

**For discussion  
on 18 January 2012**

**EC(2011-12)15**

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

### **HEAD 92 – DEPARTMENT OF JUSTICE Subhead 000 Operational expenses**

Members are invited to recommend to Finance Committee the creation of the following supernumerary post in the Legal Policy Division of the Department of Justice for a period of five years with immediate effect –

1 Deputy Principal Government Counsel  
(DL2) (\$126,500 - \$138,350)

### **PROBLEM**

We need to strengthen the staffing support at the directorate level in the Legal Policy Division (LPD) of the Department of Justice (DoJ) to head a dedicated unit to handle legal work in respect of constitutional development and electoral affairs.

### **PROPOSAL**

2. We propose to create a supernumerary post of Deputy Principal Government Counsel (DPGC) (DL2) in the LPD for a period of five years with immediate effect upon approval by the Finance Committee (FC).

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## JUSTIFICATION

### Current situation

3. The LPD provides advice to government bureaux and departments on whether a proposed policy or legislation is consistent with the provisions of the Basic Law, including provisions on human rights. It also provides advice on and promotes understanding of the law of the Mainland, and plays an active part in law reform. The LPD also assists in formulating policy particularly in relation to the legal system and the legal profession.

4. The LPD is headed by the Solicitor General, who is supported by three Principal Government Counsel (PGC). One of the PGC serves as the Secretary to the Law Reform Commission while the other two PGC head the Legal Policy (Constitutional) Section (the Constitutional Section) and the Legal Policy (General) Section respectively.

5. Within the DoJ, the work in respect of constitutional development and electoral affairs is undertaken by the LPD and the Civil Division in the following two aspects –

- (a) the legal advisory and research work in respect of the development of constitutional and election laws; and
- (b) the advisory work in relation to the application of existing election legislation.

In the previous rounds of Chief Executive (CE), Legislative Council (LegCo), District Council (DC) and Village Representative elections held after the establishment of the Hong Kong Special Administrative Region (HKSAR), we saw a growing, albeit cyclical, workload in relation to the front-line legal advisory work, i.e., the advisory work in relation to the application of existing election legislation. Such work has generally been dealt with by counsel in the Civil Advisory Unit of the Civil Division. Where intricate issues in respect of the development of constitutional and election laws are raised, the guidance of the Constitutional Section would be sought.

### The Constitutional Section

6. The Constitutional Section comprises two units, namely the Basic Law Unit and the Human Rights Unit, each headed by a DPGC. The Basic Law Unit and the Human Rights Unit provide specialised advice on constitutional law (Basic Law) and human rights law to ensure the consistency of new government

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policies and legislation with the requirements of the Basic Law, including the provisions on human rights. They also provide legal advice on the Hong Kong Bill of Rights Ordinance, four anti-discrimination Ordinances and on international human rights treaties extended to the HKSAR, assist in promoting knowledge of the Basic Law, as well as advise and help the Government defend its position in litigation concerning issues which carry Basic Law and human rights implications. The work in respect of the development of constitutional and election laws is but one facet of the array of duties in the Constitutional Section, and has hitherto been shared between the Basic Law and Human Rights Units.

7. In the specific area of constitutional/election law development, the general work currently carried out by the Constitutional Section includes, inter alia, advising the Constitutional and Mainland Affairs Bureau (CMAB) on relevant provisions of the Basic Law, as well as on legislative amendments to be made to the various pieces of election-related legislation, including the Chief Executive Election Ordinance and the Legislative Council Ordinance. An example of such duties is to advise CMAB on its proposal to amend the Elections (Corrupt and Illegal Conduct) Ordinance to relax the regulatory regime regarding election advertisements. These duties are currently being carried out by the PGC with support from counsel in the Civil Advisory Unit and the LPD.

8. Against the backdrop of a new constitutional order, the Constitutional Section has seen a significant increase in its workload. Coupled with the novel and increased complexity of legal issues raised, as well as the shortening of timeframe for advice, the manpower in the Constitutional Section needs to be strengthened if it is to provide adequate and effective support to the Administration in order to tackle the new challenges associated with constitutional development and the application of the existing election legislation in the near future, which are set out in the following paragraphs.

#### **Anticipated substantial increase in demand for legal advice in relation to constitutional development**

9. The Basic Law provides, in relation to selection of the CE and the election of members for the LegCo, that the ultimate aim is to elect the CE and the LegCo by universal suffrage, in the light of the actual situation of Hong Kong and in accordance with the principle of gradual and orderly progress. The decision of the Standing Committee of National People's Congress of 2007 has made clear the universal suffrage timetable: Hong Kong may implement universal suffrage for the CE in 2017 and for the LegCo in 2020.

10. In 2010, the Government's proposed package to enhance the democratic elements of the two electoral methods for 2012 through the participation of elected DC members who have a broad electorate base was passed, and will be implemented, beginning with DC elections held in November 2011. It is anticipated that democratic development for Hong Kong will continue to roll forward now that the way has been paved for determining the universal suffrage models of 2017 and 2020.

11. The work in relation to constitutional development, in particular how to achieve the ultimate aim of selection of the CE by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures, laid down in BL45, is an important and serious task that may involve constitutional legal issues with increasing complexity. From the legal policy perspective, such task demands the attention of a dedicated team at the right level. It is anticipated that there will be heavy demand for legal advice on the proposed measures, policies or legislative amendments required in order to move forward to meet the ultimate aim. The existing manpower in LPD would not be adequate to cater for such demand. New resources are required.

#### **Advisory work in relation to existing election legislation**

12. As mentioned above, the demand for legal advice and services in relation to the application of existing election legislation in the context of elections at various levels has been on the rise. We expect to see a continuous increase in the coming years. The tasks currently being carried out by an Senior Government Counsel (SGC) in the Civil Advisory Unit of the Civil Division include rendering advice on the interpretation and application of the various pieces of election-related legislation to the Electoral Affairs Commission, CMAB, Registration and Electoral Office (REO), Home Affairs Department (HAD) and the Independent Commission Against Corruption (ICAC).

13. The demand for the above legal advice and services will further increase in an election year arising from the need to advise on the criteria for delineation of geographical constituency/DC constituency boundaries, and to attend briefings for Revising Officers/Returning Officers and Assistant Returning Officers. During the election period, there will be increased demand for advice on candidates' eligibility to stand for election as well as the need to attend briefing sessions for candidates; advice on complaints relating to the election process, etc.

14. In view of the increased demand for advisory service in relation to the application of existing election legislation and the preparation for the coming CE and LegCo Elections in 2012, a supernumerary DPGC post has been created on 1 October 2011 for six months to provide the necessary directorate support for such work.

15. At the DC election in November 2011, three Government lawyers from the DoJ, namely the PGC in the LPD, the supernumerary DPGC created on 1 October 2011 and an SGC in the Civil Advisory Unit, were involved on the polling day on 6 November 2011 as part of the headquarters team in the Central Command Centre to give instant legal advice and support to the Returning Officers or Assistant Returning Officers stationed in the 18 District Offices. On that occasion, 18 Government lawyers also acted as Assistant Returning Officer (Legal) providing legal advice to polling stations in the 18 Districts. After an election, considerable demand for advice relating to election petitions, payment of financial assistance to eligible candidates, destruction of election materials pending Police/ICAC investigation, and candidates' application for relief orders under the Elections (Corrupt and Legal Conduct) Ordinance, etc. can be anticipated.

### **Proposed creation of a DPGC post**

16. There has been a rising demand for advisory service in relation to constitutional development and electoral affairs over the years and it is expected that the demand will continue as we move forward to achieve the ultimate aim of universal suffrage. Since the Constitutional Section is expected to meet service needs for a large volume of legal advice of great complexity in a timely manner, the demand on the Constitutional Section will be so demanding that it warrants the reinforcement of manpower through the creation of a dedicated Unit to cope with the increasing workload and to prevent the Constitutional Section from being further strained.

17. In order to provide effective and efficient legal support to the Administration in the important and sensitive task of Hong Kong's democratisation and determining the universal suffrage models of 2017 and 2020, it is proposed that a dedicated unit (tentatively called the Constitutional Development and Elections Unit (the Unit)) would be formed to cope with the on-going and anticipated caseload in this respect.

18. We envisage that the Unit be headed by the proposed supernumerary DPGC and supported by an SGC re-deployed from the Civil Division to the Constitutional Section of the LPD internally. From the operational point of view, there is good synergy in combining the front-line advisory function with the handling of constitutional developmental issues under one single roof with the designated attention of one directorate officer. Such rationalisation of work enables a global view to be taken and would assist in developing legal expertise and ensuring sustainability.

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19. The DPGC will be primarily responsible for the provision of legal advice to the Administration relating to constitutional development and electoral affairs. He/She has to provide dedicated legal support and services to the said important task, including researching and advising on legal issues and advising on legislative proposals. He/She has to assist the Administration to explain the legal aspects of the legislative proposals relating to constitutional development and electoral matters in the Executive Council, LegCo or any other committees, as required. The importance of the subject matter demands the attention of a dedicated team at the right level. The legal work involved is highly complex and technical, and requires a wide spectrum of knowledge in electoral law, constitutional law and human rights law. In view of the above, it is considered that the post should be pitched at DPGC level in recognition of the knowledge and experience required and the level of responsibility.

20. Being the head of the Unit, the DPGC will supervise the SGC to provide legal advice and support to relevant bureaux and departments, including the REO, on the existing election-related laws and relevant legislative proposals. The DPGC will also have to supervise the SGC to ensure that effective and efficient legal support and services are provided to HAD in its exercise to review rural elections. The Unit will also deal with legal issues relating to post-election reviews, complaints and appeals, and where necessary, work with the relevant bureaux on the follow-up amendments to the relevant legislation.

21. We expect that the coming five years from April 2012 will be crucial in terms of developing the universal suffrage models of 2017 and the associated legislation. Once the ground work has been done, the long-term need for this DPGC post should be reviewed. In terms of constitutional development and electoral affairs, 2017 would provide a natural point for reviewing our workload, including whether any adjustment to the composition of our legal team is needed. We therefore propose that the relevant DPGC post should be created for a period of five years with immediate effect upon approval by the FC, and a review on the continued need for the post would be conducted in 2016.

Encl. 1  
Encl. 2

22. The job description of the proposed DPGC post is at Enclosure 1. An organisation chart showing the proposed change is at Enclosure 2.

### **ALTERNATIVES CONSIDERED**

23. There is no viable alternative. Other than the creation of the DPGC post, the alternative of staff redeployment has been considered but found infeasible. We are not able to meet these new demands from within existing

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staffing resources without serious disruption and depletion of provision of service in other essential areas. Without the post of DPGC to head the Unit, the existing directorate establishment of the LPD will be inadequate to cope effectively with the substantial rise in demand for advice of increasing complexity on constitutional development and electoral affairs on a regular basis.

## FINANCIAL IMPLICATIONS

24. The proposed creation of the DPGC post in DoJ will bring about an additional notional annual salary cost at mid-point of \$1,611,600. The full annual average staff cost, including salaries and staff on-cost, is \$2,257,000.

25. In addition, a time-limited Personal Secretary I (PS I) post will be created to support the proposed DPGC for five years. This will incur a notional annual salary cost at mid-point of \$324,360 and a full annual average staff cost, including salaries and staff on-cost, of \$468,000.

26. We will include the necessary provision in the draft Estimates of 2012-13 and subsequent years to meet the cost of the proposed creation of the DPGC and PS I posts.

## PUBLIC CONSULTATION

27. We consulted the LegCo Panel on Administration of Justice and Legal Services on 28 November 2011. Members supported the submission of the staffing proposal to the Establishment Subcommittee and FC.

## ESTABLISHMENT CHANGES

28. The establishment changes in the DoJ for the last two years are as follows –

Establishment (Note)	Number of posts			
	Existing (as at 1 December 2011)	As at 1 April 2011	As at 1 April 2010	As at 1 April 2009
A	87#	87*	73*+(1)	71*+(1)
B	336	335	340	320
C	749	748	731	719
<b>Total</b>	<b>1 172</b>	<b>1 170</b>	<b>1 144+(1)</b>	<b>1 110+(1)</b>

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Note :

- A - ranks in the directorate pay scale or equivalent
- B - non-directorate ranks, the maximum pay point of which is above MPS Point 33 or equivalent
- C - non-directorate ranks, the maximum pay point of which is at or below MPS Point 33 or equivalent
- ( ) - number of supernumerary directorate post
- # - as at 1 December 2011, there was no unfilled directorate post
- \* - there was an increase of 16 directorate posts from 1 April 2009 to 1 April 2011, namely two directorate posts which were approved by the FC on 5 February 2010 vide EC(2009-10)13 and 14 directorate posts which were approved by the FC on 28 January 2011 vide EC(2010-11)12.

### **CIVIL SERVICE BUREAU COMMENTS**

29. The Civil Service Bureau supports the proposed creation of the supernumerary DPGC post. The grading and ranking of the proposed post are considered appropriate having regard to the level and scope of responsibilities.

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

30. As the post is proposed on a supernumerary basis, its creation, if approved, will be reported to the Standing Committee on Directorate Salaries and Conditions of Service in accordance with the agreed procedure.

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Department of Justice  
January 2012



**Job Description**  
**Deputy Principal Government Counsel**  
**(Constitutional Development and Elections)**

**Rank** : Deputy Principal Government Counsel (DL2)

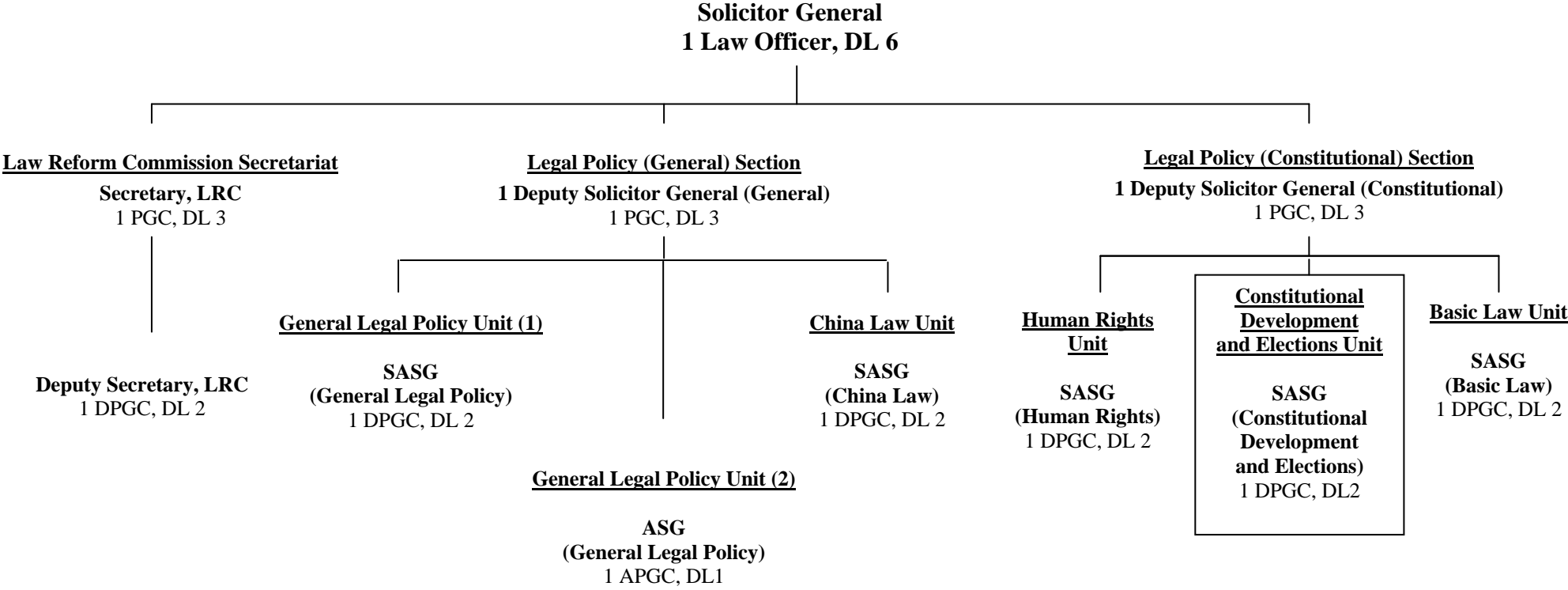
**Responsible to** : Deputy Solicitor General (Constitutional)

**Main Duties and Responsibilities –**

1. To provide legal advice and services to relevant Government bureaux and departments on matters relating to constitutional development and electoral affairs.
2. To appear before Executive Council, Legislative Council or any other committees, as required, to explain the legal aspects of legislative proposals relating to constitutional development and electoral matters.
3. To supervise and provide guidance to counsel of the Unit in providing legal advice and support to relevant Government bureaux and departments, including Constitutional and Mainland Affairs Bureau; Electoral Affairs Commission; Registration and Electoral Office, on the existing election related laws, and relevant legislative proposals.
4. To deal with matters relating to post-election reviews, complaints and appeals, and follow-up amendments to legislation.
5. To be responsible for the general administration of the Unit.
6. To perform any other duties as and when required in order to assist in the efficient and effective performance of the Legal Policy Division.

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**Existing and Proposed Organisation Chart of the Legal Policy Division**



**Legend :**

- APGC – Assistant Principal Government Counsel
- ASG – Assistant Solicitor General
- DPGC – Deputy Principal Government Counsel
- LRC – Law Reform Commission
- PGC – Principal Government Counsel
- SASG – Senior Assistant Solicitor General
- Proposed DPGC post