

**BRIEFING OUT IN CRIMINAL PROSECUTIONS
LAW SOCIETY STATEMENT**

1. The Law Society notes with concern queries and comments raised in the community on the decision of the Department of Justice (“DoJ”) in not seeking an external legal opinion, when it made its decision not to prosecute in a high-profile case of public interest.
2. In exercising its constitutional power to control criminal prosecutions free from any interference, it is of paramount importance for the DOJ to enhance public confidence in the impartiality of its decision and adhere to the cardinal principle of “Justice must be seen to be done”. This could be achieved by following due process which would prevent public perception of possible bias or political considerations. The Secretary for Justice on various occasions has given explanations on the norm or convention adopted by her department in briefing out criminal cases. We acknowledge that clarifications have been made on the criteria that the Secretary would consider generally, in the briefing out of criminal cases.
3. The above-mentioned criteria appear in a Legislative Council paper of February 2018 (and were repeated in a press release of 16 January 2019). The current Prosecution Code (2013 edition) is however silent on any briefing out policy. A Prosecution Code without guidelines on briefing out could justifiably invite skepticism on preferential treatment on prosecutions and undermine public confidence in the system of Justice. In the interest of greater transparency and accountability, the above criteria should be adopted or incorporated into the Prosecution Code as soon as practicable.

The Law Society of Hong Kong

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