

SJ001

**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

Question Serial No.

1870

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

Programme: (1) Prosecutions

Controlling Officer: Director of Administration and Development

Question:

Please provide details on the work of the specialist sections of the Prosecutions Division in the areas of human rights and the Basic Law, complaints against the Police, computer crime and market misconduct in 2009-10.

Asked by: Hon. HO Chun-yan, Albert

Reply:

The work done by the specialised sections in the areas of human rights and the Basic Law, complaints against the Police, computer crime and market misconduct are summarised below:

(a) Basic Law and human rights:

Section 10 in the Prosecutions Division handled Basic Law, bill of rights, judicial review, obscene articles & child pornography as well as gambling matters. In 2009-10, in relation to matters pertaining to human rights and the Basic Law, the section advised on criminal cases which involve issues of Basic Law and human rights before trial. Where human rights arguments or constitutional issues were raised in the course of criminal proceedings, the section advised on those matters. On many occasions, members of the section prepared submissions and attended court to deal with the matters raised. They also represented the prosecution in appeals and judicial reviews of criminal cases involving Basic Law or human rights issues. The section monitored the advices given in order to ensure that a consistent approach was adopted, and alerted prosecutors when judgments having significant human rights impact were delivered. In 2009, the section provided 40 advices on human rights/ Basic Law issues.

(b) Complaints against the Police Officers (CAPO)

Section 4 in the Prosecutions Division handled management and training matters as well as complaints against police. In 2009-10, in relation to matters pertaining to CAPO matters, the section provided legal advices on cases involving allegations of criminal misconduct on the part of police, and considered whether there was sufficient evidence to prosecute police officers where allegations of criminal misconduct were made and undertook the prosecution. In 2009, the section provided 329 advices related to CAPO cases.

(c) Computer crime:

Section 12 in the Prosecutions Division handled computer crime and copyright matters. In 2009-10, in relation to matters pertaining to computer crime, the section advised law enforcement agencies upon their investigations, promoted best practice in relation to computer forensics, and liaised with its counterparts in other jurisdictions to combat computer crime. Typical cases prosecuted by the Division include crimes against computer, such as hacking and damage, crimes using computers, such as online fraud and phishing, and conventional crimes, such as unlawful Internet gambling and accessing/ publishing pornography. In 2009, the section provided 43 advices related to computer crime.

(d) Market misconduct

Section 13 in the Prosecutions Division handled market misconduct and Inland Revenue matters. In 2009-10, in relation to matters pertaining to market misconduct, the section advised the Securities and Futures Commission (the Commission) on market misconduct cases. Depending on the evidence, cases of market misconduct may be prosecuted at court or dealt with by a market misconduct tribunal. Market misconduct includes insider dealing, false trading, price rigging, disclosure of information about prohibited transactions, disclosure of false or misleading information inducing transactions and stock market manipulation. In 2009, the section provided 22 advices in relation to market misconduct cases referred to this section by the Commission. The section has been instrumental in advising and preparing cases for prosecution for securities fraud. A number of cases have been successfully prosecuted by the section involving publicly listed companies.

Signature _____

Name in block letters _____ Susie Ho

Post Title _____ Director of Administration and Development

Date _____ 19 March 2010

**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

SJ002

Head: 92 Department of Justice

Subhead (No. & title):

Question Serial No.

1871

Programme: (1) Prosecutions

Controlling Officer: Director of Administration and Development

Question:

Please provide details of the co-operation between the Department of Justice and the Mainland prosecution and law enforcement authorities on matters relating to prosecutorial work and criminal proceedings.

Asked by: Hon. HO Chun-yan, Albert

Reply:

The prosecution and law enforcement authorities of the Mainland and the Department of Justice co-operate in various ways to combat crime. These include implementing letters of request issued by courts for the gathering of evidence, contributing to efforts to counter fraud, money laundering and transnational crime; as well as sharing information and experience in the combat of crime. There are also official visits which provide a forum for discussion and exchange of views on a myriad of issues and topics related to law enforcement and prosecution.

Signature _____

Name in block letters _____ Susie Ho

Post Title _____ Director of Administration and
Development

Date _____ 19 March 2010

SJ003

**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

Question Serial No.

1006

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

Programme: (2) Civil

Controlling Officer: Director of Administration and Development

Question:

The Administration's provision under this Programme is \$6.6 million higher than the revised estimate for 2009-2010, which is mainly due to the filling of vacancies, creation of 29 posts to meet operational needs, as well as anticipated increase in general departmental expenses.

Will the Director of Administration and Development state the titles, salaries and length of employment of the 29 posts to be created? Besides, what is the scope of work under this Programme? What is the number of vacant posts that need to be filled?

Asked by: Hon. TSE Wai-chun, Paul

Reply:

The work of the Civil Division involves providing legal advice to the Government on civil matters, undertaking civil litigation and drafting contracts on commercial and other matters. In 2010-11, the Civil Division expects to fill 10 vacancies in the Government Counsel, Law Clerk and general grades. Twenty-nine posts will also be created.

Of the 29 posts, the following 8 posts will be created to cope with the increasing demand for legal services and increasing complexity of the legal work involved and strengthen support to the professional staff -

- 4 Senior Government Counsel (SGC)
- 1 Government Counsel (GC)
- 1 Law Clerk (LC)
- 1 Assistant Clerical Officer (ACO); and
- 1 Workman II (WM II)

One of the above SGC posts is time-limited in nature. It will be created for 3 years specifically for the purpose of enhancing legal support for the development of a territory-wide patient-oriented electronic health record system.

The following 21 posts will be created to cope with the increased workload in handling claims lodged under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment -

- 1 Deputy Principal Government Counsel (DPGC)
- 10 SGC
- 5 GC
- 3 LC
- 1 Personal Secretary I (PSI); and
- 1 ACO

The notional annual mid-point salary of the respective posts is as follows –

DPGC	\$1,479,480
SGC	\$981,000
GC	\$719,160
LC	\$289,440
PS I	\$303,840
ACO	\$189,420
WM II	\$117,420

Signature _____

Name in block letters _____ Susie Ho

Post Title _____ Director of Administration and Development

Date _____ 19 March 2010

**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

SJ004

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

Question Serial No.

1007

Programme: (3) Legal Policy

Controlling Officer: Director of Administration and Development

Question:

Regarding matters requiring special attention in 2010-11 “to take forward the proposals for reform of arbitration law”, what measures will the Administration adopt for its implementation in the new financial year (i.e. 2010-11)? What are the estimated expenditure and staffing involved?

Asked by: Hon. TSE Wai-chun, Paul

Reply:

The Department of Justice (DoJ) set up a Working Group in September 2005 to review the Arbitration Ordinance (Cap. 341). The purpose of the review is to make the law of arbitration more user-friendly to arbitration users both in and outside Hong Kong.

DoJ published a Consultation Paper on Reform of the Law of Arbitration in Hong Kong and Draft Arbitration Bill on 31 December 2007. The Arbitration Bill (‘the Bill’) was subsequently introduced into the Legislative Council on 8 July 2009 and a Bills Committee is studying the Bill. It is hoped that the second reading debate of the Bill could be resumed before the end of 2010. We have been working closely with the users, the legal community and other arbitration professionals. Upon enactment of the Bill, we would continue to publicise the provisions and hold seminars on the new legislation for arbitration users so that they can make preparation for its implementation.

The staff cost and other related expenses for promoting arbitration 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 2010

SJ005

**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

Question Serial No.

1008

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

Programme: (3) Legal Policy

Controlling Officer: Director of Administration and Development

Question:

Regarding the matter requiring special attention in 2010-11 - "to promote Hong Kong as a regional centre for legal services and dispute resolution", what measures will the Administration adopt for its implementation in the new financial year (i.e. 2010-11)? What are the estimated expenditure and staffing involved?

Asked by: Hon. TSE Wai-chun, Paul

Reply:

(a) Reform of arbitration law

An on-going policy objective of the Department of Justice (DoJ) is to develop Hong Kong into a regional centre for legal services and dispute resolution. As one of the measures to achieve this objective, DoJ set up a Working Group in September 2005 to review the Arbitration Ordinance (Cap. 341). The Arbitration Bill ('the Bill') was introduced into the Legislative Council on 8 July 2009. The Bills Committee is studying the Bill. It is hoped that the second reading debate of the Bill could be resumed before the end of 2010. We have been working closely with the users, the legal community and other arbitration professionals. Upon enactment of the Bill, we would continue to publicise the provisions and hold seminars on the new legislation for arbitration users to facilitate their preparation for its implementation.

(b) Promotion of mediation

Mediation is another effective alternative of dispute resolution service. The Secretary for Justice set up a cross-sector Working Group to review the current development of mediation in Hong Kong and to make recommendations on how mediation can be more effectively and extensively used to resolve higher-end commercial disputes and relatively small-scale local disputes. The Working Group's report was published in February 2010 and we are now seeking the public's views on the 48 recommendations made by the Working Group. Subject to the outcome of the consultation exercise, we would seek to implement the recommendations of the Working Group to facilitate the more effective and extensive application of mediation in both commercial disputes and those at community level.

(c) Reciprocal Enforcement of Judgments (REJ) Arrangement

The Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and the HKSAR pursuant to Choice of Court Agreements between Parties Concerned (the REJ Arrangement) was signed on 14 July 2006 and came into effect on 1 August 2008 after the enactment of the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597) and the promulgation of a judicial interpretation by the Supreme People's Court. It is now possible for judgment creditors to seek summary enforcement of court judgments of one jurisdiction in the other jurisdiction if the judgment falls within the specified scope of the arrangement. In 2010-11, we shall monitor its implementation and discuss with the Supreme People's Court (SPC) any improvements that may be required. We shall also discuss with the SPC on the need and feasibility of establishing a mechanism to facilitate the mutual recognition and enforcement of matrimonial orders made by the courts.

(d) The Hong Kong Legal Services Forum in Shanghai on 6 July 2010

As part of HKSARG's initiatives to promote Hong Kong professional services during the Expo 2010, DoJ will co-organize the 'Hong Kong Legal Services Forum' in Shanghai on 6 July 2010 with the Law Society, the Bar Association, the Hong Kong International Arbitration Centre, the International Court of Arbitration of the International Chamber of Commerce (Asia Office) and the Hong Kong Trade Development Council. The forum is a one day event which aims to demonstrate Hong Kong's strength as a leading legal services and dispute resolution centre. We hope to attract a wide spectrum of participants from business enterprises and the legal profession in the Mainland.

The staff cost and other related expenses for promoting Hong Kong as a regional centre for legal services and dispute resolution are covered in the Department's 2010-11 estimates of expenditure. However, the estimated expenditure and staff cost in this regard cannot be quantified.

Signature _____

Name in block letters _____ Susie Ho

Post Title _____ Director of Administration and Development

Date _____ 19 March 2010

**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

SJ006

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

Question Serial No.

1009

Programme: (3) Legal Policy

Controlling Officer: Director of Administration and Development

Question:

Please state the titles, salaries and length of employment of the 3 posts to be created under this Programme.

Asked by: Hon. TSE Wai-chun, Paul

Reply:

The 3 posts to be created in the Legal Policy Division in 2010-11 include 2 Senior Government Counsel (SGC) and 1 Government Counsel (GC) posts to cope with the increased workload in handling claims lodged under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The notional annual mid-point salary of a SGC is \$981,000 and that of a GC is \$719,160.

Signature _____

Name in block letters _____ Susie Ho

Post Title _____ Director of Administration and Development

Date _____ 19 March 2010

**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

SJ007

Head: 92 Department of Justice

Subhead (No. & title): 003
Recoverable salaries and allowances
(General)

Question Serial No.

1010

Programme:

Controlling Officer: Director of Administration and Development

Question:

Regarding the provision of \$2,000,000 under Subhead 003 Recoverable salaries and allowances (General) which is for the salaries and allowances of civil servants providing legal services for the rewrite of Companies Ordinance, will the Administration give a detailed account of how the amount of \$2,000,000 is calculated? How many civil servants will be engaged to provide the service? How many working days or working hours are required and what kind of allowance will be involved?

Asked by: Hon. TSE Wai-chun, Paul

Reply:

The Department provides legal services for the Companies Ordinance re-write exercise and part of the expenses incurred is reimbursable from the Companies Registry Trading Fund. Subhead 003 provides for this recoverable amount. The ceiling of \$2,000,000 in 2010-11 is calculated on the basis of salaries and allowances in respect of 1 Deputy Principal Government Counsel and 1 Personal Secretary II on full time basis for one full year duration.

Signature _____

Name in block letters _____ Susie Ho

Post Title _____ Director of Administration and
Development

Date _____ 19 March 2010

**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

SJ008

Question Serial No.

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

1187

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 2008-09 and 2009-10.

Asked by: Hon. NG Margaret

Reply:

A comparison of the qualifications of officers in the Court Prosecutor grade in 2008-09 and 2009-10 is set out below –

	Qualifications as at 1.3.2009					Total
	Matriculation	Diploma/ Higher Diploma	Other Degree	LLB/ PCLL	Fully Qualified as barrister/ solicitor	
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

	Qualifications as at 1.3.2010					Total
	Matriculation	Diploma/ Higher Diploma	Other Degree	LLB/ PCLL	Fully Qualified as barrister/ solicitor	
Chief Court Prosecutor	0	0	0	1	1	2
Senior Court Prosecutor I	0	1	4	2	0	7
Senior Court Prosecutor II	3	3	6	18	1	31
Court Prosecutor	3	4	29	23	1	60
Total	6	8	39	44	3	100

A comparison of the experience of officers in the Court Prosecutor grade in 2008-09 and 2009-10 is set out below –

	Years of experience in the Grade as at 1.3.2009					Total
	20 or more	15 to less than 20	10 to less than 15	5 to less than 10	Less than 5	
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

	Years of experience in the Grade as at 1.3.2010					Total
	20 or more	15 to less than 20	10 to less than 15	5 to less than 10	Less than 5	
Chief Court Prosecutor	2	-	-	-	-	2
Senior Court Prosecutor I	7	-	-	-	-	7
Senior Court Prosecutor II	8	23	-	-	-	31
Court Prosecutor	-	15	32	2	11	60
Total	17	38	32	2	11	100

A comparison of the salaries of officers in the Court Prosecutor grade in 2008-09 and 2009-10 is set out below –

	<u>Notional annual mid-point salary for 2008-09</u>	<u>Notional annual mid-point salary for 2009-10</u>
Chief Court Prosecutor	\$862,560	\$816,180
Senior Court Prosecutor I	\$694,500	\$657,180
Senior Court Prosecutor II	\$529,860	\$529,860
Court Prosecutor	\$334,920	\$334,920

The difference in the salaries in 2008-09 and 2009-10 in respect of the Chief Court Prosecutor and Senior Court Prosecutor I ranks arises as result of the pay reduction under the 2009-10 Civil Service Pay Adjustment.

Signature _____

Name in block letters _____ Susie Ho

Post Title _____ Director of Administration and Development

Date _____ 19 March 2010

**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

SJ009

Question Serial No.

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

1188

Programme: (1) Prosecutions

Controlling Officer: Director of Administration and Development

Question:

Regarding the figures of “court days undertaken by Counsel instructed to prosecute in Magistrates’ Court in place of Court Prosecutors”, the number of days has increased by more than 1 000 days in 2009 as compared with that in 2008, representing an increase of almost 50%. What are the reasons for the increase? How many cases were involved?

Asked by: Hon. NG Margaret

Reply:

The total number of court days undertaken by Court Prosecutors/ Counsel instructed to prosecute in Magistrates’ Courts in place of Court Prosecutors in the Magistrates’ Courts is largely demand driven and it has increased from 13 983 in 2008 to 14 610 in 2009. The number of court days undertaken by Counsel instructed to prosecute in Magistrates’ Courts in place of Court Prosecutors has therefore increased. Furthermore, the 11 Court Prosecutor vacancies were only filled in July 2009 and the new recruits are now undergoing training. These new recruits, unless they are legally qualified, will concentrate upon general court and administrative duties. This also contributed to the increase in the number of court days undertaken by counsel.

Statistics on the work done by Court Prosecutors and Counsel instructed to prosecute in Magistrates’ Court in place of Court Prosecutors are kept in terms of the number of court days. Figures on the number of cases conducted by fiat counsel are not available.

Signature _____

Name in block letters _____ Susie Ho

Post Title _____ Director of Administration and
Development

Date _____ 19 March 2010

**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

SJ010

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

Question Serial No.

1189

Programme: (1) Prosecutions

Controlling Officer: Director of Administration and Development

Question:

How many cases were conducted by Court Prosecutors in 2009? What was the average number of cases conducted by each Court Prosecutor?

Asked by: Hon. NG Margaret

Reply:

Statistics on the work done by Court Prosecutors and fiat counsel in place of Court Prosecutors at the Magistrates' Courts are kept in terms of the number of court days. Figures on the average number of cases conducted by Court Prosecutors are not readily available.

Signature _____

Name in block letters _____ Susie Ho

Post Title _____ Director of Administration and
Development

Date _____ 19 March 2010

**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

SJ011

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

Question Serial No.

1190

Programme: (3) Legal Policy

Controlling Officer: Director of Administration and Development

Question:

In 2010-11, will the Legal Policy Division conduct any study on the implementation of co-location of boundary crossing facilities in Hong Kong? If yes, what are the details of the resources and staffing allocation as well as the specific work plan? If no, what are the reasons?

Asked by: Hon. NG Margaret

Reply:

The Department will, on request by the relevant policy bureaux, study the legal implications of the proposal of arranging co-location of boundary crossing facilities in Hong Kong. The staff cost and related expenses of the study will be absorbed by the Department, and the estimated expenditure cannot be quantified.

Signature _____

Name in block letters _____ Susie Ho

Post Title _____ Director of Administration and
Development

Date _____ 19 March 2010

**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

SJ012

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

Question Serial No.

1191

Programme: (4) Law Drafting

Controlling Officer: Director of Administration and Development

Question:

Does the Law Drafting Division reserve any resources for enhancing in particular the standard of Chinese translation of legislation as well as the drafting of legislation in Chinese? If yes, what are the details of the resources and staffing allocation as well as the specific work plan? If no, what are the reasons?

Asked by: Hon. NG Margaret

Reply:

Funds have been reserved for inviting experts in translation and linguistics and legislative drafters from other Chinese-speaking jurisdictions to conduct a number of seminars for counsel in the Law Drafting Division and Law Translation Officers in 2010-11. The purpose is to enhance the officers' ability to draft precise and concise legal provisions or to produce precise and concise Chinese translations of English legal documents.

The Law Drafting Division also plans to conduct a comprehensive study on the legislation of the Mainland, Taiwan and Macao. The purpose is to identify drafting techniques that may, notwithstanding their civil law origin, be useful in improving the comprehensibility of the Chinese text of Hong Kong legislation. The study will be conducted by a group of counsel of the Law Drafting Division in July to September 2010. The workload will be absorbed within existing resources.

Signature _____

Name in block letters _____ Susie Ho

Post Title _____ Director of Administration and
Development

Date _____ 19 March 2010

**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

SJ013

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

Question Serial No.

2236

Programme: (1) Prosecutions

Controlling Officer: Director of Administration and Development

Question:

As shown by the prosecution figures of 2008 and 2009, the number of cases conducted by Government Counsel and the number of court days undertaken by Government Counsel increased significantly in the past two years, and they are expected to continue to increase in 2010. What are the reasons for the increase? Given the financial resources allocated for 2010-11, how will the Department of Justice cope with the situation without compromising the quality of the administration of justice?

Asked by: Hon. TAM Yiu-chung

Reply:

The number of cases undertaken by Government Counsel and the number of court days involved are largely demand driven and vary from year to year. The number of cases increased from 3 993 in 2008 to 4 243 in 2009, and the number of court days undertaken by Government Counsel also increased from 3 564 in 2008 to 4 299 in 2009. This is mainly due to the overall increase in both the number of cases and the number of court days conducted in court in 2009; the former increased from 4 981 in 2008 to 5 455 in 2009 while the latter increased from 8 389 in 2008 to 9 565 in 2009.

To cope with the increase, we would seek to streamline our workflow and enhance efficiency. For example, we have put in place a quick advisory system in the Prosecutions Division, known as FAST, since January 2010. The objective of FAST is to achieve quick and efficient processing of straight forward cases so that counsel can be released to do more court work. We have also conducted a recruitment exercise to fill vacancies at the Government Counsel grade. If the need arises, we would also brief out more of cases to fiat counsel. Taken together, these measures will ensure that all prosecution work are properly dealt with, and the quality of the administration of justice is not undermined.

Signature _____

Name in block letters _____

Susie Ho

Post Title _____

Director of Administration and
Development

Date _____

19 March 2010

**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

SJ014

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

Question Serial No.

2237

Programme: (2) Civil

Controlling Officer: Director of Administration and Development

Question:

As shown by the civil litigation figures of 2008 and 2009, the numbers of new proceedings brought by the Government, new proceedings brought against the Government, person days of court appearances, and items of legal advice provided increased significantly in the past two years, and they are expected to continue to increase in 2010. What are the reasons and basic facts accounting for these increases? Given the financial resources allocated for 2010-11, how will the Department of Justice cope with the situation without compromising the quality of the administration of justice?

Asked by: Hon. TAM Yiu-chung

Reply:

The actual numbers of new proceedings brought by the Government, new proceedings brought against the Government, person days of court appearances and items of legal advice provided in 2008, 2009 and the estimated number for 2010 are as follows:

	2008 (Actual)	2009 (Actual)	2010 (Estimate)
1. New proceedings (including non-construction arbitration and mediation) brought by the Government	1 467	1 526	1 935
2. New proceedings (including non-construction arbitration and mediation) brought against the Government	889	1 071	1 280
3. Person days of court appearances	1 001	1 314	1 505
4. Items of legal advice provided	14 590	15 079	15 080

In relation to item 1 above, the increase in the actual number of new civil proceedings brought by the Government in 2009 in comparison with 2008 is mainly due to an increase in the number of cases involving recovery of student loans. As regards the estimated increase in 2010, this is mainly due to an estimated increase in recovery of student loans cases and charging order cases involving

rates as advised by the Student Finance Assistance Agency and the Rating and Valuation Department respectively.

In relation to item 2 above, the increase in the actual number of new civil proceedings brought against the Government in 2009 in comparison with 2008 is mainly due to an increase in the number of cases involving rating appeals and building appeals. As regards the estimated increase in 2010, this is mainly due to the estimated increase in the number of cases involving Claims made under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and judicial review cases generally.

In relation to item 3 above, the increase in the number of person days of court appearances in 2009 in comparison with 2008 was mainly due to the increase in the litigation cases including a few particularly long cases. As regards the estimated increase in 2010, this is mainly due to the estimated increase in the number of new civil proceedings in 2010 arising from handling claims made under CAT and judicial review cases generally.

In relation to item 4 above, the increase in the number of items of legal advice provided in 2009 in comparison with 2008, this is mainly due to the increase in the legal advice provided in response to requests from Government bureaux and departments.

To cope with the increasing demand for legal services and increasing complexity of the legal work involved, financial resources have been earmarked for the creation of 29 posts including 21 counsel grade posts and 8 para-legal, clerical and secretarial grade posts in the Civil Division in 2010-11.

Signature _____

Name in block letters _____ Susie Ho _____

Post Title _____ Director of Administration and Development _____

Date _____ 19 March 2010 _____

SJ015

**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

Question Serial No.

2238

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

Programme: (3) Legal Policy

Controlling Officer: Director of Administration and Development

Question:

In 2010-11, what are the specific plans for promoting the use of arbitration and mediation in Hong Kong and taking forward the proposals for reform of arbitration law? What is the estimated expenditure? Will the Administration consider sponsoring relevant professional bodies to take forward the work in this area?

Asked by: Hon. TAM Yiu-chung

Reply:

In respect of the reform of arbitration law, the Department of Justice (DoJ) will continue its work to strengthen our legislative framework. DoJ introduced the Arbitration Bill ("The Bill") into the Legislative Council on 8 July 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. A Bills Committee has been formed to study the Bill. It is hoped that the second reading debate of the Bill could be resumed before the end of 2010. We have been working closely with the users, the legal community and other arbitration professionals. Upon enactment of the Bill, we would continue to publicise the provisions and hold seminars on the new legislation for arbitration users to facilitate their preparation for its implementation. We would endeavour to seek the early enactment of the Bill.

With reference to the promotion of mediation, the cross-sector Working Group chaired by the Secretary for Justice published its Report in February 2010 and we are now seeking the public's views on the 48 recommendations made by the Working Group. In 2010-11, subject to the outcome of the consultation exercise, we would seek to implement the recommendations of the Working Group to facilitate the more effective and extensive application of mediation in both commercial disputes and those at community level.

We shall continue to work closely with the Hong Kong International Arbitration Centre, the International Court of Arbitration of the International Chamber of Commerce (Asia Office), and other arbitration and mediation related organisations in Hong Kong and overseas to promote the use of arbitration and mediation as an alternative means of dispute resolution. As part of HKSARG's initiatives to promote Hong Kong professional services during the Expo 2010, DoJ will co-organize the 'Hong Kong Legal Services Forum' in Shanghai on 6 July 2010 with the Law Society, the Bar Association, the Hong Kong International Arbitration Centre, the International Court of Arbitration of the International Chamber of Commerce (Asia Office) and the Hong Kong Trade Development Council. The forum is a one day event which aims to demonstrate Hong

Kong's strength as a leading legal services and dispute resolution centre. We hope to attract a wide spectrum of participants from business enterprises and the legal profession in the Mainland.

The staff cost and other related expenses for promoting the use of arbitration and mediation are covered in the Department's 2010-11 estimates of expenditure. However, 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 2010

**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

SJ016

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

Question Serial No.

2239

Programme: (3) Legal Policy

Controlling Officer: Director of Administration and Development

Question:

In 2010-11, what is the specific plan for exploring with the Mainland authorities further opportunities for the legal profession to provide services in the Mainland? What is the estimated expenditure?

Asked by: Hon. TAM Yiu-chung

Reply:

The Department of Justice (DoJ) works closely with the legal professional bodies, namely the Law Society of Hong Kong and the Hong Kong Bar Association in promoting Hong Kong's legal services in the Mainland. In addition to exploring further liberalization measures under the Closer Economic Partnership Arrangement (CEPA), DoJ and the legal professions will also examine ways to further develop Hong Kong legal services in the Pearl River Delta. Under the CEPA liberalisation framework, Hong Kong practitioners enjoy a more competitive position compared to their counterparts from other jurisdictions.

DoJ regularly seeks the views of the legal profession as regards the problems encountered in the implementation of various liberalization measures under CEPA and identifies ways to improve the implementation regime. We also discuss the profession's feedback with the Mainland authorities whether at regular meetings such as the Senior Officials' meetings (SOMs) on CEPA or on other suitable occasions such as visits to Mainland organs. Counsel of the Department would also attend functions held by the legal professions or join them to visit their counterparts in the Mainland in order to gauge their views on closer cooperation in legal practices between the two sides.

We shall continue to explore with the legal professional bodies and Mainland organs the opportunities for further cooperation in legal services and promotion of Hong Kong's services in the Mainland. Following the launching of Expo 2010 in May, DoJ, together with the legal professional bodies and the arbitration institutions in Hong Kong will jointly host a forum entitled 'Hong Kong Legal Services – Global Vision' in Shanghai on 6 July 2010. It will focus on various aspects of international trade, corporate finance and governance as well as dispute resolution. We hope to attract a wide spectrum of audiences from business enterprises and the legal profession in the Mainland. The forum will provide the Hong Kong legal and arbitration practitioners and the participants the opportunity to explore ways for further cooperation.

The staff cost and other related expenses for taking part in such events will be absorbed by DoJ and the estimated expenditure for this specific activity cannot be quantified.

Signature _____

Name in block letters _____ Susie Ho _____

Post Title _____ Director of Administration and
Development _____

Date _____ 19 March 2010 _____

**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

SJ017

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

Question Serial No.

2439

Programme: All Programmes

Controlling Officer: Director of Administration and Development

Question:

Please provide details of the consultations on policy making and assessment under all programmes in the following format. Using the table below, please provide information on the consultations for which funds had been allocated in 2009-10:

Name/ subject of consultation	Revised estimate (\$)	Progress of consultation (under planning/ in progress/ completed)	Mode of consultation (e.g. by means of written submissions, consultation sessions, focus groups), number of consultation exercises, name of organisations and number of people consulted/to be consulted	The Administration's follow-up actions on the consultation results and the progress made (if applicable)	For consultations already completed, were the results publicised? If so, what were the channels? If not, why not?

Asked by: Hon. EU Yuet-mee, Audrey

Reply:

Name/ subject of consultation	Revised estimate (\$)	Progress of consultation (under planning/ in progress/ completed)	Mode of consultation (e.g. by means of written submissions, consultation sessions, focus groups), number of consultation exercises, name of organisations and number of people consulted/to be consulted	The Administration's follow-up actions on the consultation results and the progress made (if applicable)	For consultations already completed, were the results publicised? If so, what were the channels? If not, why not?
(1) Law Reform Commission (LRC) consultation paper on <i>Enduring Powers of Attorney: Personal Care</i> (issued in Jul 2009)	Absorbed by department.	Completed.	The consultation paper was uploaded onto the LRC homepage and hard copies were sent to around 55 organisations and individuals. Organisations consulted included the Law Society and the Bar Association. This was a one-off consultation exercise and was conducted mainly through written submissions.	A draft report will be prepared and considered by the LRC in due course.	The LRC's final report will be published in due course.
(2) LRC Class Actions Sub-committee's consultation paper on <i>Class Actions</i> (issued in Nov 2009)	Absorbed by department.	In progress.	The consultation paper was uploaded onto the LRC homepage and hard copies were sent to around 995 organisations and individuals. Organisations consulted included the Law Society and the Bar Association. This was a one-off consultation exercise and was conducted mainly through written submissions.	A draft report will be prepared by the LRC's Class Actions Sub-committee and submitted to the LRC in due course.	The LRC's final report will be published in due course.

<p>(3) Report of the Working Group on Mediation (issued in Feb 2010)</p>	<p>Absorbed by department.</p>	<p>In progress from 8 Feb to 8 May 2010.</p>	<p>The consultation paper was uploaded onto the Department of Justice's website on 8 Feb 2010, and hard copies were sent to over 390 organisation. Organisations being consulted include the mediation service providers, the Law Society, Bar Association, chambers of commerce, and other organisations who may have an interest in the development of mediation service and the academia. This is a one-off consultation and is conducted mainly through written submissions.</p>	<p>To be decided upon completion.</p>	<p>Not applicable.</p>
<p>(4) LRC Double Jeopardy Sub-committee's consultation paper on <i>Double Jeopardy</i> (issued in March 2010)</p>	<p>To be absorbed by department.</p>	<p>In progress.</p>	<p>The consultation paper was uploaded onto the LRC homepage and hard copies were sent to around 415 organisations and individuals. Organisations to be consulted will include the Law Society and the Bar Association. This is a one-off consultation exercise and will be conducted mainly through written submissions.</p>	<p>A draft report will be prepared by the Double Jeopardy Sub-committee and submitted to the LRC in due course.</p>	<p>The LRC's final report will be published in due course.</p>

Signature _____

Name in block letters _____ Susie Ho _____

Post Title _____ Director of Administration and
Development _____

Date _____ 19 March 2010 _____

**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

SJ018

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

Question Serial No.

2440

Programme: All Programmes

Controlling Officer: Director of Administration and Development

Question:

Please provide details of the consultations on policy making and assessment under all programmes in the following format. Have resources been earmarked for holding consultations in 2010-11? If so, please provide the following details.

Name/subject of consultation	Expenditure (\$)	Progress of consultation (under planning/ in progress/ completed)	Mode of consultation (e.g. by means of written submissions, consultation sessions, focus groups), number of consultation exercises, name of organisations and number of people consulted/to be consulted	For consultations scheduled for completion in the financial year 2010-11, will the results be publicised? If not, what are the reasons?

Asked by: Hon. EU Yuet-mee, Audrey

Reply:

Name/subject of consultation	Expenditure (\$)	Progress of consultation (under planning/ in progress/ completed)	Mode of consultation (e.g. by means of written submissions, consultation sessions, focus groups), number of consultation exercises, name of organisations and number of people consulted/to be consulted	For consultations scheduled for completion in the financial year 2010-11, will the results be publicised? If not, what are the reasons?
Law Reform Commission (LRC) Charities Sub-committee's consultation paper on <i>Charities</i>	To be absorbed by department.	Under planning.	To be decided.	As is the usual LRC practice, a final report will be published by the LRC on completion of the project.
LRC Causing or Allowing the Death of a Child Sub-committee's consultation paper on <i>Causing or Allowing the Death of a Child</i>	To be absorbed by department.	Under planning.	To be decided.	As is the usual LRC practice, a final report will be published by the LRC on completion of the project.

Signature _____

Name in block letters _____ Susie Ho

Post Title _____ Director of Administration and Development

Date _____ 19 March 2010

**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

SJ019

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

Question Serial No.

2625

Programme:

Controlling Officer: Director of Administration and Development

Question:

The Department of Justice will create 36 non-directorate posts and 1 directorate post in 2010-11. Please provide the following information-

- a) details of these posts, including their ranks, scope of work and salaries;
- b) justifications for the creation of these posts; and
- c) provision involved for the creation of these posts.

Asked by: Hon. SHEK Lai-him, Abraham

Reply:

In 2010-11, we expect to create 39 new posts and this will be partly offset by the lapse of 1 supernumerary post and deletion of 1 post.

The following 15 posts will be created –

- 1 Deputy Principal Government Counsel (DPGC)
- 5 Senior Government Counsel (SGC)
- 1 Government Counsel (GC)
- 2 Law Clerk (LC)
- 1 Executive Officer II (EO II)
- 1 Personal Secretary I (PS I)
- 1 Clerical Officer (CO)
- 1 Assistant Clerical Officer (ACO); and
- 2 Workman II (WM II)

to cope with the increasing demand for legal services and increasing complexity of the legal work involved, strengthen support to the legal professionals and strengthen general administrative and secretarial support.

Separately the Department will also create the following 24 posts -

- 1 DPGC
- 12 SGC
- 6 GC
- 3 LC
- 1 PS I; and
- 1 ACO

to cope with the increased workload in handling claims lodged under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

A total provision of \$25.53 million has been reserved in 2010-11 for the creation of above posts and the notional annual mid-point salary of the respective posts is as follows –

DPGC	\$1,479,480
SGC	\$981,000
GC	\$719,160
LC	\$289,440
EO II	\$350,820
PS I	\$303,840
CO	\$303,840
ACO	\$189,420
WM II	\$117,420

Signature _____

Name in block letters _____ Susie Ho

Post Title _____ Director of Administration and Development

Date _____ 19 March 2010

**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

SJ020

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

Question Serial No.

2890

Programme: (4) Law Drafting

Controlling Officer: Director of Administration and Development

Question:

Please provide the titles of all legislation being drafted/ to which amendments are being drafted.

Asked by: Hon. IP Wai-ming

Reply:

The legislation being drafted/ to which amendments are being drafted includes the following 14 bills listed in the legislative programme for the second half of the 2009-2010 Legislative Session are set out below –

1. Communications Authority Bill
2. Competition Bill
3. Legal Practitioners (Amendment) Bill
4. Matrimonial Proceedings and Property (Amendment) Bill
5. Motor Vehicle Idling (Fixed Penalty) Bill
6. Food Safety Bill
7. Public Health and Municipal Services (Amendment) Bill
8. A bill to amend the Inland Revenue Ordinance and Stamp Duty Ordinance
9. Deposit Protection Scheme (Amendment) Bill
10. Inland Revenue (Amendment) Bill
11. Prevention of Money Laundering and Terrorist Financing (Financial Institutions) Bill
12. Residential Care Homes (Persons with Disabilities) Bill
13. Immigration (Amendment) Bill
14. Road Traffic Legislation (Amendment) Bill

Signature _____

Name in block letters _____ Susie Ho

Post Title _____ Director of Administration and
Development

Date _____ 19 March 2010

SJ021

**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

Question Serial No.

2781

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

Programme: (3) Legal Policy

Controlling Officer: Director of Administration and Development

Question:

The activities of recovery agents have been on the rise in recent years. Under the pledge of “no win, no charge”, these agents induce injured persons to make claims for compensation and they will receive a portion of the compensation recovered as rewards. At the same time, these agents also abet the victims to exaggerate the degree of their injuries so as to obtain more compensation for their traffic accident claims by fraud, resulting in an undesirable trend. In this respect, what is the amount of resources that the Administration will reserve in the current financial year, i.e. 2010-11, for combating activities of recovery agents and stepping up public education to address the problems caused by recovery agents?

Asked by: Hon. LAU Kin-ye, Miriam

Reply:

The issue 'recovery agents' is addressed by enhancing public awareness and enforcing law through investigation and prosecution. The Department of Justice (DoJ) will continue the publicity through the media (by broadcasting a radio Announcement in the Public Interest (API) and a television API in government airtime) to enhance public understanding of the activities of recovery agents and the offences of champerty and maintenance. The public is reminded to be vigilant with regard to the activities of recovery agents which may be unlawful and may also jeopardise their own interest.

As regards law enforcement, there has been one successful prosecution related to champerty and maintenance, and some suspected cases are under investigation by the police. Where fraud (including insurance fraud) is involved and substantiated, those perpetrating the fraud may also be prosecuted for fraud-related offences.

The staff costs and other related expenses relating to combating the activities of recovery agents will be absorbed by DoJ and the relevant departments 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 2010