

ITEM FOR ESTABLISHMENT SUBCOMMITTEE OF FINANCE COMMITTEE

HEAD 92 - DEPARTMENT OF JUSTICE

Subhead 001 Salaries

Subhead 243 Hire of legal services and related professional fees

Members are invited to recommend to Finance Committee -

- (a) the creation of a consultancy position at DL4 equivalent level (\$145,150 - \$149,600) in the Secretary for Justice's Office for a period of two years from 7 September 2000 to 6 September 2002;
- (b) the redeployment of a permanent post of Principal Government Counsel (DL3) (\$127,900 - \$135,550) from the Secretary for Justice's Office to the Legal Policy Division; and
- (c) the revision to the responsibilities of an existing permanent post of Principal Government Counsel (DL3) (\$127,900 - \$135,550) in the Legal Policy Division

PROBLEM

The existing directorate establishment in the Secretary for Justice's Office (SJO) and the Legal Policy Division (LPD) is insufficient to cope effectively with the constitutional and legislative issues faced by the Department of Justice (the Department).

/PROPOSAL

PROPOSAL

2. With a view to enabling the Department to cope with the demands placed on it, the Secretary for Justice (SJ) proposes -

- (a) to create a consultancy position pitched at DL4 equivalent level for two years with effect from 7 September 2000 in the SJO;
- (b) to redeploy one permanent post of Principal Government Counsel (PGC) (DL3) from the SJO to LPD to handle constitutional, Basic Law and Human Rights matters; and
- (c) to revise the responsibilities of one existing PGC in the Legal Policy Division to handle China law issues, general advisory work, and some duties currently performed by the PGC in the SJO.

JUSTIFICATION**Proposed consultancy position at DL4 equivalent level**

3. SJ has been assisted by the Deputy Law Officer/SJO (DLO/SJO) [ranked at PGC (DL3)] in the professional aspects of her work as legal adviser to the Chief Executive, as Member of the Executive Council and other committees, and in the discharge of her duties in respect of the Legislative Council (LegCo). As legislative issues assumed a much increased significance in the formative period after Reunification, we have engaged a consultant at DL3 equivalent level as Legal Adviser on Legislative Affairs (LA) to provide expert legal advice to SJ on matters relating to LegCo for a period of 12 months with effect from 7 September 1999. The existing organisation chart of SJO is at Enclosure 1. We set out at Enclosures 2 and 3 the existing duty lists of DLO/SJO and LA respectively.

Encl.1
Encls.2&3

4. As part of his duties, LA provides expert legal advice to the Administration on legislative, procedural and practice matters involving LegCo, including advice on implications of Basic Law provisions relevant to LegCo. He also provides legal advice regarding the accountability of the executive authorities to LegCo. Since the commencement of the above consultancy position in September 1999, LA has been increasingly engaged in advice work to Bureaux, often interacting with officers at the Secretary or Deputy Secretary level. The advice tendered by LA involves important procedural and practical matters where understanding and experience of the principles of the legislative process are essential in order to reflect the proper constitutional roles of both the executive authorities and the legislature.

5. When the LA was engaged in September 1999, we could not predict with certainty the optimum duration required of this consultancy position. Based on the experience over the past six months, it is clear that the services of an experienced specialist in legislative affairs is needed at least for a further limited period. Present indication is that there still remains some major legislative issues affecting the working relationship between the executive and the legislature, to which the LA will be expected to devote his expertise in order to move towards positive and pragmatic solutions. These issues include -

- (a) achieving the proper balance between governmental initiatives and governmental accountability in the legislative process;
- (b) recognising the full extent of the legislature's functions under the Basic Law; and
- (c) advising on ways in which the Administration can further assist LegCo in its scrutiny of principal and subsidiary legislation.

Encl. 4 SJ therefore proposes to retain the existing consultancy position, with an expanded scope of work covering certain areas currently under the responsibility of the DLO/SJO, for a further period of two years and to upgrade its level from DL3 to DL4. We set out at Enclosure 4 the proposed duty list of the new consultancy position.

6. During the two-year period for the new consultancy position, the incumbent will be tasked to enhance expertise in legislative affairs in the development of our institutions under the Basic Law. Substantial further progress is expected to be made on major issues affecting the legislative process, the legislature's position under the Basic Law and the working relationship between the executive and the legislature (e.g. Members' amendments to bills, scrutiny of subsidiary legislation, accountability of the Hong Kong Special Administration Region (HKSAR) Government under Article 43 of the Basic Law, mechanism for amendment of Basic Law, etc.). We shall review the situation towards the end of the two-year period to decide whether further retention of the position is necessary.

7. As regards the ranking of the consultancy position, we consider it justified to upgrade the position from DL3 to DL4 equivalent level. This would more realistically reflect the level of responsibility of the LA, the level of expertise and experience possessed and the skills required of him to discharge his responsibilities. As pointed out above, the LA is often required to interact and respond to requests from other Bureaux, normally at the Bureau Secretary or

/Deputy

Deputy Secretary levels. Furthermore, in many respects the depth and breadth of LA's duties mirror those of the Legal Adviser of LegCo. Both positions have the ultimate aim of developing soundly based legislative procedures and practices which properly recognise the respective functions of the executive and the legislature according to the relevant principles of the Basic Law. In light of these demanding requirements and the expanded scope of responsibility (upon the transfer of the DLO/SOJ post to the LPD as proposed below), we consider it necessary to pitch the new two-year consultancy position at the DL4 equivalent level.

Redeployment of a PGC post from SJO to LPD

8. The LPD is headed by the Solicitor General (SG) who is supported by three PGC, in the posts of Deputy Solicitor General (Advisory) [DSG(A)], Deputy Solicitor General (Constitutional) [DSG(C)] and Secretary, Law Reform Commission respectively. Each of the two DSGs in turn supervises a number of units namely, the Human Rights, General Advisory and the China Law Units under DSG(A); and the Electoral Affairs Team, Basic Law and Administration Units under DSG(C). We set out at Enclosure 5 the existing organisation chart of the LPD.

Encl. 5

9. The post of DSG(C) is a supernumerary post which will lapse on 1 April 2001. The major task of the post when first established was to provide legal input into the preparation and passage of the electoral laws required under the Basic Law for the LegCo elections and the establishment of the legal infrastructure for the regular cycle of elections. However, over the past two years, there has been a significant increase in the volume, complexity, and importance of constitutional advice sought. Furthermore, the workload of the Basic Law Unit, which is under the supervision of DSG(C), has also increased considerably both in volume and complexity. Since the coming into effect of the Basic Law in HKSAR on 1 July 1997, there has been a growing demand for specialised advice on the Basic Law. The number of complicated legal issues arising under and in connection with the Basic Law has also increased. These include issues relating to the offences listed in Article 23, the right of abode issues under Article 24, the mechanism for amending the Basic Law under Article 159, and the preparation of the electoral law for the election of the Chief Executive under Annex I.

10. In view of the increased demand for constitutional and Basic Law advice, SJ considers it necessary to enhance the LPD with a permanent DSG. Mindful of the need to make the most optimal use of existing resources and together with the proposal to retain and upgrade the LA position, she proposes to

/redeploy

redeploy the existing permanent PGC post in her office (i.e. DLO/SJO) to the LPD. This would obviate the need to create an additional permanent post. Upon Members' approval of the redeployment proposal, the existing supernumerary post of DSG(C) will lapse.

Revision of responsibilities of DSG(A) and DSG(C)

11. SJ has also reviewed the distribution of duties between DSG(A) and DSG(C). At present, the Human Rights Unit under DSG(A) gives advice in respect of the human rights guarantees in the Basic Law and human rights obligations arising under international law whereas the Basic Law Unit under DSG(C) advises the Government in respect of all other aspects of the Basic Law. Since the constitutionality of all government policies and legislation is to be determined by compliance with the Basic Law, SJ considers it more appropriate for these two units to be supervised and co-ordinated by one DSG.

12. On the other hand, the workload of DSG(A) has increased as a result of a growing demand for China law advice after Reunification. For instance, there is a need to provide support towards the development of mutual legal assistance with the Mainland and develop mutual understanding of the two legal systems. China's impending accession to the World Trade Organisation will also lead to a greater demand for advice on Mainland laws and for initiatives that will benefit the HKSAR. Against the above background, SJ proposes to transfer the Human Rights Unit from DSG(A) to DSG(C). This will enable DSG(A) to concentrate on the China law issues and general advisory work and to absorb the residual duties of DLO/SJO, that is, other than those to be undertaken by the LA and liaison and briefing duties which will be absorbed by the Administrative Assistant to the SJ.

Encls. 6 & 7
Encl. 8

13. We set out at Enclosures 6 and 7 the revised duty lists of DSG(C) and DSG(A) respectively. The proposed organisation chart of the LPD is at Enclosure 8.

FINANCIAL IMPLICATIONS

14. The additional notional annual salary cost of the proposed consultancy position at MID-POINT is \$1,795,200. The additional full annual average staff cost of the proposed consultancy position, including salaries and staff on-costs, is \$3,331,000. There is sufficient provision in the 2000-01 Estimates to meet the cost of this proposal. The proposed redeployment of a

/permanent

permanent PGC post from SJO to the LPD is cost-neutral. The early termination of the PGC supernumerary post will give rise to a one-off saving of \$2,250,000 which is the full annual average staff cost of the post for ten months.

BACKGROUND INFORMATION

15. On 12 December 1997, the Finance Committee approved the creation of a supernumerary PGC post from 3 January 1998 to 31 March 2001 to provide the necessary legal input to put in place arrangements for the 1998 and 2000 LegCo elections and for the first round of elections for district organisations in 1999 [vide (EC97-98)36]. We need to create a permanent PGC post upon the lapse of the supernumerary post to handle constitutional, Basic Law and Human Rights matters and we propose to redeploy the permanent PGC post in the SJO to the LPD for the purpose.

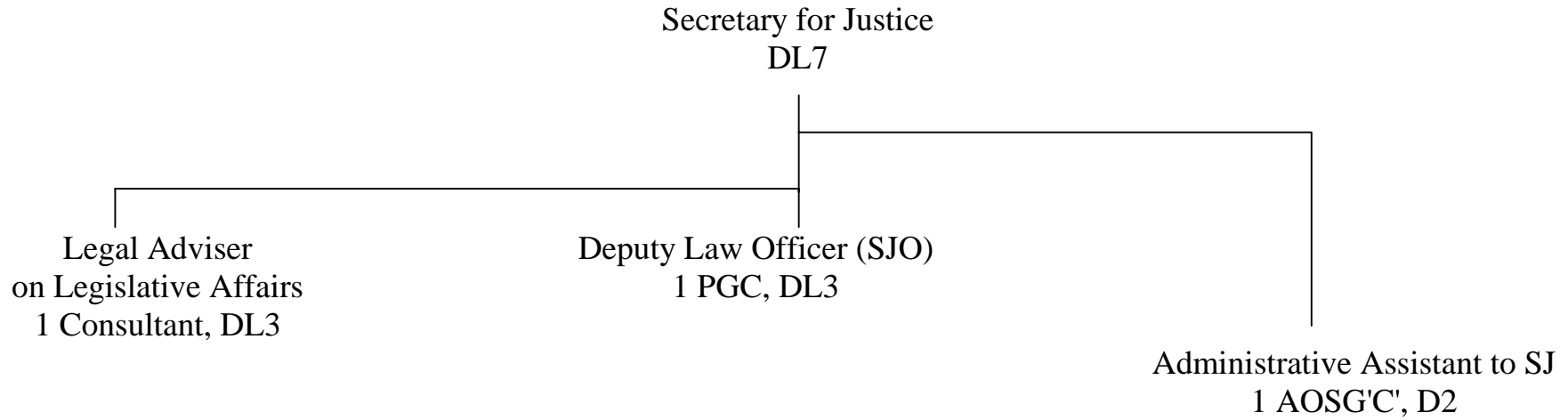
CIVIL SERVICE BUREAU COMMENTS

16. Having regard to the need for expert legal advice on legislative affairs to the Administration, and the increased demand for constitutional, Basic Law and China law advice after Reunification, Civil Service Bureau supports the creation of the consultancy position for two years, and the permanent redeployment of one PGC post and revision of responsibilities of another PGC post as set out in this paper. The level of the consultancy position and the grading and ranking of the proposed post are considered appropriate.

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

17. The Standing Committee on Directorate Salaries and Conditions of Service has advised that the grading proposed for the consultancy position would be appropriate if the post were to be created, and endorsed the proposed redeployment and revision of responsibilities in the LPD.

Existing Organisation Chart of the Secretary for Justice's Office



Legend :

- PGC = Principal Government Counsel
- AOSG'C' = Administrative Officer Staff Grade 'C'

**Existing main duties and responsibilities of the
Principal Government Counsel (DL3)
(Deputy Law Officer (Secretary for Justice's Office))**

Responsible to the Secretary for Justice for -

- (1) providing legal assistance to the Secretary for Justice in respect of her work as legal adviser to the Chief Executive, as member of the Executive Council and other committees and in the discharge of her duties in respect of LegCo;
- (2) briefing the Secretary for Justice on legal issues coming within her policy responsibility;
- (3) liaising with Bureau Secretaries, Heads of Departments and the Law Officers on such legal issues as the Secretary for Justice may direct;
- (4) assisting the Secretary for Justice in monitoring the progress of legislative proposals;
- (5) briefing and assisting the Secretary for Justice on legal issues in respect of official visitors and official invitations;
- (6) drafting or revising speeches and statements with a high legal content to be delivered by the Secretary for Justice;
- (7) assisting the Secretary for Justice in respect of the legal aspects of press statements, and questions and answers on issues raised by the media, or to be raised with the media;
- (8) allocating work to and supervising such professional officers as may be assigned from time to time to the Secretary for Justice's Office; and
- (9) performing such other duties as the Secretary for Justice may from time to time direct.

**Existing main duties and responsibilities of the
Legal Adviser on Legislative Affairs (DL3)**

Responsible to the Secretary for Justice for -

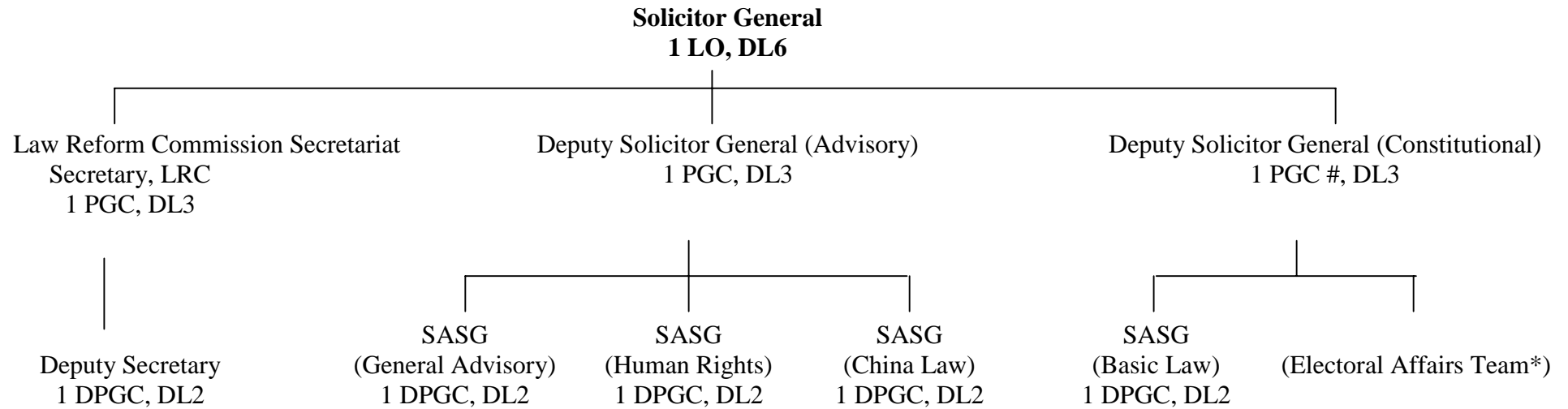
- (1) providing legal advice to the Secretary for Justice on legislative, procedural and practice matters involving the Legislative Council, including advice on implications of Basic Law provisions relevant to the Council;
- (2) providing legal advice regarding the accountability of the Hong Kong SAR Government to the Legislative Council;
- (3) providing legal advice on legislative issues affecting fees and charges and subsidiary legislation generally;
- (4) providing assistance in the adaptation of laws programme;
- (5) attending meetings of Legislative Council Panels and Committees on behalf of the Department of Justice in respect of the Rules of Procedure and legislative policy issues; and
- (6) developing strategies for enhancing the working relationship between the Executive and the Legislative Council.

**Proposed main duties and responsibilities of the
Legal Adviser on Legislative Affairs (DL4)**

Responsible to the Secretary for Justice for -

- (1) providing legal assistance to the Secretary for Justice in the discharge of her duties in respect of the Legislative Council;
- (2) providing legal advice to the Secretary for Justice on legislative, procedural and practice matters involving the Legislative Council, including advice on implications of Basic Law provisions relevant to the Council;
- (3) providing legal advice regarding the accountability of the Hong Kong SAR Government to the Legislative Council;
- (4) providing legal advice on legislative issues affecting fees and charges and subsidiary legislation generally;
- (5) providing assistance in the adaptation of laws programme;
- (6) assisting the Secretary for Justice in monitoring the progress of legislative proposals;
- (7) drafting or revising speeches and statements with a legislative content to be delivered by the Secretary for Justice;
- (8) assisting the Secretary for Justice in respect of the legislative aspects of press statements, and questions and answers on issues raised by the media, or to be raised by the media;
- (9) attending meetings of Legislative Council Panels and Committees on behalf of the Department of Justice in respect of the Rules of Procedure and legislative policy issues;
- (10) developing strategies for enhancing the working relationship between the Executive and the Legislative Council; and
- (11) performing such other duties as the Secretary for Justice may from time to time direct.

Existing Organisation Chart of the Legal Policy Division



Legend :

- LO = Law Officer
- PGC = Principal Government Counsel
- DPGC = Deputy Principal Government Counsel
- SASG = Senior Assistant Solicitor General
- # = Supernumerary post to lapse on 1 April 2001
- * = The Electoral Affairs Team comprises one SGC and one PS I posts in the Division and the PGC also supervises the work of two DPGC, one SGC, one GC and six supporting staff in the Law Drafting Division

**Revised main duties and responsibilities of the
Principal Government Counsel (DL3)
(Deputy Solicitor General (Constitutional))**

Responsible to the Solicitor General for -

- (1) providing legal advice to Government on sensitive and complex constitutional and electoral matters;
- (2) advising on legal policy and human rights issues arising out of the Basic Law and the Bill of Rights Ordinance;
- (3) advising on reports to various United Nations and treaty-monitoring bodies in relation to multilateral human rights treaties applicable to Hong Kong and attending and assisting on attendance of hearing thereon;
- (4) supervising and overseeing the distribution of work of the Basic Law and Human Rights Units;
- (5) examining draft drafting instructions in respect of legislation required to be implemented under the Basic Law, assisting in the preparation of such instructions and in the formulation of related policy, assisting in steering such Bills through the legislative process;
- (6) allocating and supervising the work of the Electoral Affairs Team;
- (7) providing legal advice to the Electoral Affairs Commission on all electoral matters and co-ordinating the staff of Department of Justice when assisting as electoral officers; and
- (8) performing such other duties as may be assigned from time to time by the Solicitor General.

**Revised main duties and responsibilities of the
Principal Government Counsel (DL3)
(Deputy Solicitor General (Advisory))**

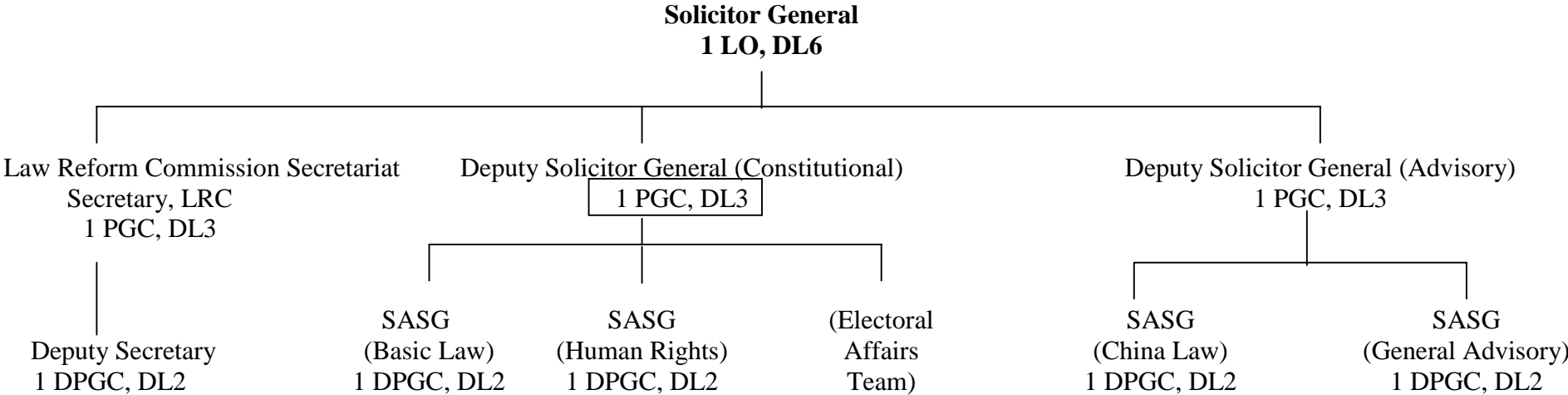
Responsible to the Solicitor General for -

- (1) providing legal advice to Government on sensitive and complex general legal policy and China law issues;
- (2) preparing or editing papers or advices in Chinese on sensitive and complex general legal policy and China law issues;
- (3) taking responsibility for liaison with Government policy bureaux and departments, relevant professional bodies, as well as other divisions in the Department of Justice, on general legal policy and China law issues, including chairing or attending meetings of inter-departmental committees or working groups;
- (4) preparing and promoting Bills for which the Department of Justice has policy responsibility, including the drafting of Drafting Instructions and consultation papers; explaining the proposals to the Chief Secretary's Committee and Executive Council; and steering such Bills through the legislative process;
- (5) establishing and maintaining contacts with Mainland counterparts;
- (6) developing and promoting mutual understanding of the two legal systems in the SAR and the Mainland;
- (7) supervising and overseeing the work of the General Advisory Unit, including proposing or advising on proposed legislative reforms having a legal policy dimension, advising on petitions or complaints to the Chief Executive and surrender of fugitive offenders;
- (8) supervising and overseeing the work of the China Law Unit, including initiating and implementing exchange programmes with Mainland authorities and academic institutions;
- (9) assisting the Department of Justice in the promotion of the rule of law;
- (10) providing legal assistance to the Secretary for Justice in respect of her work as legal adviser to the Chief Executive, and as member of the Executive Council and other committees;

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- (11) drafting or revising speeches and statements with a high legal content to be delivered by the Secretary for Justice or the Solicitor General;
- (12) assisting the Secretary for Justice and the Solicitor General in respect of the legal aspects of press statements, and questions and answers raised by the media, or to be raised by the media; and
- (13) performing such other duties as may be assigned from time to time by the Solicitor General.

Proposed Organisation Chart of the Legal Policy Division



Legend :

- LO = Law Officer
- PGC = Principal Government Counsel
- DPGC = Deputy Principal Government Counsel
- SASG = Senior Assistant Solicitor General
- = Proposed PGC post to be redeployed from SJO

