

**Replies to initial written questions raised by Finance Committee Members in
examining the Estimates of Expenditure 2009-10**

**Controlling Officer : Director of Administration and Development
Session No. : 5**

Reply Serial No.	Question Serial No.	Name of Member	Head	Programme
SJ001	0186	LAU Kong-wah	92	(1) Prosecutions
SJ002	0187	LAU Kong-wah	92	(1) Prosecutions
SJ003	0188	LAU Kong-wah	92	(1) Prosecutions
SJ004	0189	LAU Kong-wah	92	(2) Civil
SJ005	0190	LAU Kong-wah	92	(2) Civil
SJ006	0191	LAU Kong-wah	92	(2) Civil
SJ007	0192	LAU Kong-wah	92	(2) Civil
SJ008	0193	LAU Kong-wah	92	(3) Legal Policy
SJ009	0194	LAU Kong-wah	92	(3) Legal Policy
SJ010	0195	LAU Kong-wah	92	(3) Legal Policy
SJ011	0196	LAU Kong-wah	92	(3) Legal Policy
SJ012	0197	LAU Kong-wah	92	(3) Legal Policy
SJ013	0198	LAU Kong-wah	92	(4) Law Drafting
SJ014	0625	LEE Wai-king, Starry	92	(4) Law Drafting
SJ015	0626	LEE Wai-king, Starry	92	(4) Law Drafting
SJ016	0628	LEE Wai-king, Starry	92	(3) Legal Policy
SJ017	0754	HO Sau-lan, Cyd	92	(4) Law Drafting
SJ018	0757	HO Sau-lan, Cyd	92	(3) Legal Policy
SJ019	0762	HO Sau-lan, Cyd	92	(3) Legal Policy
SJ020	2068	TSE Wai-chun, Paul	92	(1) Prosecutions
SJ021	2069	TSE Wai-chun, Paul	92	(1) Prosecutions
SJ022	2070	TSE Wai-chun, Paul	92	(2) Civil
SJ023	2071	TSE Wai-chun, Paul	92	(2) Civil
SJ024	2097	NG Margaret	92	(1) Prosecutions
SJ025	2098	NG Margaret	92	(1) Prosecutions
SJ026	2099	NG Margaret	92	(1) Prosecutions
SJ027	2100	NG Margaret	92	(1) Prosecutions
SJ028	2101	NG Margaret	92	(3) Legal Policy
SJ029	2102	NG Margaret	92	(1) Prosecutions
SJ030	2103	NG Margaret	92	(1) Prosecutions
SJ031	2104	NG Margaret	92	(3) Legal Policy
SJ032	2105	NG Margaret	92	(1) Prosecutions
SJ033	2106	NG Margaret	92	(4) Law Drafting
SJ034	2107	NG Margaret	92	(3) Legal Policy

Examination of Estimates of Expenditure 2009-10
**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

Reply Serial No.

SJ001

Question Serial No.

0186

Head : 92 Department of Justice Subhead (No. & title) :

Programme : (1) Prosecutions

Controlling Officer : Director of Administration and Development

Question :

With regard to providing advice for law enforcement agencies on whether charges should be laid within 14 working days upon receipt of request by the Prosecutions Division, please provide breakdown of such cases in 2006-07, 2007-08 and 2008-09 by (a) the law enforcement agencies making the requests, (b) types of cases, and (c) advices given by the Prosecutions Division on whether to (i) lay charges, or (ii) not to lay charges.

Asked by : Hon. LAU Kong-wah

Reply :

Upon receipt of the requests from law enforcement agencies for legal advice, we are pledged to provide advice within 14 working days, or for a complex case, an interim reply within 14 working days. In 2008, advices (including advice on whether charges should be laid) were provided in 96% of such requests within 14 working days. However, the detailed breakdown of type of advice given (including whether or not to lay charges) to the law enforcement agencies are not available. The breakdown of the request for legal advice from law enforcement agencies in the past three years are set out below -

	2006	2007	2008
Police	7 060	7 859	7 892
Customs & Excise	893	710	767
Independent Commission Against Corruption	830	837	801
Immigration	513	790	894
Other government departments and agencies	2 420	3 017	3 020
Total :	11 716	13 213	13 374

Breakdown of the legal advice by type of cases are not available.

Signature _____

Name in block letters Miss Susie Ho
Director of Administration

Post Title and Development

Date 19 March 2009

Examination of Estimates of Expenditure 2009-10
**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

Reply Serial No.

SJ002

Question Serial No.

0187

Head : 92 Department of Justice Subhead (No. & title) :

Programme : (1) Prosecutions

Controlling Officer : Director of Administration and Development

Question :

Comparing the conviction rates for 2007 and 2008, it is found that the conviction rate at the Magistrates' Court level in 2008 is lower than that of 2007. What are the reasons and problems involved?

Please list the numbers of different types of cases in which convictions were made by the Magistrates' Courts in 2006, 2007 and 2008.

Asked by : Hon. LAU Kong-wah

Reply :

The duty of the prosecutor is to prosecute firmly in a fair and objective manner, and to ensure that justice is done. It is wrong to strive to secure a conviction at all costs. Cases which appear strong on paper may be lost at court for various reasons. Evidence may be ruled inadmissible, witnesses may refuse to appear, and the credibility of those who testify may wither under cross-examination. Questions of admissibility of evidence and of guilt or innocence are ultimately matters for the courts to decide. Conviction rates in criminal cases are not and should not be taken as performance indicators.

Conviction rates are calculated on the basis of the number of defendants being convicted. Breakdown of the conviction rates by type of cases is not available. The total number of defendants convicted at the Magistrates Courts level is:

<u>Year</u>	<u>No. of defendants convicted at Magistrates' Courts</u>
2006	10 660
2007	11 242
2008	10 346

Signature _____

Name in block letters Susie Ho

Post Title Director of Administration
and Development

Date 19 March 2009

Examination of Estimates of Expenditure 2009-10
**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

Reply Serial No.

SJ003

Question Serial No.

0188

Head : 92 Department of Justice Subhead (No. & title) :

Programme : (1) Prosecutions

Controlling Officer : Director of Administration and Development

Question :

Regarding matters requiring special attention in 2009-10, how will the Prosecutions Division promote co-operation amongst prosecutors at the global level in the combat of crime? What specific measures will be taken? Besides, does co-operation with the People's Procuratorate of the Mainland fall within the scope of cooperation amongst prosecutors at the global level? If yes, what are the details of the co-operation?

Asked by : Hon. LAU Kong-wah

Reply :

Global co-operation amongst prosecutors, including prosecutors from the Mainland, is promoted by facilitating the implementation of letters of request issued by courts for the gathering of evidence; by contributing to efforts to counter corruption, fraud, money laundering, child pornography and transnational crime; by sharing information and experience with prosecutors in other jurisdictions; by assisting the training agendas of other prosecution services; and by supporting the work of the International Association of Prosecutors and of its Executive Committee.

The prosecution services of the Mainland and Hong Kong co-operate in various ways to combat crime. Prosecutors appear in Mainland courts pursuant to letters of request; attachment training and visits under the Legal Services Co-operation Agreements, signed with Justice Departments and Bureaux in the Mainland and the Training Scheme in Common Law for Mainland Legal Officials, result in exchanges of views and promote greater understanding of the legal arrangements in Hong Kong; exchange of ideas occur at international fora, including the China-ASEAN Prosecutors General Conference, the 13th Annual Conference and General Meeting of the International Association of Prosecutors, the 5th Asia and Pacific Regional Conference of the International Association of Prosecutors and the Conference of the International Association of Anti-Corruption Authorities.

Signature _____

Name in block letters _____

Post Title _____

Date _____

Susie Ho

Director of Administration
and Development

19 March 2009

Examination of Estimates of Expenditure 2009-10
**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

Reply Serial No.

SJ004

Question Serial No.

0189

Head : 92 Department of Justice Subhead (No. & title) :

Programme : (2) Civil

Controlling Officer : Director of Administration and Development

Question :

In relation to the indicator on civil litigation cases, the actual numbers of current civil litigation cases and new proceedings brought by the Government in 2008 have increased as compared with the figures for 2007. What are the reasons? Besides, what are the reasons for the estimated increase in the number of proceedings brought by and against the Government in 2009 under this Programme?

Asked by : Hon. LAU Kong-wah

Reply :

The actual number of civil litigation cases in 2007, 2008 and the estimated number for 2009 are as follows:

	2007 (Actual)	2008 (Actual)	2009 (Estimate)
1. Civil litigation cases current on 31 December	18 561	20 602	20 700
2. New civil proceedings (including non-construction arbitration and mediation) brought by the Government	1 247	1 467	1 705
3. New civil proceedings (including non-construction arbitration and mediation) brought against the Government	886	889	900

In relation to item 1 above, the increase in the actual number of civil litigation cases current on 31 December in 2008 in comparison with 2007 is mainly due to an increase in the number of rating appeals, government rent appeals, charging order cases, recovery of student loans cases, traffic accident claims and claims by government for payment of employees' compensation.

In relation to item 2 above, the increase in the number of new civil proceedings brought by the Government in 2008 in comparison with 2007 is mainly due to an increase in the number of charging order and recovery of student loans cases. As regards the estimated increase in 2009, this is mainly due to an estimated increase in recovery of student loans cases as advised by the Student Finance Assistance Agency.

In relation to item 3 above, the increase in the actual number of new civil proceedings brought against the Government in 2008 in comparison with 2007 is mainly due to an increase in judicial review cases. As regards the estimated increase in 2009, this is also mainly due to an estimated increase in various judicial review cases.

Signature _____

Name in block letters Susie Ho

Post Title Director of Administration
and Development

Date 19 March 2009

Examination of Estimates of Expenditure 2009-10
**CONTROLLING OFFICER'S REPLY TO
 INITIAL WRITTEN QUESTION**

Reply Serial No.

SJ005

Question Serial No.

0190

Head : 92 Department of Justice Subhead (No. & title) :

Programme : (2) Civil

Controlling Officer : Director of Administration and Development

Question :

Among the proceedings involving the Government in 2006, 2007 and 2008 respectively, how many cases of disputes were referred to arbitration and mediation by virtue of contractual provisions? Please list separately the numbers of proceedings brought by the Government and brought against the Government.

Asked by : Hon. LAU Kong-wah

Reply :

1. The numbers of cases referred to arbitration by virtue of contractual provisions (including construction related arbitration) are as follows:

	<u>2006</u>	<u>2007</u>	<u>2008</u>
Arbitration in respect of claims initiated by government	0	2	0
Arbitration in respect of claims pursued against government	6	9	13
Total	6	11	13

2. The numbers of cases referred to mediation (including construction related mediation) by virtue of contractual provisions are as follows:

	<u>2006</u>	<u>2007</u>	<u>2008</u>
Mediation in respect of claims initiated by government	0	0	0
Mediation in respect of claims pursued against government	11	5	4
Total	11	5	4

Signature _____

Name in block letters Susie Ho

Post Title Director of Administration
and Development

Date 19 March 2009

Examination of Estimates of Expenditure 2009-10
**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

Reply Serial No.

SJ006

Question Serial No.

0191

Head : 92 Department of Justice Subhead (No. & title) :

Programme : (2) Civil

Controlling Officer : Director of Administration and Development

Question :

Please provide the numbers of cases for 2006, 2007 and 2008 in which the Administration took the initiative to propose to resolve disputes by means of arbitration or mediation even though there were no such contractual provisions. Please list the number of times in which arbitration or mediation was proposed and the number of cases in which final consent was given by the opposite party.

Asked by : Hon. LAU Kong-wah

Reply :

When contractual disputes arise and where the contract is silent on the arbitration or mediation arrangements, or where the subject matter requires an authoritative ruling, the dispute would invariably be referred to the court for a ruling instead of going through the alternative dispute resolution route. All cases which were referred to arbitration or mediation in 2006, 2007 and 2008 were by virtue of contractual provisions. In most instances where cases are taken to the court, the subject matter required authoritative ruling.

Signature _____

Name in block letters _____ Susie Ho

Post Title _____ Director of Administration
and Development

Date _____ 19 March 2009

Examination of Estimates of Expenditure 2009-10
**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

Reply Serial No.

SJ007

Question Serial No.

0192

Head : 92 Department of Justice Subhead (No. & title) :

Programme : (2) Civil

Controlling Officer : Director of Administration and Development

Question :

- (a) Please provide the numbers of insider dealing and market misconduct proceedings in which the Civil Division was involved in 2006, 2007 and 2008.
- (b) Regarding matters requiring special attention in 2009-10 of the Civil Division, giving advice on the legal aspects of "insider dealing and market misconduct proceedings" was included. Please provide the details as well as the staffing and expenditure involved.

Asked by : Hon. LAU Kong-wah

Reply :

- (a) The numbers of insider dealing and market misconduct proceedings, including related judicial review proceedings and appeals, in which Civil Division was involved in 2006, 2007 and 2008 are as follows:

	<u>2006</u>	<u>2007</u>	<u>2008</u>
Insider dealing and market misconduct proceedings (including related judicial review proceedings and appeals)	34	43	44

- (b) Legal advice will be provided as required on referral of cases to the Insider Dealing and Market Misconduct Tribunals, other matters relating to the proceedings before the said tribunals and generally in relation to the operation of the said tribunals. Legal advice will be given by counsel at different ranks and the number of staff deployed will depend on the workload. Where necessary, opinions from experienced outside counsel will be obtained. The cost involved will be absorbed by the provision under Head 92 and cannot be quantified.

Signature _____

Name in block letters _____ Susie Ho

Post Title _____ Director of Administration and Development

Date _____ 19 March 2009

Examination of Estimates of Expenditure 2009-10
**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

Reply Serial No.

SJ008

Question Serial No.

0193

Head : 92 Department of Justice Subhead (No. & title) :

Programme :(3) Legal Policy

Controlling Officer : Director of Administration and Development

Question :

With respect to the discussions with the Mainland authorities on the co-operation arrangements on civil and commercial matters that took place between 2006 and 2008, had the issue of enforcement of arbitral awards in the two places been involved? If yes, please give an account of the problems discussed and the number of their occurrences?

Asked by : Hon. LAU Kong-wah

Reply :

The issue of enforcement under the "Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the HKSAR" was not on the agenda in the discussions of an arrangement on the reciprocal enforcement of court judgments in civil and commercial matters between the Mainland and the HKSAR. However, during the course of the meetings, the parties agreed to continue to exchange information on the enforcement of arbitral awards which originated in the other jurisdiction. The latest statistics on the enforcement of arbitration awards from Mainland in Hong Kong from 2006 to 2008 are attached.

Signature _____

Name in block letters Susie Ho

Post Title Director of Administration
and Development

Date 19 March 2009

**Enforcement of Arbitration Awards
from Mainland in Hong Kong from 2006 to 2008 (up to September 2008)**

Year	No. of Applications¹ Granted	No. of Order² Set Aside
2006	6	0
2007	4	0
2008	0	0

Explanatory notes

- 1 The figures represent the number of applications for registration of Mainland awards.
- 2 The figures show the number of orders of registration later set aside by the High Court.

Examination of Estimates of Expenditure 2009-10
**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

Reply Serial No.

SJ009

Question Serial No.

0194

Head : 92 Department of Justice Subhead (No. & title) : 700 Operating Account

Programme : (3) Legal Policy

Controlling Officer : Director of Administration and Development

Question :

What are the details on the estimated expenditure for the development of Mainland-related legal services in Hong Kong? Besides, what is the estimated expenditure for exploring further opportunities for the legal profession in Hong Kong to provide services in the Mainland? Does it come under the first-mentioned expenditure item?

Asked by : Hon. LAU Kong-wah

Reply :

In 2009-10, the Department will continue to work with the local legal profession and the relevant parties in the Mainland to explore way to further develop Hong Kong legal services in the Mainland as well as locally, whether through regular meetings or through participation in specific activities such as the All China Lawyers Forum. The staff cost and other related expenses for taking forward the work will be absorbed by the Department and the estimated expenditure in this regard cannot be quantified.

Signature _____

Name in block letters Susie Ho
Post Title Director of Administration
and Development

Date 19 March 2009

Examination of Estimates of Expenditure 2009-10
**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

Reply Serial No.

SJ010

Question Serial No.

0195

Head : 92 Department of Justice Subhead (No. & title) :

Programme : (3) Legal Policy

Controlling Officer : Director of Administration and Development

Question :

Regarding the estimate that the items of legal advice to be given on human rights issues in 2009 will only increase by 2 items as compared to the actual figure in 2008, is this assessment accurate? Given that the Race Discrimination Ordinance has just come into operation, has the Legal Policy Division anticipated that considerable legal advice on human rights issues will be required by various departments and hence the items of legal advice to be given will increase?

Asked by : Hon. LAU Kong-wah

Reply :

The need for legal advice is demand led and depends on the issues that arise in the course of the financial year. The number of cases in the Report are estimates. The Legal Policy Division is aware that there would likely be an increase in demand for advice from government bureaux and departments after the commencement of the Race Discrimination Ordinance in 2009-10, but we expect that this would be off-set by the decrease in demand for advice in the preparation and promotion of the Race Discrimination Bill. The estimated number of cases is therefore similar to the actual figure in 2008-09.

Signature _____

Name in block letters Susie Ho

Post Title Director of Administration
and Development

Date 19 March 2009

Examination of Estimates of Expenditure 2009-10
**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

Reply Serial No.

SJ011

Question Serial No.

0196

Head : 92 Department of Justice Subhead (No. & title) :

Programme : (3) Legal Policy

Controlling Officer : Director of Administration and Development

Question :

The number of pieces of legal advice given on Mainland law and related matters by the Legal Policy Division in 2008 has decreased as compared to 2007. What are the reasons?

Asked by : Hon. LAU Kong-wah

Reply :

The advice given on Mainland law and related matters is demand led and there has been no consistent pattern on the trend over past few years. The increase in the number of pieces of advice given in 2007 was largely attributable to the active discussion of the co-location of boundary crossing facilities in Shenzhen. In addition, advice was also rendered on matters relating to the introduction of the bill to implement the "Reciprocal Enforcement of Judgments in Civil & Commercial Matters" signed between the Mainland and the HKSAR in 2006. Following the conclusion of the co-location matters in early 2008, and the passage of the Mainland Judgments (Reciprocal Enforcement) Bill in April 2008, the number of pieces of advice given in 2008 has dropped.

Signature _____

Name in block letters Susie Ho

Post Title Director of Administration
and Development

Date 19 March 2009

Examination of Estimates of Expenditure 2009-10
**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

Reply Serial No.

SJ012

Question Serial No.

0197

Head : 92 Department of Justice Subhead (No. & title) :

Programme : (3) Legal Policy

Controlling Officer : Director of Administration and Development

Question :

According to the "Framework for Development and Reform Planning for Pearl River Delta Region", Hong Kong will continue to strengthen its co-operation with the Pearl River Delta Region. In this respect, does the Department of Justice anticipate an increase in the provision of legal advice to various departments on Mainland-related matters? If so, what will the main areas of advice be?

Asked by : Hon. LAU Kong-wah

Reply :

At this stage, we do not expect a sudden surge in the demand for legal advice on Mainland legal matters in the implementation of the "Framework".

Signature _____

Name in block letters _____ Susie Ho

Post Title _____ Director of Administration
and Development

Date _____ 19 March 2009

Examination of Estimates of Expenditure 2009-10
**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

Reply Serial No.

SJ013

Question Serial No.

0198

Head : 92 Department of Justice Subhead (No. & title):

Programme : (4) Law Drafting

Controlling Officer : Director of Administration and Development

Question :

Regarding the increased estimate for the provision for 2009-10, what is the amount required for the filling of vacancies? What is the number of staff involved and what are their ranks? What is the proportion of the anticipated increase in general departmental expenses in the increased estimate? What are the specific expenditure items involved?

Asked by : Hon. LAU Kong-wah

Reply :

The provision for the Law Drafting programme for 2009-10 is \$8.8M higher than the revised estimate for 2008-09. This is mainly due to the filling of vacancies, salary increments for staff, as well as anticipated increase in general departmental expenses. The estimated amount required for filling of vacancies is \$3.1M covering 6 vacancies in the Government Counsel, Law Clerk and general grades.

The increase in general departmental expenses constitutes 29% of the increased estimate. It includes additional provision for training and expenses for a contract Legislative Editor and temporary counsel.

Signature _____

Name in block letters _____ Susie Ho

Post Title _____ Director of Administration
and Development

Date _____ 19 March 2009

Examination of Estimates of Expenditure 2009-10
**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

Reply Serial No.

SJ014

Question Serial No.

0625

Head : 92 Department of Justice Subhead (No. & title):

Programme : (4) Law Drafting

Controlling Officer : Director of Administration and Development

Question :

Regarding the increase of 11.3% in the 2009-10 estimate over the 2008-09 revised estimate, will this figure be revised after taking into account the Administration's deferment of the legislative work of the 8 ordinances including the Competition Bill and the Food Safety Bill? What are the details?

Asked by: Hon. LEE Wai-king, Starry

Reply:

The budget for the Law Drafting Division will not be affected by the proposal to postpone the introduction of 8 bills into the Legislative Council. The drafting work is in progress.

Signature _____

Name in block letters Miss Susie Ho

Post Title Director of Administration
and Development

Date 19 March 2009

Examination of Estimates of Expenditure 2009-10
**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

Reply Serial No.

SJ015

Question Serial No.

0626

Head : 92 Department of Justice Subhead (No. & title):

Programme : (4) Law Drafting

Controlling Officer : Director of Administration and Development

Question :

The Department of Justice has estimated that 30 bills will be gazetted in 2009. Please provide the names of the bills and the related expenses for drafting these bills.

Asked by : Hon. LEE Wai-king, Starry

Reply :

The estimate of 30 bills was made towards the end of 2008 on the basis of the information provided by the Policy Bureaux. These include 16 bills listed in the legislative programme for the 2nd half of the 2008-09 Legislative Session released by the Administration Wing vide a letter dated 26 February 2009 and set out below.

1. Copyright (Amendment) Bill
2. Voting by Imprisoned Persons Bill
3. Arbitration Bill
4. Legal Practitioners (Amendment) Bill
5. Biosafety Bill
6. Fixed Penalty (Idling Vehicles) Bill
7. Inland Revenue (Amendment) Bill
8. Mandatory Provident Fund Schemes (Amendment) Bill
9. Legal Aid (Amendment) Bill
10. Village Representative Election (Amendment) Bill
11. Domestic Violence (Amendment) Bill
12. A bill to enhance enforcement of Labour Tribunal awards
13. Minimum Wage Bill
14. Occupational Deafness (Compensation) (Amendment) Bill
15. International Convention on Civil Liability to Bunker Oil Pollution Damage
16. Merchant Shipping (Safety) (Amendment) Bill

The released programme does not cover the Bills to be introduced in the 1st half of the 2009-10 Legislative Session; these will be finalised later in the year.

As all officers in the Law Drafting Division work on multiple items at any one time and all drafting items require team efforts, it is impracticable to calculate the cost of drafting of each bill.

Signature _____

Name in block letters Miss Susie Ho
Director of Administration
Post Title and Development

Date 19 March 2009

Examination of Estimates of Expenditure 2009-10
**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

Reply Serial No.

SJ016

Question Serial No.

0628

Head : 92 Department of Justice Subhead (No. & title):

Programme : (3) Legal Policy

Controlling Officer : Director of Administration and Development

Question :

Please provide details on the work involved in promoting the use of arbitration and mediation as well as the breakdown of the expenditure in 2009-10.

Asked by : Hon. LEE Wai-king, Starry

Reply :

Arbitration

The Department of Justice welcomes the setting up in Hong Kong of a branch secretariat of the International Court of Arbitration of the International Chamber of Commerce. In 2009-10, we will continue our efforts to forge closer ties with reputable international arbitration institutions to enhance our status as a dispute resolution centre for the Asia Pacific. We will continue to strengthen our legislative framework by finalising and introducing the Arbitration Bill to the Legislative Council in June 2009 which will unify the domestic and international arbitration regimes on the basis of the United Nations Commission on International Trade Law (UNCITRAL) Model Law. We will work closely with the Hong Kong International Arbitration Centre to promote the use of arbitration to settle civil and commercial disputes.

Mediation

The Secretary for Justice's Working Group on Mediation has been making progress in its deliberations on the promotion of mediation in Hong Kong. In 2009, the 3 Sub-groups covering Public Education and Publicity, Accreditation and Training, and Regulatory Framework will continue their discussions covering their terms of reference. It is expected that the 3 Sub-groups will complete their reports and submit their recommendations to the Working Group for consideration in 2009.

The staff cost and other related expenses for promoting arbitration and mediation will be absorbed by the Department and the estimated expenditure in this regard cannot be quantified.

Signature _____

Name in block letters Susie Ho

Post Title Director of Administration
and Development

Date 19 March 2009

Examination of Estimates of Expenditure 2009-10
**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

Reply Serial No.

SJ017

Question Serial No.

0754

Head : 92 Department of Justice Subhead (No. & title):

Programme : (4) Law Drafting

Controlling Officer : Director of Administration and Development

Question :

Regarding the expenditure on law drafting, please provide the following information:

- (1) details of and resources involved in the seminars and workshops organised by the Administration to enhance the drafting skills of the Counsel under the implementation of the in-house mentorship programme from 2006-07 to 2009-10.
- (2) Hong Kong is currently the only Chinese speaking region which has adopted the common law system. Does the Administration have any relevant policy to enhance the Counsel's skills in drafting law in Chinese and has it conducted any related study?

Asked by : Hon. HO Sau-lan, Cyd

Reply :

- (1) The followings are the details of the mentorship programme and in-house seminars organised from 2006-07 to 2009-10.

Seminars and Workshop –

- (a) Two seminars on drafting Chinese legal provisions and preparing legal reports were held in July and August 2007.
- (b) A seminar on modern trends in law drafting was organised in May 2008.
- (c) A Legislative Drafting Course was organised from May to December 2008.
- (d) A seminar on gender-neutral drafting was organised in June 2008.
- (e) A seminar on saving and transitional provisions was organised in February 2009.

The expenditure for organising Item (c) above was \$882,000. All the other items listed above are conducted in-house and the resource required was absorbed under the Law Drafting programme.

A number of in-house drafting seminars are also being planned. We have also nominated 25 counsel to attend, subject to operational requirement, the Commonwealth Association of Legislative Counsel Conference 2009 to be held in Hong Kong in April 2009.

Mentorship Scheme

Throughout the period concerned, all Senior Government Counsel and Government Counsel in the Law Drafting Division were assigned a mentor or supervisor to provide close guidance. The mentors and supervisors are all experienced directorate officers. No additional expenditure was incurred.

- (2) We will continue to provide close guidance and progressive on-the-job training to bilingual drafters. Seminars will continue to be organised to enhance Chinese legislative drafting skills. We have not conducted any academic study on Chinese legislative drafting but we study from time to time legislation enacted in the Mainland, Taiwan and Macau to tap on their way of drafting and presentation. We do so however with the full awareness that those three jurisdictions are not common law jurisdiction.

Signature _____

Name in block letters Susie Ho

Post Title Director of Administration
and Development

Date 19 March 2009

Examination of Estimates of Expenditure 2009-10
**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

Reply Serial No.

SJ018

Question Serial No.

0757

Head : 92 Department of Justice Subhead (No. & title):

Programme : (3) Legal Policy

Controlling Officer : Director of Administration and Development

Question :

The Department of Justice provides secretariat support for the Law Reform Commission (LRC). For better understanding of the financial position and the work of the LRC, please state the followings:

- (a) What ongoing projects are being undertaken by the LRC? What is the progress of these projects?
- (b) In the financial year 2009-10, will the LRC embark on any new projects? If yes, what are the details and the estimate involved?

Asked by : Hon. HO Sau-lan, Cyd

Reply :

Most Law Reform Commission projects are referred to a sub-committee of those with a relevant interest or expertise in the particular subject under review. Some projects are dealt with by the Commission itself, without a sub-committee. In all projects, the public's views will be sought by way of a consultation paper which sets out the Commission's or the sub-committee's preliminary conclusions and recommendations. Following the consultation process, the Commission will issue a Final Report.

The LRC's current projects and their progress are:

Project	Progress
1. Adverse possession	A sub-committee began work in October 2006 and is working towards completion of a consultation paper.
2. Causing or allowing the death of a child	A sub-committee began work in December 2006 and is working towards completion of a consultation paper.
3. Charities	A sub-committee began work in November 2007 and is working towards completion of a consultation paper.

4. Class actions	A sub-committee began work in January 2007 and is working towards completion of a consultation paper.
5. Criteria for service as jurors	A sub-committee began work in October 2003 and published a consultation paper in January 2008. The sub-committee is working towards completion of its final report.
6. Double jeopardy	A sub-committee began work in July 2006 and is working towards completion of a consultation paper.
7. Enduring powers of attorney	The Commission has finalised a consultation paper which will be published later this year.
8. Hearsay in criminal proceedings	A sub-committee began work in August 2001 and published a consultation paper in November 2005. The sub-committee is working towards completion of its final report.
9. Review of sexual offences	A sub-committee began work in August 2006 and published a consultation paper containing its interim proposals for a sex offender register in July 2008. The sub-committee is working towards completion of its report on this aspect of the project.

As existing projects are completed and resources are freed up, the usual practice is for the LRC to take on new projects to replace them. It is anticipated that one, or possibly two, projects may be completed in the 2009-10 financial year. A decision has not yet been taken on what new projects will then be taken on.

The members of the LRC and its sub-committees volunteer their services part-time and are unpaid. The Department of Justice provides secretariat and research support to the LRC and its sub-committees. The staff costs and other related expenses for LRC projects are absorbed by the Department and the estimated expenditure for the ongoing and new research projects in the 2009-10 financial year cannot be quantified.

Signature _____

Name in block letters Susie Ho

Post Title Director of Administration
and Development

Date 19 March 2009

Examination of Estimates of Expenditure 2009-10
**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

Reply Serial No.

SJ019

Question Serial No.

0762

Head : 92 Department of Justice Subhead (No. & title):

Programme : (3) Legal Policy

Controlling Officer : Director of Administration and Development

Question :

Please provide relevant information on the legal policy reform studies (including those conducted in-house and by consultants commissioned) in the following table format:

- (a) The surveys and studies for which funds were provided in the past three years (i.e. 2006-07 to 2008-09)

Consultants (if available)	Description and objectives	Expenditure	Progress of the studies (under planning/ in progress/ completed)	What was the Administration's follow-up action on the results and recommendations of the study reports and the progress made; if no, what are the reasons?	What was the way through which the Administration released the study reports to the public upon completion of the studies; if no, what are the reasons?

- (b) Has provision been allocated for conducting law reform studies in 2009-10? If yes, please provide relevant information in the following table format. If no, what are the reasons?

Consultants (if available)	Description and objectives	Estimate	Progress of the studies (under planning/ in progress/ completed)	What will be the way through which the Administration releases the study reports to the public if the studies are completed within this financial year; if no, what are the reasons?

Asked by : Hon. HO Sau-lan, Cyd

Reply :

(a)

Consultants (if available)	Description and objectives	Expenditure	Progress of the studies (under planning/ in progress/ completed)	What was the Administration's follow-up action on the results and recommendations of the study reports and the progress made; if no, what are the reasons?	What was the way through which the Administration released the study reports to the public upon completion of the studies; if no, what are the reasons?
Asia Consulting Group Limited	The consultancy study is to conduct a review of legal and related services. The purpose of the review is to ascertain, through an empirical study, the nature of legal problems commonly faced by members of the community and how those problems are handled.	\$5,250,000	Completed	The findings of the consultancy study were presented to the Administration of Justice and Legal Services (AJLS) Panel on 29 May 2008. The Department of Justice and the Home Affairs Bureau will brief the AJLS Panel on the way forward in June 2009.	The consultancy study reports were published on 29 May 2008, and they have been uploaded on the Department's homepage since then.

(b) There are 9 current Law Reform Commission (LRC) projects. No paid consultant has been engaged in respect of any of these, nor are there plans to do so.

From time to time, the LRC Secretariat undertakes preliminary research on subjects which may be considered by the Secretary for Justice and the Chief Justice for formal reference to the LRC. All such research is carried out in-house by LRC counsel and no paid consultants are used.

Signature _____

Name in block letters Susie Ho

Post Title Director of Administration and Development

Date 19 March 2009

Examination of Estimates of Expenditure 2009-10
**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

Reply Serial No.

SJ020

Question Serial No.

2068

Head : 92 Department of Justice Subhead (No. & title):

Programme : (1) Prosecutions

Controlling Officer : Director of Administration and Development

Question :

What are the reasons for the increase in the number of court days undertaken by Counsel instructed to prosecute in Magistrates' Court in place of Court Prosecutors from 1 493 in 2007 to 2 184 in 2008 and to 2 400 in 2009. What is the estimated additional expenditure for the above increase in the number of court days?

Asked by: Hon.TSE Wai-chun, Paul

Reply:

The number of court days undertaken by Counsel instructed to prosecute in Magistrates' Court in place of Court Prosecutors increased from 1 493 in 2007 to 2 184 in 2008. This is mainly because the vacancies in the grade have not been filled. A recruitment exercise is now being conducted to fill the vacancies. As a matter of allocation of work, the new recruits will, after training, unless they are legally qualified, generally concentrate upon general court and administrative duties, and will not be conducting trial work. For this reason, the number of cases briefed out to counsel on fiat is expected to increase to 2 400 in 2009.

Counsel instructed to prosecute in place of Court Prosecutors in the Magistrates' Courts are paid in accordance with the approved scale of fees, which is \$5,430 per day. It is expected that the number of court days briefed to these counsel will be increased by 216 days in 2009, from 2 184 to 2 400. The additional expenditure in 2009 is estimated to be \$1,172,880 (\$5,430 x 216).

Signature _____

Name in block letters _____ Susie Ho
Director of Administration
Post Title _____ and Development

Date _____ 19 March 2009

Examination of Estimates of Expenditure 2009-10
**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

Reply Serial No.

SJ021

Question Serial No.

2069

Head : 92 Department of Justice Subhead (No. & title):

Programme : (1) Prosecutions

Controlling Officer : Director of Administration and Development

Question :

What will be the increase in the number of Court Prosecutor posts in 2009-10? With the increase in the number of Court Prosecutors to be recruited, why is there still an estimated increase in the number of court days undertaken by Counsel instructed to prosecute in place of Court Prosecutors?

Asked by : Hon. TSE Wai-chun, Paul

Reply :

There will not be any increase in the number of Court Prosecutor posts in 2009-10. A recruitment exercise is being conducted to recruit new Court Prosecutors to fill the existing vacancies in the grade. The new recruits will, after training, unless they are legally qualified, generally concentrate upon general court and administrative duties, and will not be conducting trial work. For this reason, the number of court days briefed out to counsel on fiat is expected to continue to increase in 2009.

Signature _____

Name in block letters _____ Susie Ho

Post Title _____ Director of Administration
and Development

Date _____ 19 March 2009

Examination of Estimates of Expenditure 2009-10
**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

Reply Serial No.

SJ022

Question Serial No.

2070

Head : 92 Department of Justice Subhead (No. & title):

Programme : (2) Civil

Controlling Officer : Director of Administration and Development

Question :

With regard to the 7 posts to be created in 2009-10, please state the ranks, salaries and duties of the posts

Asked by : Hon. TSE Wai-chun, Paul

Reply :

The following 7 posts will be created in the Civil Division in 2009-10 –

- (a) three Senior Government Counsel (SGC) posts, two of which are to deal with the increasing workload in litigation cases including judicial review and other complex major cases, and the other one is to deal with the litigation and advisory work arising from increasing number of claims made under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The notional annual mid-point salary of an SGC is \$1,036,740;
- (b) two Government Counsel (GC) posts to cope with the increasing demand for legal advice on Government projects and commercial matters. The notional annual mid-point salary of a GC is \$760,020; and
- (c) one Law Clerk (LC) and one Assistant Clerical Officer (ACO) posts to strengthen support to the professional staff. The notional annual mid-point salary of a LC is \$289,440 and that of an ACO is \$189,420.

Signature _____

Name in block letters Susie Ho

Post Title Director of Administration
and Development

Date 19 March 2009

Examination of Estimates of Expenditure 2009-10
**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

Reply Serial No.

SJ023

Question Serial No.

2071

Head : 92 Department of Justice Subhead (No. & title):

Programme : (2) Civil

Controlling Officer : Director of Administration and Development

Question :

What are the respective amounts of the anticipated increase in court costs and briefing-out expenses in 2009-10? What are the reasons for the increase?

Asked by : Hon. TSE Wai-chun, Paul

Reply :

The amounts of the estimated increase in the provision for court costs and briefing out expenses in 2009-10 when compared with the revised estimates for 2008-09 are \$5.56M and \$3.67M respectively. The estimated increase in the provision for these two items is mainly to meet the costs awarded against the government by the courts and briefing out expenditure required for major litigation cases.

Signature _____

Name in block letters Susie Ho

Post Title Director of Administration
and Development

Date 19 March 2009

Examination of Estimates of Expenditure 2009-10
CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION

Reply Serial No.

SJ024

Question Serial No.

2097

Head : 92 Department of Justice Subhead (No. & title):

Programme : (1) Prosecutions

Controlling Officer : Director of Administration and Development

Question :

Please compare the qualifications, experience and salaries of officers of the Court Prosecutor grade in 2007-08 and 2008-09.

Asked by : Hon. NG Margaret

Reply :

A comparison of the qualifications of officers in the Court Prosecutor grade in 2007-08 and 2008-09 is set out below –

Qualifications as at 1.3.2008

	Matriculation	Diploma/ Higher Diploma	Other Degree	LLB/ PCLL	Fully Qualified as barrister	Total
Chief Court Prosecutor	0	0	0	2	0	2
Senior Court Prosecutor I	0	1	4	2	1	8
Senior Court Prosecutor II	3	4	6	16	0	29
Court Prosecutor	3	4	23	23	0	53
Total	6	9	33	43	1	92

Qualifications as at 1.3.2009

	Matriculation	Diploma/ Higher Diploma	Other Degree	LLB/ PCLL	Fully Qualified as barrister	Total
Chief Court Prosecutor	0	0	0	2	0	2
Senior Court Prosecutor I	0	1	4	2	1	8
Senior Court Prosecutor II	3	4	6	17	0	30
Court Prosecutor	3	4	23	21	0	51
Total	6	9	33	42	1	91

A comparison of the experience of officers in the Court Prosecutor grade in 2007-08 and 2008-09 is set out below –

<u>Years of experience in the Grade as at 1.3.2008</u>						
	20 or more	15 to less than 20	10 to less than 15	5 to less than 10	Less than 5	Total
Chief Court Prosecutor	2	-	-	-	-	2
Senior Court Prosecutor I	6	2	-	-	-	8
Senior Court Prosecutor II	4	25	-	-	-	29
Court Prosecutor	-	3	48	2	-	53
Total	12	30	48	2	-	92

<u>Years of experience in the Grade as at 1.3.2009</u>						
	20 or more	15 to less than 20	10 to less than 15	5 to less than 10	Less than 5	Total
Chief Court Prosecutor	2	-	-	-	-	2
Senior Court Prosecutor I	8	-	-	-	-	8
Senior Court Prosecutor II	5	25	-	-	-	30
Court Prosecutor	-	11	38	2	-	51
Total	15	36	38	2	-	91

A comparison of the salaries of officers in the Court Prosecutor grade in 2007-08 and 2008-09 is set out below –

	<u>Notional annual mid-point salary for 2007-08</u>	<u>Notional annual mid-point salary for 2008-09</u>
Chief Court Prosecutor	\$811,440	\$862,560
Senior Court Prosecutor I	\$653,340	\$694,500
Senior Court Prosecutor II	\$503,220	\$529,860
Court Prosecutor	\$318,120	\$334,920

The difference in the salaries in the two years is the result of overall civil service pay adjustment.

Signature _____

Name in block letters Susie Ho
 Director of Administration
 and Development

Post Title _____

Date 19 March 2009

Examination of Estimates of Expenditure 2009-10
**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

Reply Serial No.

SJ025

Question Serial No.

2098

Head : 92 Department of Justice Subhead (No. & title):

Programme : (1) Prosecutions

Controlling Officer : Director of Administration and Development

Question :

Does the Department of Justice have any plan to recruit additional Court Prosecutors with legal qualifications in 2009-10 to completely replace those without legal qualifications? If yes, what is the specific plan? If no, what are the reasons?

Asked by : Hon. NG Margaret

Reply:

A recruitment exercise is now being conducted to recruit Court Prosecutors (CP) to fill the existing vacancies in the grade. The minimum entry requirement for the CP rank is matriculation. Legal qualification is not a prerequisite for appointment as CP, but given the duties of CP, candidates with knowledge of legal matters and court procedures would have an edge. In selecting candidates for appointment, regard will be given to their suitability for the post and their performance during the interview.

The plan is that the bulk of prosecutions ought ideally to be conducted by the legally qualified, if not in the short term, then in the medium to long term. New recruits, will, unless they are legally qualified, generally concentrate upon general court and administrative duties. Cases will continue to be briefed out to counsel on fiat.

Signature _____

Name in block letters Susie Ho

Post Title Director of Administration
and Development

Date 19 March 2009

Examination of Estimates of Expenditure 2009-10
**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

Reply Serial No.

SJ026

Question Serial No.

2099

Head : 92 Department of Justice Subhead (No. & title):

Programme : (1) Prosecutions

Controlling Officer : Director of Administration and Development

Question :

Please provide details on the total cost and average cost per case of Counsel instructed to prosecute in place of Court Prosecutors in 2008-09, and explain how they are calculated.

Asked by : Hon. NG Margaret

Reply :

Counsel instructed to prosecute in place of Court Prosecutors are not paid on a case by case basis. Fees are paid to these counsel in accordance with the approved scale of fees, which is \$5,430 per day. In 2008, a total of 2 184 court days were briefed out to fiat counsel in place of Court Prosecutors. The actual expenditure was \$11,859,120 (\$5,430 x 2 184).

Signature _____

Name in block letters _____ Susie Ho

Post Title _____ Director of Administration
and Development

Date _____ 19 March 2009

Examination of Estimates of Expenditure 2009-10
**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

Reply Serial No.

SJ027

Question Serial No.

2100

Head : 92 Department of Justice Subhead (No. & title):

Programme : (1) Prosecutions

Controlling Officer : Director of Administration and Development

Question :

Please provide details on the total cost and average cost per case of the prosecution work undertaken by Court Prosecutors in 2008-09, and explain how they are calculated.

Asked by : Hon. NG Margaret

Reply :

In 2008, the average cost of a Court Prosecutor conducting prosecutions at the Magistrates' Courts was \$3,030 per court day, which has included staff cost as well as accommodation cost. The staff cost per court day is calculated on a full cost basis of the Court Prosecutors on court duties which takes into account benefits such as retirement benefits, housing, leave and medical benefits. The number of court days undertaken by Court Prosecutors at the Magistrates' Courts in 2008 was 11 799. The total cost was \$35.75M.

These calculations do not include 19 Court Prosecutor grade officers who are on administration and supervisory duties. This is because even if prosecution work is briefed out, there is still a need for senior officers in the Court Prosecutor grade to manage the cases in relation to both charges and summonses, to provide instructions to counsel, to liaise with police and departmental prosecutors, and to manage day-to-day deployment of manpower at the Magistrates' Courts.

Signature _____

Name in block letters Susie Ho

Post Title Director of Administration
and Development

Date 19 March 2009

Examination of Estimates of Expenditure 2009-10
**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

Reply Serial No.

SJ028

Question Serial No.

2101

Head : 92 Department of Justice Subhead (No. & title):

Programme : (3) Legal Policy

Controlling Officer : Director of Administration and Development

Question :

Regarding matters requiring special attention in 2009-10, the Administration mentioned about taking forward access to justice issues in the context of the consultancy study on the demand for and supply of legal and related services. What is the specific plan related to this area of work?

Asked by : Hon. NG Margaret

Reply :

The consultancy study on the demand for and supply of legal and related services has been completed. The results of the consultancy study provide the Department of Justice with a broad overview of the demand for and supply of legal and related services. They also serve as useful reference materials for stakeholders concerned to understand more about the gap between the supply of and demand for legal and related service and to examine how best their services could be improved. The findings of the consultancy study were discussed at the Administration of Justice and Legal Services (AJLS) Panel on 29 May 2008. Taking into account the discussion in the Panel meeting, the Department of Justice and the Home Affairs Bureau are studying the findings of the consultancy study, and will brief the AJLS Panel on the way forward in June 2009.

Signature _____

Name in block letters Susie Ho

Post Title Director of Administration
and Development

Date 19 March 2009

Examination of Estimates of Expenditure 2009-10
**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

Reply Serial No.

SJ029

Question Serial No.

2102

Head : 92 Department of Justice Subhead (No. & title):

Programme : (1) Prosecutions

Controlling Officer : Director of Administration and Development

Question :

Regarding the cases conducted by Counsel instructed to prosecute in all courts, what are the reasons for the decrease in the actual numbers in 2007 and 2008 as well as the decrease in the estimated number in 2009?

Asked by Hon. NG Margaret

Reply :

As a result of a decrease in the number of criminal cases heard in the courts (other than in the Magistrates' Courts), the number of such cases undertaken by Government Counsel or fiat counsel in place of Government Counsel have correspondingly decreased. The number of cases conducted by Counsel instructed to prosecute in all courts in 2008 decreased by 88 cases as compared to 2007, from 1 076 to 988. It is anticipated that there will not be any significant changes in the number of cases heard in 2009 as compared to 2008.

Signature _____

Name in block letters Susie Ho
Director of Administration

Post Title and Development

Date 19 March 2009

Examination of Estimates of Expenditure 2009-10
**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

Reply Serial No.

SJ030

Question Serial No.

2103

Head : 92 Department of Justice Subhead (No. & title):

Programme : (1) Prosecutions

Controlling Officer : Director of Administration and Development

Question :

According to the Department of Justice's principle in relation to prosecution, it is wrong to require Counsel and Court Prosecutors to strive to secure a conviction at all costs. In this connection, do the conviction rates of the District Court and the Court of First Instance in 2007 and 2008, which are all over 90%, reflect a departure from the principle of the Department?

Asked by : Hon. NG Margaret

Reply :

Prosecutions are pursued on the basis of recognised criteria applied throughout the common law world. A suspect should only be prosecuted if there is a reasonable prospect of conviction, and if that course is in the interests of justice. A bare prima facie case is not enough to justify a decision to prosecute. This decision requires an evaluation of how strong the case is likely to be when presented at trial. Before reaching a decision to prosecute, a prosecutor must be satisfied that there is no reasonable expectation of an order of acquittal or a successful submission of no case to answer. Once a prosecution is instituted, the duty of the prosecutor is to present the case in a way which is firm and fair. The prosecutor should ensure that those who are guilty of crime are not acquitted because the evidence has not been properly marshalled or for technical reasons, and should act to secure a fair trial of the accused. Questions of admissibility of evidence and of guilt or innocence are ultimately matters for the court to decide. While not all prosecutions result in conviction, prosecutions are pursued only if there is a reasonable prospect of conviction. This explains the high conviction rates at the District Court and Court of First Instance in 2007 and 2008.

Signature _____

Name in block letters Susie Ho
Director of Administration
Post Title and Development

Date 19 March 2009

Examination of Estimates of Expenditure 2009-10
**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

Reply Serial No.

SJ031

Question Serial No.

2104

Head : 92 Department of Justice Subhead (No. & title):

Programme : (3) Legal Policy

Controlling Officer : Director of Administration and Development

Question :

Regarding the items of legal advice given on the Basic Law and constitutional matters, the actual figure in 2008 is less than that in 2007 by 351 items, representing a drop of more than 26%. What are the reasons?

Asked by : Hon. NG Margaret

Reply :

The number of items of advice on the Basic Law and constitutional matters is basically demand driven. The decrease in the number of advice given in 2008 is largely due to the completion of the project relating to the co-location arrangement at the Shenzhen Bay Port in 2007.

Signature _____

Name in block letters Susie Ho

Post Title Director of Administration
and Development

Date 19 March 2009

Examination of Estimates of Expenditure 2009-10
**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

Reply Serial No.

SJ032

Question Serial No.

2105

Head : 92 Department of Justice Subhead (No. & title):

Programme : (1) Prosecutions

Controlling Officer : Director of Administration and Development

Question :

What are the reasons for the increase in the actual provision for 2007-08 and 2008-09 as well as the increase in the estimated provision for 2009-10 under Programme (1)?

Asked by : Hon. NG Margaret

Reply :

The provision for the Prosecutions programme for 2009-10 is \$17.3M (4.3%) higher than the revised estimates for 2008-09. It is mainly due to the increase in provision for filling of vacancies, salary increments for staff and creation of one post to meet operational needs.

The revised estimates for 2008-09 is \$50M (14.1%) higher than the actual provision for 2007-08 mainly because of the increase in provision for court costs, briefing-out expenses, filling of vacancies and salary increments.

Signature _____

Name in block letters Susie Ho

Post Title Director of Administration
and Development

Date 19 March 2009

Examination of Estimates of Expenditure 2009-10
**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

Reply Serial No.

SJ033

Question Serial No.

2106

Head : 92 Department of Justice Subhead (No. & title):

Programme : (4) Law Drafting

Controlling Officer : Director of Administration and Development

Question :

What are the reasons for the increase in the actual provision for 2007-08 and 2008-09 as well as the increase in the estimated provision for 2009-10 under Programme (4)? In what areas are the additional resources deployed? What improvements have been brought about?

Asked by : Hon. NG Margaret

Reply :

The revised estimate for 2008-09 for the Law Drafting programme is \$2.9M higher than the actual provision for 2007-08. It is mainly due to the filling of vacancy and salary increments.

The provision for 2009-10 is \$8.8M higher than the revised estimate for 2008-09. This is mainly due to the filling of vacancies, salary increments for staff, as well as anticipated increase in general departmental expenses. The additional resources will be deployed mainly for filling of vacancies in the Government Counsel, Law Clerk and general grades. Also, additional provision for training and expenses for a contract Legislative Editor and temporary counsel is included.

With the enhanced manpower, we were able to provide an improved legislative drafting service and to embark on a number of initiatives such as drafting style review, standard provisions compilation and improvement of the Bilingual Laws Information System.

Signature _____

Name in block letters Susie Ho

Post Title Director of Administration
and Development

Date 19 March 2009

Examination of Estimates of Expenditure 2009-10
**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

Reply Serial No.

SJ034

Question Serial No.

2107

Head : 92 Department of Justice Subhead (No. & title):

Programme : (3) Legal Policy

Controlling Officer : Director of Administration and Development

Question :

Regarding the revised estimated expenditure for item 514 "Promotion of rule of law and Hong Kong's legal system" and item 519 "Development of Mainland-related legal services" in Hong Kong for 2008-09:

- (a) only \$75,000 is for the promotion of rule of law and Hong Kong's legal system while as much as \$500,000 is for the development of Mainland-related legal services in Hong Kong. What are the reasons?
- (b) please state the work carried out, its effectiveness and whether the work target has been achieved in 2008-09 under the item "Promotion of rule of law and Hong Kong's legal system".
- (c) please state the work carried out, its effectiveness and whether the work target has been achieved in 2008-09 under the item "Development of Mainland-related legal services in Hong Kong". Besides, is there any plan to enhance the work in this area?

Asked by : Hon. NG Margaret

Reply :

Item 514 'Promotion of rule of law and Hong Kong's legal system' and item 519 'Development of Mainland-related legal services in Hong Kong' are non-recurrent accounts under Subhead 700 'General Non-recurrent Account'. The approved project commitment for item 514 is \$6.3M, while that for item 519 is \$4.3M.

- (a) Item 514 was created in 1998-99 serving the purposes to strengthen the understanding and appreciation of the rule of law and the legal system of the HKSAR, as well as to assure the public and overseas audience of the HKSARG's determination to maintain the rule of law and the existing legal system. Item 514 has been used to provide necessary funding for the replication of promotional video and legal docudrama VCDs, and the production of a video on law making, as well as in recent years for Solicitor General's overseas speaking engagements in Washington DC, Philadelphia, New York and Geneva.

Item 519 was created in 2004-05 with the aims to develop Mainland-related services in Hong Kong and to promote Hong Kong as a legal services and dispute resolution centre. In past few years, this item has been used to pay for the expenses incurred by the publication of a reference book entitled 'Opportunities for Hong Kong Lawyers under Closer Economic Partnership Arrangement (CEPA)', experience sharing sessions for Hong Kong law firms to discuss CEPA related matters, duty visits to the Mainland for the purpose of enhancing further cooperation on legal services between Mainland and Hong Kong, and the attachment programme (for Mainland officials and counsel in the department) under the cooperation agreements between the Department of Justice (DoJ) and certain Justice Departments/ Bureaux in the Mainland.

When compared with item 514, item 519 covers a wider scope of work consisting a number of ongoing and comprehensive items. In 2008-09, the allocation to item 519 was thus more than that of item 514 in order to meet the necessary expenses arising from the development of Mainland-related legal services in Hong Kong.

- (b) A sum of \$63,000 was used in 2008-09 under item 514 to publish the 'Legal System in Hong Kong' which explain how the legal systems works in Hong Kong. As an ongoing effort, the department has promoted the rule of law and Hong Kong's legal system through various means and this is by no means confined to the activities under the ambit of item 514. For example, the Secretary for Justice promotes the rule of law and Hong Kong's legal system in his public speaking engagements both in Hong Kong and overseas. The 'Basic Law Bulletin' has also been made accessible to the public from the department's website. Hard copies of the Basic Law Bulletin are sent to overseas Hong Kong Economic and Trade Offices through the Information Services Department. From time to time, members of the department give briefings to influential overseas visitors about the rule of law and legal system in Hong Kong.
- (c) In 2008-09, item 519 was mainly used to meet expenses including:
- in receiving 12 Mainland officials for attachment to the DoJ, and in sending 5 DoJ counsel for attachment in the Mainland pursuant to the cooperation agreements between the DoJ and certain Justice Departments and Bureaux in the Mainland; and
 - duty visits to the Mainland in attending CEPA discussions meetings, and official visits paid to relevant departments in Shanghai and Zhejiang to better understand the implementation of CEPA liberalization measures and to enhance working relationship with the Mainland organs concerned.

In 2008-09, item 519 provided necessary funding for the aforesaid work items which are considered to be effective in fostering the development of Mainland-related legal services in Hong Kong. The work in this area will be adjusted based on operational needs.

Signature _____

Name in block letters Susie Ho

Post Title Director of Administration
and Development

Date 19 March 2009