

**Staffing Proposal on the
Creation of a Consultancy Position and
Re-deployment of a Principal Government Counsel Post
in the Department of Justice**

This paper seeks the views of the Members of the LegCo Panel on Administration of Justice and Legal Services on the Department of Justice's proposal to make the following changes to its directorate establishment –

- (a) the creation of a consultancy position at DL4 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; and
- (b) the redeployment of a permanent post of Principal Government Counsel (DL3) from the Secretary for Justice's Office to the Legal Policy Division with effect from 9 June 2000.

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 issues faced by the Department of Justice (the Department) as a result of Reunification.

PROPOSAL

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

- (a) Secretary for Justice's Office - creating a consultancy position pitched at DL4 level for two years from 7 September 2000 to 6 September 2002; and
- (b) Legal Policy Division - creating one permanent post of Principal Government Counsel (PGC) (DL3) to handle constitutional/Basic Law/Human Rights matters, offset by deleting one permanent post of PGC in the SJO with effect from 9 June 2000.

JUSTIFICATION

Secretary for Justice's Office

3. SJ has been assisted by the Deputy Law Officer/SJO (DLO/SJO) (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, a consultant pitched at DL3 level has been engaged as Legal Adviser on Legislative Affairs (LA) to provide expert legal advice to SJ on matters relating to the LegCo for a period of 12 months with effect from 7 September 1999. The existing organisation chart of SJO is at Enclosure 1. The existing duty lists of DLO/SJO and LA are at Enclosures 2 and 3

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respectively.

4. As part of his duties, LA provides legal advice to SJ on legislative, procedural and practice matters involving the 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 the LegCo. Since the commencement of the consultancy, he has been increasingly engaged in advice work to Bureaux, often at Secretary or Deputy Secretary level, on 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 the optimum duration of the consultancy position could not be predicted with certainty. However experience over the past six months shows that the services of an experienced specialist in legislative affairs is needed at least for a further limited period. There still remain some major legislative issues affecting the working relationship between the government 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 initiative 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.

SJ therefore proposes to retain the consultancy position, with an expanded scope of work covering certain areas previously under the responsibility of the DLO/SJO, for a further period of two years and to upgrade its level from DL3 to DL4. The proposed duty list of the consultant is at Enclosure 4.

6. The proposed period of two years for the consultancy reflects the intention that this should be a temporary arrangement to enhance expertise in legislative affairs during the formative period in the development of our institutions under the Basic Law. During the two years, substantial further progress should 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). At the end of the two-year period, the position will be reviewed to decide whether expertise at this senior level is still required.

7. As regards the level of the consultancy, it has already been noted above that the work of the present LA has already developed into high-level advice to Bureaux. Furthermore, in many respects the depth and breadth of LA's duties mirror those of the Legal Adviser of LegCo, which is pitched at DL5 level. Both have the ultimate aim of developing soundly based legislative procedures and practices which properly recognize the respective functions of the executive and the legislature according to the relevant principles of the Basic Law. To pitch the consultancy at DL4 level would realistically reflect the fact that the consultant would personally be giving advice to Secretaries and their Deputies on matters vital to the legislative

programme.

8. Upon successful creation of this consultancy position, the DLO/SJO post could be redeployed to the LPD to meet the changing demands and increase in workload in that Division. The residual duties of the DLO/SJO post which are not transferred to the LA will be assigned to Deputy Solicitor General (Advisory) (DSG(A)) who, before the creation of the former post, previously performed those duties. However, some of the liaison and briefing duties will be passed to the Administrative Assistant to the SJ. We will review the continued need for the consultancy post after two years and should the consultancy position expire after the two-year period, the Deputy Solicitor General (Constitutional) (DSG(C)) will take over those functions of DLO/SJO which are now proposed to be taken over by the LA as they relate to constitutional issues affecting the legislature.

Legal Policy Division

9. The LPD is headed by the Solicitor General (SG) who is supported by three PGC, in the posts of DSG(A), DSG(C) and Secretary, Law Reform Commission respectively. Each of the two DSG 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). The existing organisation chart of the LPD is at
Enclosure 5.

10. 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 the legal input into the preparation and passage of the electoral laws required under the Basic Law for the elections to the Legislative Council and the establishment of

the legal infrastructure for the regular cycle of elections. However, the volume, complexity, and importance of constitutional advice needed as a result of Reunification justify the creation of a permanent post of DSG(C). 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. It is proposed that the opportunity should also be taken to re-organise the responsibilities of the two DSG in LPD.

11. The Human Rights Unit currently under DSG(A) gives advice in respect of the human rights guarantees in the Basic Law and human rights obligations arising under international law. The Basic Law Unit currently under DSG(C) advises 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, it would be more appropriate for these two units to be supervised and co-ordinated by one DSG. This DSG would also be responsible for provision of advice in relation to the introduction of electoral legislation and the conduct of the regular cycle of public elections. He heads the Electoral Affairs Team which includes one Senior Government Counsel (SGC) in LPD and two Deputy Principal Government Counsel, one SGC and one Government Counsel in Law Drafting Division (LDD), and seven support staff. The posts in LDD will lapse on 1 April 2001 after the demand for specialist electoral legislation reduces.

12. The effect of removing the Human Rights Unit from the

supervision of DSG(A) will be to enable that post to concentrate on the China Law and general advisory work of LPD as a result of a growing demand for advice after Reunification. In respect of the former area of work, in particular, 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 proposed entry 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 Government. In order to reflect the diverse nature of this work, it is proposed to retitle the China Law Unit as the Mainland Affairs Unit.

13. The existing and proposed duty lists of DSG(C) and DSG(A) are at Enclosures 6 to 9. The proposed organisation chart of the LPD is at Enclosure 10.

FINANCIAL IMPLICATIONS

14. The additional notional annual salary cost of the consultancy position at mid-point is \$1,795,200. The additional full annual average staff cost of the consultancy position, including salaries and staff on-cost, is \$3,331,000. In addition, the consultancy position will necessitate the creation of a Senior Personal Secretary (SPS) (MPS 22 - 27) at a notional mid-point salary cost of \$386,280 and a full annual average staff cost of \$604,000 which will be partly offset by the deletion of a Personal Secretary I post in SJO. The SPS post would be subject to review at the end of the two-year period, when the consultancy position is reviewed. We will be able to meet the additional costs of the proposal through savings in briefing out expenses and redeployment of existing resources.

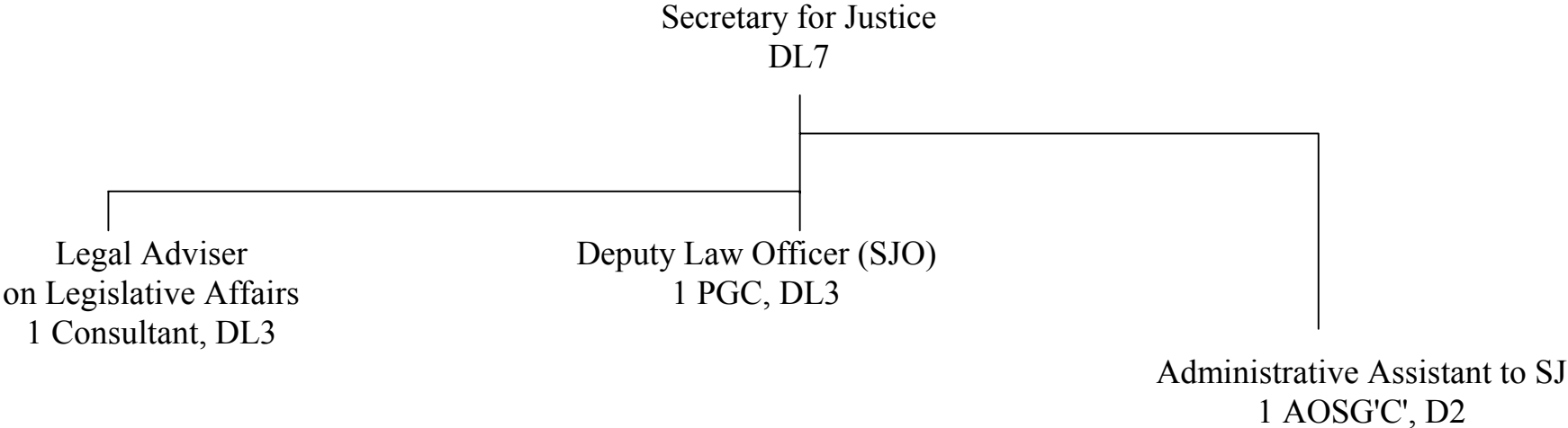
15. The creation of a permanent PGC post in the LPD, offset by the deletion of a PGC post in SJO, will be cost neutral.

BACKGROUND INFORMATION

16. 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 Division.

Department of Justice
April 2000

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 members 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.

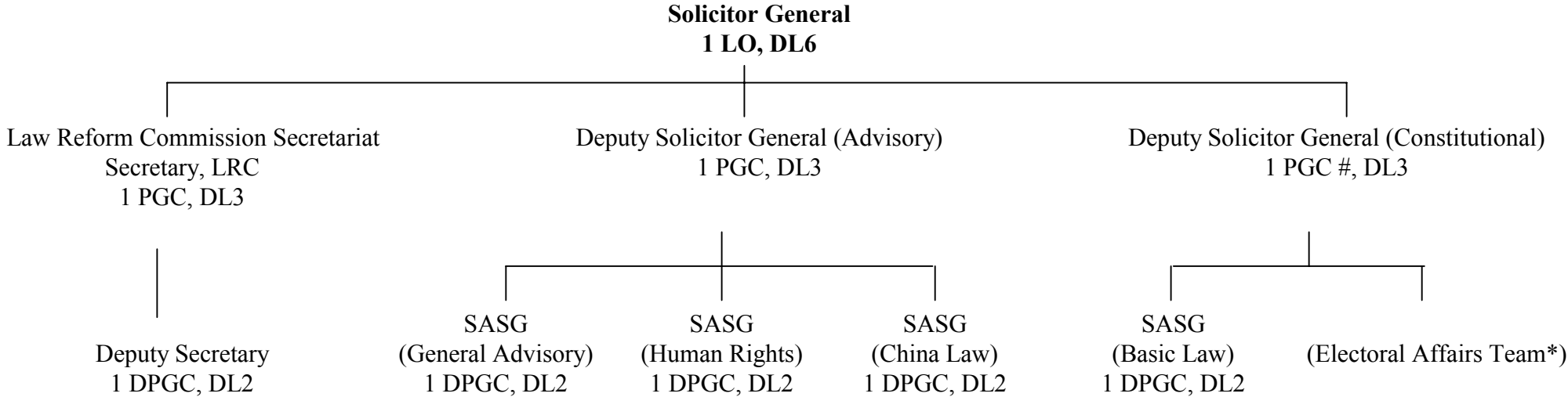
**Proposed Main duties and responsibilities of the
Legal Adviser on Legislative Affairs (DL4)**

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 with 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

**Existing 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 Basic Law and electoral matters;
- (2) providing legal advice to the Electoral Affairs Commission on all electoral matters including registration of electors, drafting regulations, drafting guidelines, conduct of elections, election appeals and conflicts;
- (3) examining the draft drafting instructions in respect of the primary and subsidiary legislation for the electoral reforms, and assisting in the preparation of such instructions and in the formulation of electoral policy;
- (4) assisting the Policy Bureau in steering the electoral legislation through the legislative process, including attendance before the Executive Council and the relevant Legislative Council committees;
- (5) supervising and overseeing the distribution of work of the Basic Law Unit and Election Team; and
- (6) performing such other duties as may be assigned from time to time by the Solicitor General.

**Proposed 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.

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

Responsible to the Solicitor General for -

- (1) advising bureaux and departments on matters involving legal policy, human rights and China Law;
- (2) 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;
- (3) 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;
- (4) 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;
- (5) supervising and overseeing the work of the Human Rights Unit;
- (6) supervising and overseeing the work of the China Law Unit, including initiating and implementing exchange programmes with Mainland authorities and academic institutions;
- (7) attending or chairing meetings of inter-departmental committees, working groups, boards, etc as directed by the Solicitor General;
- (8) performing such other duties within Legal Policy Division as the Solicitor General may from time to time direct.

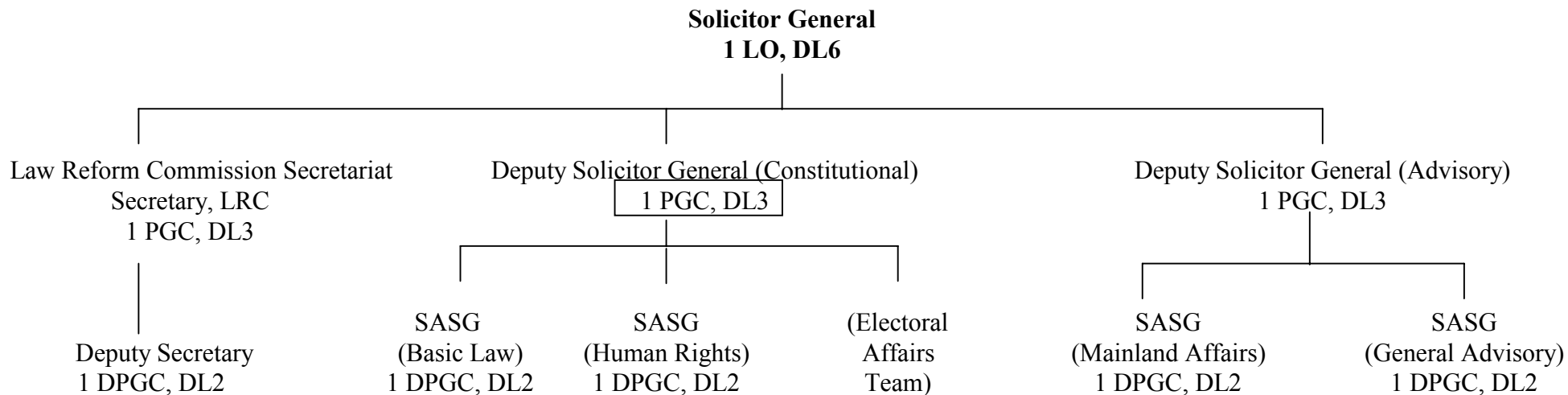
**Proposed main duties and responsibilities of the
Principal Government Counsel (DL3)
(Deputy Solicitor General (Advisory))**

Responsible to the Solicitor General for -

- (1) providing legal advice to Government on sensitive and complex general legal policy and Mainland affairs issues;
- (2) preparing or editing papers or advices in Chinese on sensitive and complex general legal policy and Mainland affairs 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 issues and Mainland affairs, 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 Mainland Affairs 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;
and
- (10) 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 creation of a PGC post on a permanent basis