

## **ITEM FOR ESTABLISHMENT SUBCOMMITTEE OF FINANCE COMMITTEE**

### **HEAD 92 - DEPARTMENT OF JUSTICE Subhead 001 Salaries**

Members are invited to recommend to Finance Committee the creation of the following permanent directorate posts in the Civil Division of the Department of Justice -

- (a) 1 Deputy Principal Government Counsel  
(DL 2) (\$116,650 - \$123,850)  
with effect from 1 December 2000; and
- (b) 1 Deputy Principal Government Counsel  
(DL 2) (\$116,650 - \$123,850)  
with effect from 12 December 2000

### **PROBLEM**

The existing directorate establishment in the Civil Division (CD) is insufficient to cope with the complicated commercial law matters in the Department of Justice (the Department). In addition, the CD needs continued directorate support to cope with the workload on insider dealing cases when the existing supernumerary post of Deputy Principal Government Counsel (DPGC) (DL2) created for this purpose lapses on 12 December 2000.

### **PROPOSAL**

2. The Secretary for Justice (SJ) proposes to create the following posts in the Commercial Unit of the CD -

/(a) .....

- (a) a permanent post of DPGC in the Commercial Law Team with effect from 1 December 2000 to strengthen the directorate support in complicated commercial law matters; and
- (b) a permanent post of DPGC in the Insider Dealing Tribunal (IDT) Team with effect from 12 December 2000 to provide continued directorate support to the Financial Services Bureau (FSB) in relation to insider dealing cases.

## JUSTIFICATION

### Creation of a DPGC post in the Commercial Law Team

3. The Commercial Law Team is one of the two teams under the Commercial Unit of the CD. It advises government bureaux and departments on all aspects of commercial law in connection with the Government's own commercial activities and its regulation of certain commercial activities. It provides legal advice on negotiation, drafting and interpretation of contracts, matters relating to privatisation and other aspects of public sector reform, trade-related matters, broadcasting, telecommunications and public transport franchises, substantial infrastructural franchises and commercial leases. It also advises on the enactment of new regulatory functions and the exercise of statutory regulatory powers of a commercial nature.

4. In recent years, there has been a significant increase in the complexity and range of the legal work undertaken by the Team. This is partly a result of the advance of new technology and partly due to a number of new government initiatives. One of these major initiatives is increased competition in the provision of various services to the public. For instance, there are now a variety of means by which telecommunications and broadcasting services are delivered to consumers and there is considerable competition between a large number of licensees. While there was a single licensee providing fixed-line telephone services previously, there are now more than 20 licensees providing a variety of fixed and mobile services. In broadcasting, where previously there were two television licensees each transmitting directly to local receivers, there are now in addition separate licences for satellite space stations, satellite uplink and downlinks, cable television, video on demand and domestic pay television. The relevant legislation has been expanded to take account of these changes and the number and variety of licences have greatly increased. Greater competition has also been introduced into public transport services and in the moves towards outsourcing a number of activities which were previously undertaken directly by the Government. Other major initiatives include -

- (a) implementation of major projects, including the East Rail and West Rail Project Agreements, the Walt Disney Theme Park and the Cyberport;

/(b) .....

- (b) public sector reform, including privatisation of the Mass Transit Railway Corporation;
- (c) reform of companies and securities legislation, including reform of the Companies Ordinance and the proposed composite Securities and Futures Bill;
- (d) information technology matters such as Electronic Transactions Ordinance, E'Commerce and the Certification Authority Recognition Office;
- (e) retirement protection initiatives, including the Mandatory Provident Fund Schemes Ordinance and the registration of Occupational Retirement Schemes; and
- (f) demutualisation of the Stock Exchange which resulted in the public listing of the Stock and Futures Exchanges.

5. The Team now comprises one DPGC, eight Senior Government Counsel (SGC) (MPS 45 - 49) and two Government Counsel (GC) (MPS 27 - 44). To cope with the increase in workload, an additional GC post will be created for the Team shortly. As head of the Team, the DPGC has a wide portfolio overseeing the work of ten counsel (shortly to be increased to 11 counsel) in the wide range of commercial law matters, and personally providing legal advice on the more complex and sensitive cases. In addition, the DPGC has to represent the Department on high level working parties and steering groups, and appear before the Executive Council and Legislative Council panels and committees on commercial matters. With the growth in the workload and portfolio of the Team, it is no longer possible for the DPGC to cope with the demand and provide adequate supervision for the counsel in his Team.

6. There is a need to strengthen the directorate establishment of the Team as soon as possible. Given the workload of the other units in the Division, SJ does not consider it possible to re-deploy resources from within the Division, or elsewhere in the Department, to meet the need. It is necessary to create a permanent DPGC post in the Team to share the responsibility for advising government bureaux/departments on the more complicated commercial law matters and overseeing the work of the SGC/GC in the Team in respect of the new initiatives. The duty list of the existing DPGC in the Commercial Law Team is at Enclosure 1. The proposed lists for the two DPGC in the Team after creation of the additional DPGC post are at Enclosures 2 and 3.

Encl. 1

Encls. 2&3

### **Creation of a DPGC post in the IDT Team**

7. Established in 1994 under the Securities (Insider Dealing) Ordinance (SIDO) Cap. 395, the Tribunal conducts inquiries into insider dealing, a type of market fraud in Hong Kong (and in other developed jurisdictions) that had

/previously .....

previously proved relatively easy to detect but difficult to prosecute and punish. The SIDO has now shown itself to be a success in this respect. Its provision for a Judge of the Court of First Instance of the High Court to sit with two lay expert assessors with the liberty to decide upon its own procedure within a civil regime, has made Hong Kong one of the few jurisdictions which have been able both to detect and to punish this particularly insidious type of market misconduct.

8. The role of the Tribunal is becoming increasingly important. Article 109 of the Basic Law provides that "The Government of the Hong Kong Special Administrative Region shall provide an appropriate economic and legal environment for the maintenance of the status of Hong Kong as an international financial centre". To achieve this, Hong Kong has to maintain an open and fair market place for both local and international investors and market operators. With the rapid expansion and development of the Hong Kong securities market, both the securities industry and the investing public have the expectation that the Government will uphold the standards of the market place and, in particular, provide a level playing field for all. This requires the Regulator and the Government to deal swiftly and decisively with suspected insider dealing cases and anything short of this will not only tarnish Hong Kong's reputation as an international financial centre but will also adversely affect the further development of our market.

9. The IDT Team, comprising one supernumerary DPGC and two time-limited SGC posts, was established in December 1997 for a period of three years. It advises the Financial Secretary through the FSB on the merits of having a Tribunal inquiry into investigations referred to it by the Securities and Futures Commission (SFC) by providing pre-inquiry legal advice. Once the Tribunal commences an inquiry, the IDT Team also provides counsel and solictorial services during the inquiry process.

Encl. 4 10. From 1994 to November 1997, the Tribunal completed five insider dealing inquiries. Since the establishment of the IDT Team in December 1997, the Tribunal has completed another seven insider dealing inquiries, the last of which was of such a scale that it took more than a year to complete. A summary of the orders made under the SIDO in these inquiries is at Enclosure 4. The Tribunal has just commenced a new inquiry concerning China Apollo. The IDT Team is also advising the FSB in respect of five further referrals from the SFC, some of which are likely to end up in substantial inquiries by the Tribunal. We expect that the SFC will continue to refer more cases to the Tribunal in future.

11. With the back-log of referrals (there are currently five referrals being handled by the Team) and bearing in mind that some of the SFC investigations have

taken a considerable time and cover events occurring some time ago, we expect that it will take more than two years to complete the present cases even with two divisions of the Tribunal sitting simultaneously (the SIDO makes provision for more than one division of the Tribunal to sit at the same time). While it is difficult to predict the future workload in quantitative terms, as the financial market of Hong Kong expands further in both its volume and value, we expect future cases to increase in both number and complexity.

Encl. 5 12. The work of the IDT Team in the Department involves reading voluminous documents and evidence, setting out in detail the subject matter of the inquiry, examining and cross-examining witnesses, making submissions and advising the Tribunal on points of law and procedure, and making submissions at the commencement and at the conclusion of the inquiry. Insider dealing cases often involve complicated commercial law and practice and numerous intricate transactions involving the parties. The present establishment of one DPGC and two SGC posts is the minimum to cope with the existing workload and level of complexity of work. In view of this and having regard to the anticipated workload in this area as described in paragraphs 10 and 11 above, we propose that one DPGC post be created on a permanent basis on 12 December 2000 upon the lapse of the existing supernumerary DPGC post in the IDT Team. To support the DPGC, we will retain the two time-limited SGC posts permanently. The proposed duty list of the DPGC post is at Enclosure 5. The establishment of a dedicated team of staff will enable the Team to continue developing case-law precedents and to retain and further develop the expertise in this difficult area of law, which is essential if the fight against insider dealing and malpractice within the securities market is to continue effectively.

13. We envisage that the workload of the IDT Team will grow to stretch its present resources beyond their limit. Recently, the IDT Team has provided legal input regularly during the drafting of Parts XI, XIII and XIV of the proposed Securities and Futures Bill. The Bill was published by the Government in the form of a White Bill for a three-month consultation that ended in June 2000, and will likely be enacted in the current session of the Legislative Council. We anticipate that the workload of the Team will increase substantially if the proposed Bill becomes law. The Government regards the proposed Bill as a major step forward in reforming the regulatory framework for the securities and futures market. It proposes, amongst other things, the establishment of a Market Misconduct Tribunal (MMT) to replace the IDT. The MMT will have a wider scope than the IDT and will deal with insider dealing, as well as market manipulation and other market misconduct. We will review the need to increase the staffing complement of the IDT team further, upon the enactment of the proposed Bill.

Encl. 6 14. The proposed organisation chart of the CD is at Enclosure 6.

**FINANCIAL IMPLICATIONS**

15. The additional notional annual salary cost of the proposal at MID-POINT is \$2,886,000. The additional full annual average staff cost of the proposal, including salaries and staff on-costs, is \$4,966,000.

16. In addition, the proposed creation of a permanent DPGC post in the IDT Team will necessitate the permanent retention of two SGC posts at a notional annual mid-point salary cost of \$1,970,520 and a full annual average staff cost of \$3,549,000.

17. We have included sufficient provision in the 2000-01 Estimates to meet the cost of this proposal.

**BACKGROUND INFORMATION**

18. On 12 December 1997, the Finance Committee approved the creation of a supernumerary DPGC post in the CD to head the IDT Team in the Commercial Unit for three years [vide EC(97-98)37]. The Department has recently reviewed the work of the Commercial Unit. The work of commercial law matters and insider dealing inquiries has been increasing rapidly both in volume and in complexity, with the growth in the Government's commercial activities, its regulation of utilities, licenses and certain commercial activities, and in Hong Kong's securities market leading to the need for insider dealing inquiries. There is a need for the dedicated attention of a directorate officer on a permanent basis to head the IDT Team and another to strengthen the supervision of the Commercial Law Team.

**CIVIL SERVICE BUREAU COMMENTS**

19. Having regard to the increase in complexity and range of legal work on commercial law matters, and the need for continued directorate support to cope with the workload in insider dealing cases, the Civil Service Bureau supports the creation of the two proposed permanent directorate posts in the CD. The grading and ranking of the proposed posts are considered appropriate.

**ADVICE OF THE STANDING COMMITTEE ON DIRECTORATE SALARIES AND CONDITIONS OF SERVICE**

20. The Standing Committee on Directorate Salaries and Conditions of Service has advised that the grading proposed for the posts would be appropriate if the posts were to be created.

**Existing Main Duties and Responsibilities of the  
Deputy Principal Government Counsel (DL2)  
(Senior Assistant Law Officer (Civil Law) (Commercial))**

Responsible to the Deputy Law Officer (Civil Law) (Commercial) (DL3) for -

- (1) maintaining an overview of the work of the Commercial Law Team in respect of advice on commercial contracts, company law matters, insurance, retirement protection, public transport franchises, telecommunication and broadcasting, implementation of major projects, public sector reform, privatisation, information technology, securities and futures trading;
- (2) providing legal advice on more complex and sensitive cases in respect of such commercial law matters;
- (3) drawing up or vetting undertakings, agreements, commercial contracts, franchises, and licences;
- (4) representing the Department of Justice on high level working parties and steering groups, including the Steering Committee on the Implementation of the Hong Kong Disney Land Project;
- (5) advising on and vetting draft Executive Council memoranda and drafting instructions for major legislation;
- (6) appearing before the Executive Council and Legislative Council panels and committees on matters with which he is dealing;
- (7) supervising the SGC/GC and providing guidance to them in their legal work; and
- (8) performing such other duties as may be assigned from time to time by the Law Officer (Civil Law) and the Deputy Law Officer (Civil Law) (Commercial).

**Proposed Main Duties and Responsibilities of the  
Deputy Principal Government Counsel (DL2)  
(Senior Assistant Law Officer (Civil Law) (Commercial)1)**

Responsible to the Deputy Law Officer (Civil Law) (Commercial) (DL3) for -

- (1) maintaining an overview of the work of the Commercial Law Team in respect of advice on commercial contracts, company law matters, insurance, retirement protection, public transport franchises, telecommunication and broadcasting;
- (2) providing legal advice on more complex and sensitive cases in respect of such commercial law matters;
- (3) drawing up or vet undertakings, agreements, commercial contracts, franchises and licences;
- (4) representing the Department of Justice on high level working parties and steering groups;
- (5) advising on and vet draft Executive Council memoranda and drafting instructions for major legislation;
- (6) appearing before the Executive Council and Legislative Council panels and committees on matters with which he is dealing;
- (7) supervising and providing guidance to the SGC/GC in the Team; and
- (8) performing such other duties as may be assigned from time to time by the Deputy Law Officer (Civil Law) (Commercial).





**Proposed Main Duties and Responsibilities of the  
Deputy Principal Government Counsel (DL2)  
(Senior Assistant Law Officer (Civil Law) (Commercial)2)**

Responsible to the Deputy Law Officer (Civil Law) (Commercial) (DL3) for -

- (1) maintaining an overview of the work of the Commercial Law Team in respect of advice on implementation of major projects, public sector reform, privatisation, information technology, securities and futures trading;
- (2) providing legal advice on more complex and sensitive cases in respect of such commercial law matters;
- (3) drawing up or vet undertakings or agreements;
- (4) representing the Department of Justice on high level working parties and steering groups, including the Steering Committee on the Implementation of the Hong Kong Disney Land Project;
- (5) advising on and vet draft Executive Council memoranda and drafting instructions for major legislation;
- (6) appearing before the Executive Council and Legislative Council panels and committees on matters with which he is dealing;
- (7) supervising and providing guidance to the SGC/GC in the Team; and
- (8) performing such other duties as may be assigned from time to time by the Deputy Law Officer (Civil Law) (Commercial).

**Summary of Orders Made under  
Securities (Insider Dealing) Ordinance Cap. 395**

<b>Serial Number</b>	<b>Name of Inquiry</b>	<b>Found Insider Dealer</b>	<b>S23(1)(a) Order</b> (Directorship disqualification - maximum 5 years)	<b>S23(1)(b) Order (\$)</b> ("Disgorgement" - maximum one time of profit gained or loss avoided)	<b>S23(1)(c) Order (\$)</b> (Fine - maximum 3 times of profit gained or loss avoided)	<b>Costs Awarded Against (\$)</b>
1	Success Holdings Limited	Ms CHAN Dan-nar	2 years in relation to listed companies	236,967	No order	No order
		Mr Tony LAU Hon-chung	2 years in relation to listed companies	No order	473,934 (200% of profit gained & loss avoided viz 236,967)	439,360 (2/3 of total costs)
2	Public International Investments Limited	Don Lau	3 years in relation to listed companies	389,550	839,036 (200% of profit gained viz 389,550)	700,000
		Mr LEONG Kwok-nyem	4 years in relation to listed companies	193,670 (approximately 40% of maximum)	728,445 (150% of profit gained in joint enterprise with Foong viz 485,630)	300,000
		Ms Amy FOONG Swee-heng	4 years in relation to listed companies	193,670 (approximately 40% of maximum)	242,815 (50% of profit gained in joint enterprise with Leong viz 485,630)	300,000

<b>Serial Number</b>	<b>Name of Inquiry</b>	<b>Found Insider Dealer</b>	<b>S23(1)(a) Order</b> (Directorship disqualification - maximum 5 years)	<b>S23(1)(b) Order (\$)</b> ("Disgorgement" - maximum one time of profit gained or loss avoided)	<b>S23(1)(c) Order (\$)</b> (Fine - maximum 3 times of profit gained or loss avoided)	<b>Costs Awarded Against (\$)</b>
3	Yanion International Holdings Limited	Mr LEUNG Wah-chai	1 year in relation to any directorship	1,464,180	1,700,000  (approximately 116% of loss avoided viz 1,464,180)	Approximately 3.5 million  (100% of total costs)
		Ms BUTT Ching-han	1 year in relation to any directorship	No order	300,000  (approximately 20.5% of loss avoided viz 1,464,180)	No order
4	Hong Kong Parkview Group Limited	Mr KWANG Chou-shiuan	6 months in relation to the company	1,065,550	1,065,550  (100% of profit gained viz 1,065,550)	(80% of total costs)
5	Chevalier (OA) International Limited	There was no finding of insider dealing because a S10(3) defence succeeded.				

<b>Serial Number</b>	<b>Name of Inquiry</b>	<b>Found Insider Dealer</b>	<b>S23(1)(a) Order</b> (Directorship disqualification - maximum 5 years)	<b>S23(1)(b) Order (\$)</b> ("Disgorgement" - maximum one time of profit gained or loss avoided)	<b>S23(1)(c) Order (\$)</b> (Fine - maximum 3 times of profit gained or loss avoided)	<b>Costs Awarded Against (\$)</b>
6	Hong Kong Worsted Mills Limited	Ms SHEK Mei-ling	3 years in relation to listed companies	231,745	150,000  (64.7% of actual profit gained viz 231,745)	838,027  (25% of total costs)
		Mr TAI Lai-wo	2 years in relation to listed companies	3,000,000  (approximately 48.2% of maximum)	2,000,000  (approximately 32.2% of profit gained viz 6,217,793)	322,070  (10% of total costs)
		Mr Sinjo Wahid Winata Tan	2 years in relation to listed companies	1,500,000  (approximately 61.9% of maximum)	1,000,000  (approximately 41.3% of profit gained viz 2,423,133)	322,070  (10% of total costs)
		Mr CHENG Chun-ling	2 years in relation to listed companies	3,900,000  (approximately 49.3% of maximum)	2,600,000  (32.9% of profit gained viz 7,902,940)	322,070  (10% of total costs)
		Mr Dominic Leung	3 years in relation to listed companies	1,000,000  (approximately 48.1% of maximum)	1,500,000  (72.2% of profit gained viz 2,077,384)	838,027  (25% of total costs)

<b>Serial Number</b>	<b>Name of Inquiry</b>	<b>Found Insider Dealer</b>	<b>S23(1)(a) Order</b> (Directorship disqualification - maximum 5 years)	<b>S23(1)(b) Order (\$)</b> ("Disgorgement" - maximum one time of profit gained or loss avoided)	<b>S23(1)(c) Order (\$)</b> (Fine - maximum 3 times of profit gained or loss avoided)	<b>Costs Awarded Against (\$)</b>
7	Emperor (China Concept) Investments Limited	Mr Albert YEUNG Sau-shing	2 years in relation to listed companies	6,811,400	10,000,000  (146.8% of profit gained viz 6,811,400)	3,882,033  (100% of total costs)
8	Ngai Hing Hong Company Limited	Mr Taylor Ho	1 year in relation to listed companies	1,945,338	1,000,000  (51.4% of profit gained viz 1,945,338)	1,084,951  (100% of total costs)
9	Chinese Estates Holdings Limited	There was no finding of insider dealing on the part of Mr Johnson Lam. Costs awarded to him. Mr Joseph Lau was also found not to be an insider dealer. No costs order was made in his favour.				

<b>Serial Number</b>	<b>Name of Inquiry</b>	<b>Found Insider Dealer</b>	<b>S23(1)(a) Order</b> (Directorship disqualification - maximum 5 years)	<b>S23(1)(b) Order (\$)</b> ("Disgorgement" - maximum one time of profit gained or loss avoided)	<b>S23(1)(c) Order (\$)</b> (Fine - maximum 3 times of profit gained or loss avoided)	<b>Costs Awarded Against (\$)</b>
10	Hanny Holdings Limited (under appeal)	Mr WONG Sun	4 years in relation to listed companies	17,000,000  (approximately 97.4% of maximum)	25,000,000  (approximately 143% of profit gained & loss avoided viz 17,456,328)	5,400,000  (approximately 45% of total costs)
		Mr William FUNG Wai-kwong	3 years in relation to listed companies	8,000,000  (approximately 96.9% of maximum)	8,000,000  (approximately 96.9% of loss avoided viz 8,257,002)	1,800,000  (approximately 15% of total costs)
		Ms WONG Sanrita	4 years in relation to listed companies	10,000,000  (approximately 96.7% of maximum)	12,000,000  (approximately 116% of loss avoided viz 10,340,053)	2,400,000  (approximately 20% of total costs)

Note: In addition there are 2 tribunal decisions which are the subject of judicial review.

**Proposed Main Duties and Responsibilities of the  
Deputy Principal Government Counsel ((DL2)  
(Senior Assistant Law Officer (Civil Law) (Insider Dealing Tribunal))**

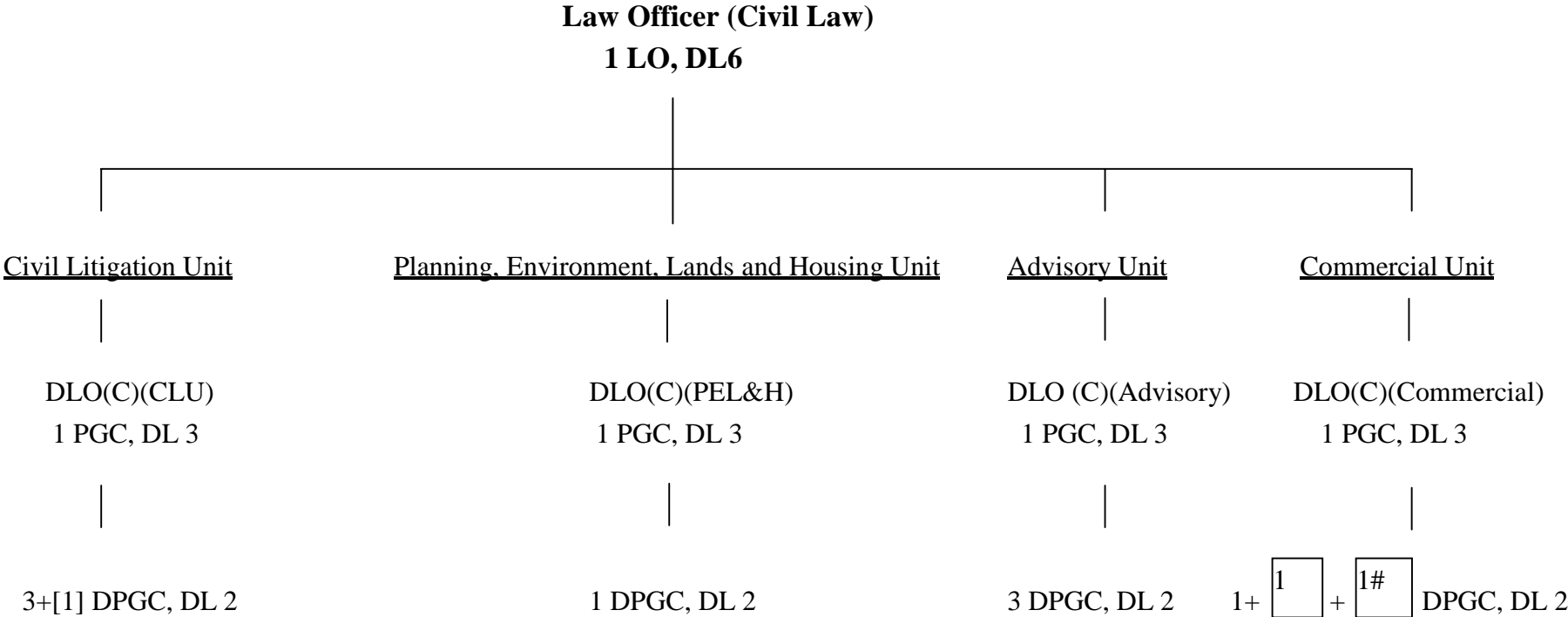
Responsible to the Deputy Law Officer (Civil Law) (Commercial) (DL3) for -

- (1) providing legal analysis and advice on suspected insider dealing cases referred to the Financial Secretary by the Securities and Futures Commission, or any cases of this nature as identified by the Financial Secretary;
- (2) giving advice on the appropriate procedures and prepare necessary documents for the operation of the Insider Dealing Tribunal;
- (3) appearing as Counsel to the Tribunal during insider dealing inquiries and render support to other Counsel to the Tribunal during those inquiries;
- (4) giving legal advice to Government on insider dealing and market manipulation;
- (5) supervising counsel in the Insider Dealing Tribunal Team; and
- (6) performing such other duties as may be assigned from time to time by the Deputy Law Officer (Civil Law) (Commercial).





Existing and Proposed Organisation Chart of the Civil Division



- Legend:
- LO = Law Officer
  - PGC = Principal Government Counsel
  - DPGC = Deputy Principal Government Counsel
  - DLO(C) = Deputy Law Officer (Civil Law)
  - [ ] = Supernumerary post held against other vacant post
  - # = Existing supernumerary post which is proposed to be created on a permanent basis
  - = Proposed creation of a DPGC post on a permanent basis