations and entities operating a business in Hong Kong. As our insolvent trading regime has not been updated in time, Hong Kong is losing business to other economies which have modernized their respective regimes in pace with rapid economic developments and the changing landscapes in the finance world. On the other hand, without a modernized insolvent trading regime, Hong Kong has not adequately prepared itself for unforeseeable and difficult challenges, for example the COVID pandemic. The COVID pandemic called for ad hoc and emergency measures including the novel initiative of the “Rental Enforcement Moratorium”. This initiative of moratorium was announced in the 2022-23 Budget and was put into effect by the “Temporary Protection Measures for Business Tenants (COVID-19 Pandemic) Ordinance” that commenced operation on 1 May 2022 (upon its gazettal). If Hong Kong had set in place a more modern insolvent trading regime in place at the time of the COVID pandemic, those business entities which have closed down during the pandemic (including popular tea houses, cinemas and travel agents which had long-established brands) could have adopted different business strategies. The overall market sentiment during the pandemic could then have been very different.
31. We note the various deliberations in the community and at the Legislative Council in the past on the policy objectives, benefits and details of the CRP (including how the interests of employees can be protected). The above deliberations included, lately, a panel discussion of the Legislative Council in November 2020. It is evident that there are strong views which are supportive of the policy objectives of the CRP in helping companies that are in short-term difficulties to try reviving their business amidst economic uncertainties. On the other hand, there are queries on how small and medium-sized enterprises could benefit from the CRP and how unsecured creditors (for example suppliers) can be adequately protected under the CRP. These are legitimate questions, and they need to be addressed by the FSTB.

32. Whilst legislative reforms would unavoidably involve a balancing exercise of interests among different stakeholders, it cannot be overstated that introduction of a statutory regime on corporate rescue in Hong Kong has been long overdue. A modern and updated corporate rescue regime is conducive to pro-investment policy; it favors and attracts business interest. When the stated policy objective is helpful to the economy of Hong Kong, the FSTB should be emboldened to pilot and to drive discussions, to foster closer collaborations with different sectors, professional bodies and business organizations to promote the CRP. The bureau needs to iron out the different concerns and reach a broad consensus. After all, the latest discussion at the Legislative Council was more than two years ago, and that took place at a time when Hong Kong has not had the experience of moratorium (on rental). This brief measure on moratorium provides valuable experience, and also a fermenting background and momentum to rekindle the discussion of this important policy initiative.

Land Titles Ordinance

33. Another significant legislative initiative for the Government to carefully consider is the Land Titles Ordinance. The Land Titles Ordinance is important to not only conveyancing practice in general but also, fundamentally, the establishment and development of a new land registration system in Hong Kong. Similar to other stakeholders, we are keen to see the implementation of the Ordinance, but we reckon that there are still outstanding issues that need to be carefully considered, for example provision of indemnity (as well as the related indemnity cap) by the Government to people who suffer loss under the new system requires thorough budgetary deliberation by the Government. The Property Committee of the Law Society has been working tirelessly with the Land Registrar in the past years. The discussion is continuing.

Resources for Judiciary and others

34. It is our members' experience that waiting time for substantive hearings and for handing down of written judgments have become very long. The problem of long waiting time is noted not only in general civil litigation, but also in bankruptcy and winding-up matters. In some cases, it could take as long as 6 months for the Court to grant permission to start bankruptcy proceedings; that is unfair to creditors.
35. Long waiting time for court hearings (in particular) is a difficult problem. That is not assisting Hong Kong's reputation as a leading dispute resolution centre, which in turn is central to Hong Kong being an international financial centre.

36. There should be more bright and skilled professionals joining the Judiciary, to share the workload and to reduce the waiting time. Recruitment for judges and judicial officers should be boosted and for that, remuneration and other fringe benefits for judges and judicial officers must be more competitive. This means their remuneration packages should be commensurate not only with the average private practitioners but with the top-class.
37. Budget allocated for translation of court judgments should be increased. There should be proper and professional translation of those court judgments in Chinese which attract public interest, including those judgments for national security cases with jurisprudential values, and those criminal cases with national security concerns. Bilingual judgments of these cases assist the public, the profession and the international community to better understand the national security law.
38. As a corollary to our above observations on the long waiting time in bankruptcy matters, we ask the Government to allocate more resources to the Official Receiver's Office ("ORO") to assist the ORO to carry out its roles to for example prosecute insolvency offences (such as failing to keep books and records).

Conclusion

39. We have in this submission outlined some policy initiatives for the Government Budget 2023-2024. We are prepared to elaborate the above. In our views, the Government must be more proactive and aggressive and embrace a new mindset in its fiscal governance, in budget planning and in formulating fiscal measures in order to catch up with the rapid developments across the border, and also to meet the challenges from other economies.

The Law Society of Hong Kong
7 February 2023