

**For discussion on
22 November 2010**

**LEGISLATIVE COUNCIL
PANEL ON
ADMINISTRATION OF JUSTICE AND LEGAL SERVICES**

**Proposed Creation of a New Rank of
Assistant Principal Government Counsel (Directorate (Legal)1)
and Creation of Posts in the Department of Justice**

PURPOSE

This paper invites Members' views on –

- (a) the creation of a new rank of Assistant Principal Government Counsel (DL1) (\$99,400 – \$108,650) ; and
- (b) the creation of 15 Assistant Principal Government Counsel posts in the Department of Justice (DoJ) and the Legal Advisory Division of Works Branch, Development Bureau offset by deleting 15 Senior Government Counsel (SGC) (MPS 45-49) (\$77,375 - \$89,140) posts.

JUSTIFICATION

Grade Structure Review for Non-directorate Government Counsel Grade

2. The Government Counsel (GC) grade is the legal professional grade in DoJ with an establishment of 378 posts as at 1 October 2010, of which 71 are in the directorate ranks (namely, the Law Officer (DL6), Principal Government Counsel (PGC)(DL3) and Deputy Principal Government Counsel (DPGC)(DL2) ranks) and 307 in the two non-directorate ranks (namely, SGC and GC). As at 1 October 2010, there are 173 substantive SGC and 87 substantive GC. Most of the GC grade officers work in DoJ while some are out-posted to other bureaux/departments e.g. Legal Advisory Division (Works) of the Development Bureau and the Commerce and Economic Development Bureau. In November 2008, the Standing Commission on Civil Service Salaries and Conditions of Service (Standing Commission) published its Report No. 43 on the Grade Structure Review (GSR) for non-directorate GC grade which was conducted at

the invitation of the Administration in view of the recruitment and retention difficulties encountered by the non-directorate GC grade. The Standing Commission sees that as the core rank of the GC grade, the SGC rank bears the brunt and is expected to rise to the new challenges with competence and confidence. It forms the view that there is scope for exploring the possibility of addressing the retention issue from a holistic and longer-term perspective by re-examining the grade structure of the GC grade and considers that there is a prima facie case for reviewing some of the SGC posts to determine whether they should be upgraded to the next higher rank. One option would be to re-create a rank at DL1 on the Directorate (Legal) Pay Scale in the GC grade to accommodate those SGC positions considered justified for upgrading. A summary of the Standing Commission's views is at Enclosure 1.

Encl. 1

Creation of a New Rank of Assistant Principal Government Counsel (APGC)

3. DoJ is responsible for the overall management of the GC grade. To follow up on the recommendations of the Standing Commission, the Department has reviewed the specific duties currently being carried out by SGC and considers that there are functional need and justifications for creating a new APGC rank at the DL1 level in view of the increase in complexity and diversity of work and the higher level of responsibilities discharged by some of the SGC. This would also improve the structure of the GC grade.

Increased Job Complexity and Diversity

4. The nature of the work of members of the GC grade has been evolving over the years. Their roles and responsibilities have increased in scope and complexity. The establishment of Hong Kong as a Special Administrative Region and the new constitutional order within which the Hong Kong Special Administrative Region Government operates have presented new dimensions and challenges to the work of counsel in DoJ.

5. In tandem with the new developments, members of the public are also becoming more aware of their rights, and the number of challenges to administrative decisions has increased. DoJ is invariably involved in the process. The number of matters and their complexity referred to DoJ for consideration and actions have steadily increased and the timeframe within which advice needs to be given is much tighter resulting in an extremely heavy workload for individual counsel. The subject matter for legal advice has become much more diverse. Many new projects and initiatives undertaken by Government that required the advice of DoJ counsel in the past decade were also ground-breaking and novel in nature (e.g. the development of private hospital services, the Hong

Kong-Zhuhai-Macao Bridge and the new cruise terminal projects) raising legal issues which had not been previously considered or argued, for example, cross border/boundary issues. As a result of these developments, some of the functions being carried out by SGC have gone beyond the level of complexity and diversity which commensurate with the SGC level. These functions are more akin to those undertaken by DL1 Directorates in the legal group of departments.

Higher level of responsibilities

6. In the past when workload was less heavy and the cases involved less complex issues and/or less urgency, most of the difficult and sensitive cases were taken up by the directorate ranks of the GC grade. In recent times, as the officers at the directorate ranks are fully occupied, some of the above work is now taken up by experienced SGC. Furthermore, some SGC also take up management duties, for example, sit as members in certain task force or working party, which is not akin to the responsibilities of a senior professional and would normally be performed by directorate officers in the department but for the heavy workload they carry.

Structure of the Grade

7. The DPGC (DL2) in DoJ are overloaded and some SGC are shouldering duties and responsibilities which should more appropriately be handled at the directorate level. This mismatch is not conducive to the healthy development of the GC grade and there is a need to rationalise the structure of the GC grade by creating a new rank of Assistant Principal Government Counsel (APGC) at DL1 on the Directorate (Legal) Pay Scale. The proposed creation of the APGC posts will further strengthen directorate professional support in DoJ and enable it to meet the increasingly pressing demand for legal services. The APGC will handle and co-ordinate cases of considerable complexity/sensitivity as well as take on some supervisory and management duties appropriate for their level. They will relieve the heavy workload of the senior directorate officers. This way, the directorate officers would be able to provide closer supervision and guidance to counsel and to focus on professional and management duties which are not delegable.

8. Having regard to the functional needs and responsibilities of the posts, we see the need for creating 14 APGC posts in the Prosecutions Division, Legal Policy Division and Civil Division of DoJ and one APGC post in the Legal Advisory Division of Works Branch of the Development Bureau. The creation of these posts will be offset by the deletion of 15 SGC posts and

therefore the effect on the total establishment will be neutral. The justifications are set out in the ensuing paragraphs.

Creation of Seven APGC posts in Prosecutions Division

9. The Prosecutions Division (PD) is charged to prosecute trials and appeals on behalf of the Hong Kong Special Administrative Region (HKSAR), to provide legal advice to law enforcement agencies upon their investigations, and generally to exercise, on behalf of the Secretary for Justice the discretion whether or not to bring criminal proceedings in the HKSAR. Prosecutorial work has increased in volume, diversity and complexity. In the past decade, the number of criminal cases in the Court of Final Appeal increased substantially as compared to the number of criminal cases in the Privy Council in the previous decade. The emergence of sophisticated and complex crimes, coupled with the more stringent rules and guidelines on various prosecution matters, require prosecutors to devote extra time and effort in providing legal support to law enforcement agencies, and in handling trials and appeals. To meet these challenges, PD has recently been re-organised with the aim of enhancing its efficiency and effectiveness as a modern prosecution service. The organisation chart of PD is at Enclosure 2. The Division is headed by the Director of Public Prosecutions (DL6). As at 1 October 2010, there are four PGC, 15 DPGC, 69 SGC and 33 GC by establishment in PD.

Encl. 2

10. In tandem with the re-organisation, we have reviewed the manpower support and the operational requirements in PD and propose the upgrading of –

- (a) five SGC posts to APGC in Sub-division II (Advocacy);
- (b) one SGC post to APGC to head a small team for dealing with Customs and Excise cases; and
- (c) one SGC post to APGC to head the Proceeds of Crime Unit.

Five APGC posts for Sub-division II (Advocacy)

11. One of the major long term objectives of the re-organization is to place greater emphasis on developing and enhancing the advocacy skills within the Division. Before the re-organisation, we had a relatively low presence in the District Court and the Magistracy. In 2009, only about 23.2 % of the overall court days in the District Court and 30.4 % of the court days in Magistrates Court were undertaken by in-house counsel. The Division needs to develop its in-house advocacy skills and expertise, in particular in respect of difficult and sensitive cases in the District Court. Under the new structure which has just

been instituted, Sub-division II focuses solely on advocacy. It is headed by a PGC (ranked at DL3), consists of four DPGC (ranked at DL2) and ten SGC. Some SGC in this sub-division have been undertaking complicated trials at higher court levels, but have not been given proper recognition. We propose that five SGC posts (out of ten) in Sub-division II (Advocacy) should be upgraded to APGC to reflect both their level of experience and expertise as advocates, and the level of complexity of the work undertaken by them at all trial court levels, in particular the District Court and above, and in the appellate courts. The new APGC posts will also give recognition to their higher level of responsibilities, including performing the role of mentor to the new and less experienced prosecutors, helping to train them and developing their advocacy skills. They will work directly under the PGC who heads the Sub-division. With the enhancement of the Division's advocacy, we hope to be able to gradually increase our presence in the District Court and the Magistracy in order to prosecute the court cases that warrant experienced in-house counsel.

Two APGC posts for leading small advisory sections

12. To improve the delivery of PD's advisory service, it is necessary to create specialist sections. However this can only be done effectively if these sections are provided with an appropriate level of staffing support.

(a) Customs and Excise Section

13. At present, the Customs & Excise and Fraud Section has taken over the advisory work in respect of Customs & Excise (C & E) cases as well as the advice work in respect of obscene articles and child pornography. This Section is headed by a DPGC and consists of seven SGC and three GC. Its current portfolio, which includes advice on dutiable commodities, copyright, trade descriptions, technology crime, obscene articles and child pornography and commercial fraud, is too diverse and the burden on the DPGC is onerous and disproportionate to other section heads. It is therefore proposed that a small advisory section headed by an APGC be set up under Sub-division IV to undertake advisory work on C & E cases. The APGC supported by one SGC and one GC will head the section, check and countersign the advice prepared by counsel. The new section will provide dedicated advisory service to the client department. Counsel in the new section will be specialised in particular areas of criminal advice work and develop the necessary expertise in that area. The existing Customs & Excise and Fraud Section, which will be re-named as the Fraud Section, will be headed by a DPGC and consist of five SGC and two GC.

(b) Proceeds of Crime Unit

14. As a result of the re-organisation, a new Proceeds of Crime Unit under the office of the Director of Public Prosecutions has been created. This new unit, directly supervised by Deputy Director of Public Prosecutions (I) (DDPP (I)), at the PGC (DL3) rank, has taken up the work previously undertaken by the former Domestic Proceeds of Crime and Anti-terrorism Section. Counsel in the Proceeds of Crime Unit are now solely responsible for recovering action in relation to the proceeds of crime and advising on terrorist financing matters. The Division works closely with law enforcement agencies to deal with cases involving proceeds of crime in order to comply with our obligations under the Financial Action Task Force, the Asian Development Bank/Organisation for Economic Co-operation and Development Anti-corruption Initiatives for Asia and the Pacific. This is an area that requires a great amount of work as well as a lot of attention and responsibility because of reform and development in this area and the regional and international dimension. It is also an area that requires proven and specialist legal skills and there has been an increased tendency in cases of this type for the parties to be legally represented by experienced counsel and to challenge recovery action/proceedings that may be initiated.

15. The Unit is currently supported by three SGC who worked directly to DDPP (I) ranked at PGC. Given the heavy portfolio of the DDPP (I), additional directorate input in the form of an APGC would provide greater efficiency and direction in this expanding area of work. We therefore propose to upgrade one of the SGC posts in this Unit to APGC rank and additional duties would be vested on this APGC. The APGC will take over the immediate supervising and decision-making role now performed by the DDPP (I). He or she will also handle the more complex or sensitive proceeds of crime cases.

Encl. 3-6 16. The proposed organisation chart of PD showing the proposed posts is at Enclosure 3. The job descriptions of the proposed APGC posts are at Enclosures 4 to 6.

Creation of one APGC post in Legal Policy Division

17. The Legal Policy Division (LPD) advises government bureaux and departments on whether proposed legislation, or a particular policy, is consistent with the Basic Law, international human rights standards, and established principles underlying the legal system. It also provides advice on and promotes understanding of the law of the Mainland, and plays an active part in law reform.

18. LPD is headed by the Solicitor General (DL6) who is supported by three PGC (DL3). One PGC heads the Legal Policy (General) Section which comprises two units, namely the China Law Unit and the General Legal Policy

Unit (GLPU). The unit head of GLPU is now pitched at DPGC (DL2). As at 1 October 2010, there are three PGCs, five DPGCs, 19 SGC and seven GC by establishment in LPD.

19. GLPU is headed by a DPGC who is supported by seven SGC and four GC. The DPGC has a heavy work portfolio including supervising counsel in GLPU, the promotion and steering of bills which are within the policy purview of DoJ to enactment, giving advice on the Government's legislative proposals from the general legal policy perspective, formulating policy in relation to the legal system and the legal profession and advising on legal issues arising from petitions and statutory appeals.

20. The workload of GLPU has increased in breadth and depth in recent years. Apart from carrying a busy legislative programme, GLPU's work portfolio has been expanded since 2008 to cover advisory work arising from three types of petitions and statutory appeals. They are statutory appeals to the Chief Executive (CE)/CE in Council made by members of the public; petitions to the CE under Article 48(13) of the Basic Law; and statutory appeals/representations under s.20 of the Public Service (Administration) Order from civil servants. These three types of petitions and statutory appeals are new tasks to GLPU, which are complicated by nature because they touch on different areas of law as required by different issues that they raise. In addition, GLPU is required to advise on appeals by torture claimants with the resumption of administrative screening scheme in December 2009. The demand on the DPGC in GLPU has been stretched to such an extent that would warrant the reinforcement of directorate staff in GLPU through re-organisation of GLPU and the creation of an APGC post. To achieve a clear demarcation of duties for better specialisation of work, it is proposed that GLPU be re-organised by dividing it into two units and one SGC be upgraded to APGC.

21. GLPU(1) is to be headed by the incumbent DPGC who would be supported by four SGC and three GC. The work portfolio of the unit includes promotion of bills within the policy purview of DoJ, and advisory work on the general legal policy issues and in relation to the legal system and the legal profession.

22. GLPU(2) is to be headed by the proposed APGC. The Unit is responsible for advising on various types of petitions and statutory appeals (including appeals by torture claimants) and public enquiries and complaints. After splitting the GLPU into two units, the APGC would take up staff management and supervision duties in respect of counsel in GLPU(2). He would be responsible for supervising two SGC and one GC, giving them

guidance and counselling, as well as manpower planning. The APGC would work under the supervision of Deputy Solicitor General (General).

Encl. 7-8 23. The job description of the proposed APGC post is at Enclosure 7. The organisation chart of LPD showing the proposed post is at Enclosure 8.

Creation of six APGC posts in Civil Division and one APGC post in Legal Advisory Division (Works), Development Bureau

24. The Civil Division (CD) of DoJ is headed by the Law Officer (Civil Law) (LO(C)) (DL6) who is supported by four Deputy Law Officers (DLO), ranked at PGC (DL3), heading each of the four units in the Division respectively, namely Civil Advisory Unit (CAU), Civil Litigation Unit (CLU), Commercial Unit (CU) and Planning, Environment, Lands and Housing (PEL&H) Unit. Each of the four units comprises two to four Senior Assistant Law Officers (SALO), ranked at DPGC (DL2). There are 129 non-directorate GC in CD. The Legal Advisory Division (Works) (LAD(W)) of the Development Bureau (DEVB) is headed by the Legal Advisor (Works) ranked at PGC and comprises two SALO with 12 non-directorate GC.

25. The CD provides legal advice and support services to government bureaux and departments in civil law matters on policy formation, legislative matters, commercial law matters, government works and projects and represents the Government and various other bodies in courts and tribunals in all forms of civil litigation and dispute resolution. LAD(W) of DEVB is a specialist unit providing legal services for all of the Government's construction programmes and advising the DEVB and the Works Group of departments and other departments as required on all construction-related legal matters and all legal matters that fall within the policy of the Works Branch of DEVB in the course of their administration.

Growing complexity of work and heavy workload

26. The work of the CD and the LAD(W) is basically demand led in nature and bound by increasingly tight time tables imposed by clients or the courts. It is noticeable that the work has become more complex in nature over the years. Many of the government projects, initiatives and cases are highly complex involving the participation of several bureaux and departments. The legal issues related to these projects, initiatives and cases therefore require consideration from different perspectives including matters relating to significant and sensitive constitutional issues that require input from different specialised units of DoJ or bureaux/departments. A great deal of co-ordination and consultation among the different Divisions in the department and with

government bureaux/departments is required in the course of providing legal support. Given the significant legal implications and the amount of public funds involved in many of the projects and cases, there has been an increasing demand for legal input, from the civil law perspective, at the directorate level. The frequency and intensity of participation by PGC and DPGC at meetings, negotiations and discussions have also increased. CD also needs to provide legal advice in policy formulation and/or during the introduction of legislation, drafting of high level policy papers and other matters outside the sphere of public law. For the LAD(W), with the Government's commitment to undertake major infrastructure projects, the complexity of the work it deals with will continue to grow in the coming years. These all add to the already very heavy workload of PGC and DPGC in the CD and the LAD(W).

27. The workload¹ of the CD and LAD(W) has been extremely heavy and has grown in number and complexity in the past years.

28. Against the above background, it is essential to strengthen the staffing support in the CD and the LAD(W) through upgrading certain posts at SGC level to APGC posts. Rationalising the division of responsibilities in some different sub-units and teams in CD by providing the right level of directorate input would also enhance the operational effectiveness and efficiency of these units. The details of our proposal are set out below.

Two APGC posts in the Civil Litigation Unit

29. The CLU in the CD represents the Government and various other bodies in courts and tribunals in all forms of civil litigation and dispute resolution. The Unit has an establishment of 67 counsel, namely one PGC, four DPGC, 36 SGC and 26 GC posts together with a team of paralegal and other support staff.

(a) One APGC post to handle complex projects and litigation cases

30. Over the years, the complexity of litigation cases has increased as they often carry with them read-across ramifications. This can be seen from the breadth and depth of legal arguments deployed by the parties and the increasingly rapid pace of development of legal principles, with regard to case

¹ In the past five years (i.e. from 2005 to 2009), the average number of active civil litigation cases handled by the CD maintained at a high level of no less than 19 000. The average number of new civil proceedings is around 2 400 a year and the average number of legal advice provided is around 15 000 a year. CD assisted in the drafting and vetting of around 550 commercial tenders, consultancy briefs, contracts, licences and franchises a year. Compared with 2007, there was an increase of 23%, 22%, 6% and 40% in the number of active civil litigation cases, new civil proceedings, legal advice provided, and documents drafted/vetted respectively in 2009.

law in other common law jurisdictions and in the areas of constitutional, human rights and international law.

31. In many cases, instead of just being a litigant or court user, the Government is expected to take a lead role in assisting the court in coming to a proper decision, particularly in public law litigation, such as JR, charity and mental health cases. There have also been occasions when the Secretary for Justice was given leave to intervene, given the important public interest even when the case might have initially stemmed from private disputes. In addition, urgent legal representation and advice have to be given on matters with broad political and constitutional implications. In recent years, CLU has handled litigation against the Government in a wide range of areas. The CD is also required to provide legal input on other matters outside the sphere of public law like death inquests. Many of these cases have wide implications. Apart from complexity and raising important legal principles, the duration of the hearings tend to be longer and in many instances, the first instance hearing would be followed by appeals and ultimately final appeal.

32. Given also the increased awareness of legal rights by the general public and accessibility to legal assistance, a multiplicity of proceedings at different venues may occur from basically the same set of facts. Many litigation cases these days do require input from different specialised units of the DoJ because of the range of issues involved. This will require the CD to perform consultation and co-ordination of instructions from different parts of the Government and liaison within the same Division or Department to strengthen the legal support.

33. Given the above demanding tasks and since all DPGC in CD are already fully occupied, litigation counsel in the rank of SGC who possess the ability to head a dedicated team are often deployed, for expediency, to take up the above difficult cases. There is scope for rationalising the present arrangement by upgrading one SGC post to the directorate level so that instead of confining to the work of SGC as a case handler with no supervisory responsibilities, the APGC could take on a good portion of this type of cases and work solely or jointly with other counsel as a team leader. The APGC is expected to be able to conduct difficult cases independently with minimal supervision, provide the necessary steer as a team leader and undertake supervisory and management duties where appropriate.

(b) One APGC post to oversee a dedicated team mainly to handle recovery cases and costs matters

34. As part of the litigation process, CLU in CD deals with recovery of debts and damages owed to the Government, enforcement of money judgements and costs matters following the conclusion of a case. The handling of recovery and enforcement matters has to be closely monitored to ensure that prompt action is taken to recover and collect all monies owed to the Government and the cases are concluded in a timely manner. At present, debt collection and costs matters are handled by four different sub-units/teams under the supervision of three DPGC in the CD. The Debt Collection Unit (DCU), the Enforcement Team (ET) and the Costs Unit are under CLU whereas the Recovery Team (RT) is under the Litigation Team of PEL&H Unit. The Costs Unit comprises a number of law clerks and is under the supervision of a DPGC in the CLU. It handles all costs matters (with some of the cases briefed out if necessary) arising out of or in connection with all civil litigation cases², including the preparation of assessment of costs and to attend to taxation proceedings. The RT, the DCU and the ET also comprise mainly law clerks are dedicated to handle debt recovery and enforcement matters with a division of labour among them by reference to the sum involved and nature of legal action required.

35. Currently, the heavy workload of the three DPGC heading the above four sub-units/teams render it difficult, if not impossible, for them to devote a lot of effort to monitor and improve the operation of the enforcement, recovery and debt collection process. There is therefore scope for rationalising the division of responsibilities and enhancing the operation effectiveness and efficiency of the process by placing the work in relation to recovery and enforcement of debt as well as costs matters under the direct supervision of one single directorate officer. We propose to create an APGC post to take over the supervision of the work and staff in the said sub-units/teams. The APGC, as the team leader, will take on management responsibilities of the dedicated team and provide legal support in all matters arising from debt recovery and enforcement proceedings as well as to supervise the conduct of all costs matters and will report to the PGC direct on these matters.

One APGC post in the Planning, Environment, Lands and Housing Unit

36. The PEL&H Unit of the CD consists of an advisory team (PEL&H(Adv)) and a litigation team (PEL&H(Lit)). PEL&H(Adv) provides legal advice to the Government on major public projects and initiatives involving town planning, land use, building control, road works, reclamation, environmental protection and heritage conservation. PEL&H(Lit) handles litigation including arbitration with an emphasis on matters relating to land,

² Covering both general litigation and PEL&H litigation cases.

town planning, building control, housing, environment, heritage conservation, rating and Government rent, land resumption and other types of statutory compensation claims. The PEL&H Unit has an establishment of 29 counsel, namely one PGC, two DPGC, 18 SGC and eight GC posts.

37. There have been an increasing number of major Government projects and initiatives³ that require the input of PEL&H counsel. These Government projects and initiatives involve complex legal issues such as the concern about property rights, procedural fairness in handling objections and representation in conducting statutory consultation exercises. The growing workload, complexity and need to consult different specialist units or teams have presented challenges to the Unit.

38. Civil litigation has also arisen from the implementation of the major projects and initiatives, and the litigation very often have significant implications, for example, the various JRs in respect of a number of town planning, harbour reclamations, and works-related projects. The litigation aspects of these projects and initiatives are handled by counsel of PEL&H(Lit) under the supervision of the DPGC of PEL&H(Lit) who is closely involved in the handling of cases affecting the major projects and initiatives in view of the significant impacts the litigation may give rise to.

39. The DPGC of PEL&H(Adv) and PEL&H(Lit) are currently fully occupied on supervising the work of their counsel and closely monitoring and handling the progress and development of many significant cases, in addition to their many daily operational and administrative duties. It is necessary to rationalise the use of directorate resources and the case handling arrangement by creating an APGC post so that an officer with substantial experience and expertise in handling PEL&H cases including litigation aspects, can take on projects under the supervision of the PGC. This would relieve the two DPGC of some of their responsibilities in handling the more complex and sensitive cases so that they have more time for their non-delegable duties and on the supervision of other non-directorate counsel. The more effective use of resources of PEL&H Unit at the directorate level would in turn enhance the efficiency and quality of the work of PEL&H Unit.

³ Examples include the Central Wan Chai Bypass, Sha Tin Central Link, New Cruise Terminal, Hong Kong-Zhuhai-Macau Bridge and Tuen Mun-Chek Lap Kok Link, Express Rail Link, Hong Kong-Shenzhen Airports Railway Link, Lok Ma Chau Loop development, revitalisation of industrial buildings, revitalisation of heritage buildings, measures to regulate sale of first-hand completed flats, and initiatives to control “inflated buildings”.

40. The proposed APGC will oversee the implementation of the major Government projects including the provision of legal advice on the statutory procedures leading the authorisation of the projects; work with the project teams closely so that legal issues concerning the project or arising from the project will be identified early and responded to expeditiously; consult other specialist teams in the Department on legal issues relating to, for example, the Basic Law, human rights, international law, and commercial law, as required, and to represent the Unit in project meetings as required to deal with legal issues early. Should litigation arise, the APGC will provide the coordination and support to the legal team representing government in the litigation as required.

One APGC post in the Civil Advisory Unit

41. The CAU has an establishment of 29 counsel, namely one PGC, three DPGC, 19 SGC and six GC posts. The Unit is made up of three teams each responsible for advising different bureaux and departments on civil law issues of general nature.

42. The CAU counsel assist clients in a wide array of activities where legal issues are raised. Apart from advising over 60 bureaux and departments on civil law issues of a general nature relating to their day-to-day functions and duties as well as those arising from their exercise of discretion and powers under the law, CAU counsel also provide legal advice in the context of preparation of high level policy papers and legislative proposals, conduct thorough research to ensure that the relevant legal issues are identified and properly dealt with, co-ordinate advice from other divisions/specialist units and teams, vet documents and guidelines prepared by clients for publication, consultation or internal reference and attend meetings with clients etc. In addition, CAU counsel also serve as legal advisers to various statutory boards and committees. The Unit's work has increased significantly in complexity and dimension over the past few years. The situation is aggravated by the fact that more and more requests are required to be handled in extremely tight time-frame for various reasons. All these have necessitated the involvement of the directorate officers of the Unit in providing timely advice to client departments and bureaux.

43. Requests for legal advice in recent years have taken on a different dimension which requires consideration of multi-facet legal issues and the timing of legal input is often of the essence. There is a growing need to deploy counsel with sufficient experience, alertness and the ability to work under pressure to give advice to clients. There is also an increasing demand for co-ordinating advice and in many instances, due to the multi-faceted nature of the subjects involved, dedicated teams need to be set up on an ad hoc basis so as to

properly address and more effectively tackle the legal issues raised. The DPGC in CD who by the nature of their involvement would have a global view of the legal issues involved invariably takes on the co-ordination and team leadership functions. These DPGC are already fully stretched with their respective professional and management duties and responsibilities. While the co-ordinating role requires directorate input, some cases are relatively less complicated than others and can be efficiently discharged at the DL1 level. It is therefore necessary to enhance the support at the directorate level by upgrading one SGC post in the CAU to DL1 level. This APGC will be aptly poised to help share and discharge that part of the duties vested in a DPGC to co-ordinate advice and supervise ad hoc advisory teams in handling the type of cases referred to above.

Two APGC posts in Commercial Unit

44. The CU is a specialist unit providing legal services to all bureaux and departments on all commercial and financial law related matters including drafting of various types of commercial agreements and documents for bureaux and departments. The CU also provides legal support to the Government in the regulation of the financial sector, power companies, telecommunications and broadcasting operators, including vetting legislative proposals in relation to the enactment and amendment of relevant legislation. The CU has an establishment of 20 counsel, namely one PGC, three DPGC, ten SGC and six GC posts.

- (a) One APGC post to handle complex commercial/financial projects and initiatives

45. The CU is now heavily engaged in various complex commercial/financial projects and initiatives⁴. From experience, implementing these major commercial/financial projects and initiatives would inevitably require substantial legal input, apart from advising on the legal issues in consultation with other units and divisions within DoJ, the handling counsel would have to attend all negotiation meetings and prepare or vet all the relevant commercial documents, such as the prospectus, loan documents, underwriting agreements, project agreements, consultancy agreements, etc. within very short period of time.

⁴ Examples include Hong Kong-Zhuhai-Macau Bridge, Hong Kong Disneyland expansion, the rewrite of the Companies Ordinance, the establishment of Hong Kong-Taiwan Economic and Cultural Co-operation and Promotion Council, new Competition Law framework, the convergence of the regulatory régime of broadcasting and telecommunications, the Government's position in relation to the implementation of the West Kowloon Cultural District (WKCD) Authority of the WKCD, introduction of the corporate rescue procedure, development of private hospital services, legislative reforms to the Trustee Ordinance and the review of consumer protection legislation.

46. Due to the complexity of many of the projects and initiatives mentioned above, there has been an increasing and acute demand for participation of PGC and DPGC to supervise and handle the legal work, which includes the giving of legal advice and attendance at discussion meetings, steering committee and working group meetings, contract negotiations, drafting meetings for bills and Bills Committee meetings. By upgrading an SGC post to APGC level, the APGC would be able to take up some of the work of the PGC and DPGC which can be effectively discharged at the DL1 level, mainly, the supervision of project teams and the provision of legal advice and input at meetings. This would help release the heavy management, administrative, and professional duties of PGC and DPGC in the CU. This would enhance the overall level of supervision and provision of steered guidance for less senior or experienced counsel and therefore the overall efficiency and effectiveness of the CU.

- (b) One APGC post to handle tax, public finance and financial services related matters

47. It is extremely important for the CD to be able to provide sound and prompt legal advice on revenue and public finance related issues which often involve complicated and highly technical issues demand to be dealt with under tight time constraints. The CU has been working together with the CAU in providing advice to the Government on public finance and tax issues related to major commercial projects, which are invariably complicated and sometimes novel, e.g. amendments to tax legislation relating to the implementation of the Islamic finance initiatives.

48. At present there is one SGC who handles public finance and tax matters under the supervision of a DPGC and a PGC. The complexity of the matters being handled by the SGC is beyond the senior professional level and involved giving advice on matters involving the use of public funds, matters relating to the interpretation of revenue related legislation such as the Public Finance Ordinance, Inland Revenue Ordinance, Stamp Duty Ordinance, Dutiable Commodities Ordinance and the Business Registration Ordinance. Furthermore, given that revenue law by nature is a very specialised and complicated subject and the challenges by taxpayers are ever evolving, any advice on the application of the law would carry wide public implications. The size of tax disputes is often substantial, the arguments are complex and the taxpayers (individuals and corporations) are aggressive in their approach with the back up of legal advice, usually from a leading counsel. It is therefore important that the requests for advice are dealt with by an experienced member of the counsel grade with expertise on the subject. In view of the highly demanding nature of work, it is appropriate that the counsel handling such

subjects should be pitched at the directorate level. We therefore propose to upgrade the SGC post to APGC level to take up such duties.

49. It is also intended that this APGC will, under the supervision of the PGC, head a small team consisting of one SGC and one GC in advising on financial matters and various reviews of financial regulatory regime⁵. Given the legal and sometimes policy implications as well as the substantial amount of public funds involved in many of these initiatives, it is considered appropriate for such cases to be handled by officers at directorate level. This will help relieve the heavy workload of the PGC and the DPGC in the CU.

One APGC post in LAD(W) of the DEVB

50. LAD(W) provides legal services for all of the Government's construction programmes and advises on all construction-related legal matters. It has an establishment of 15 counsel, namely one PGC, two DPGC, 11 SGC and one GC posts. Since 2007, there has been a significant increase in the demand of the services in the procurement strategy, preparation of contract documents, vetting of contracts advice on contract conditions, advice on claims and resolution of disputes in relations to the Government's construction programmes. The number of new matters received and new contracts/contract-related documents received for vetting/approving have increased from 312 and 61 respectively in 2007 to 382 and 88 in 2009.

51. In addition, the "Ten Major Infrastructure Projects" and other infrastructure projects being planned have resulted in a heavy demand for the legal advisory services of the LAD(W). The capital works expenditure in 2009-10 is \$45.3 billion which represents a very significant increase as compared with figures of \$20 billion plus in the four immediately preceding financial years⁶. The projected capital works expenditure in the coming financial years will continue to remain at a high level of over \$50 billion. With the significant increase in capital works expenditure in the coming financial years, inevitably there will be a corresponding increase in demand of legal input from LAD(W). Given the nature and size of the projects, the legal issues raised would also be increasingly complicated.

⁵ Matters including the introduction of changes in the financial regulatory régime to enhance investor protection, the setting up of an independent Insurance Authority, establishment and implementation of the Policyholders Protection Fund, the legislative amendments to enhance anti-money laundering regulatory regime and the legislative amendments to the Deposit Taking Protection Scheme Ordinance, the implementation of the enhancements to the Basel II Framework, and the legislative amendments to regulate Mandatory Provident Fund intermediaries.

⁶ The figures for capital works expenditure in 2005-06, 2006-07, 2007-08 and 2008-09 are \$26.5 billion, \$21.7 billion, \$20.5 billion and \$23.4 billion (exclusive of the one-off \$21.6 billion funding for the WKCD Authority).

52. LAD(W) also deals with construction claims. In the past five years, the average number of new cases is around 32 a year. The claims value are enormous and very often, it is necessary for counsel at directorate level to advise on the claims and to handle the mediations and arbitrations. The increase in infrastructure projects and construction claims (both in terms of number and value), with many of them involving complex legal issues, will add to the already very heavy work portfolio of the PGC and the two DPGCs in LAD(W). To cope with the increase in infrastructure projects and the potential construction claims and to ensure that LAD(W) can provide timely and quality service to our clients/bureau, it is necessary to enhance the directorate support at APGC level to take charge of some of the complex projects and high-valued claims.

Encl. 9-17 53. The job descriptions of the proposed APGC posts are at Enclosures 9 to 15. The organisation charts of the CD and the LAD(W) showing the proposed posts are at Enclosures 16 and 17.

Alternative

54. There is no viable alternative. The proposed creation of the 15 APGC posts (through upgrading of 15 SGC posts) is to enhance the overall effectiveness and efficiency of DoJ and the LAD(W) of DEVB in coping with the pressing demand for legal service.

FINANCIAL IMPLICATIONS

55. The additional notional annual mid-point salary cost of this proposal at mid-point is \$4,030,200. We have sufficient provision in the 2010-11 Estimates to meet the cost of this proposal. We will also include the necessary provision in the 2011-12 draft Estimates to meet the cost of this proposal.

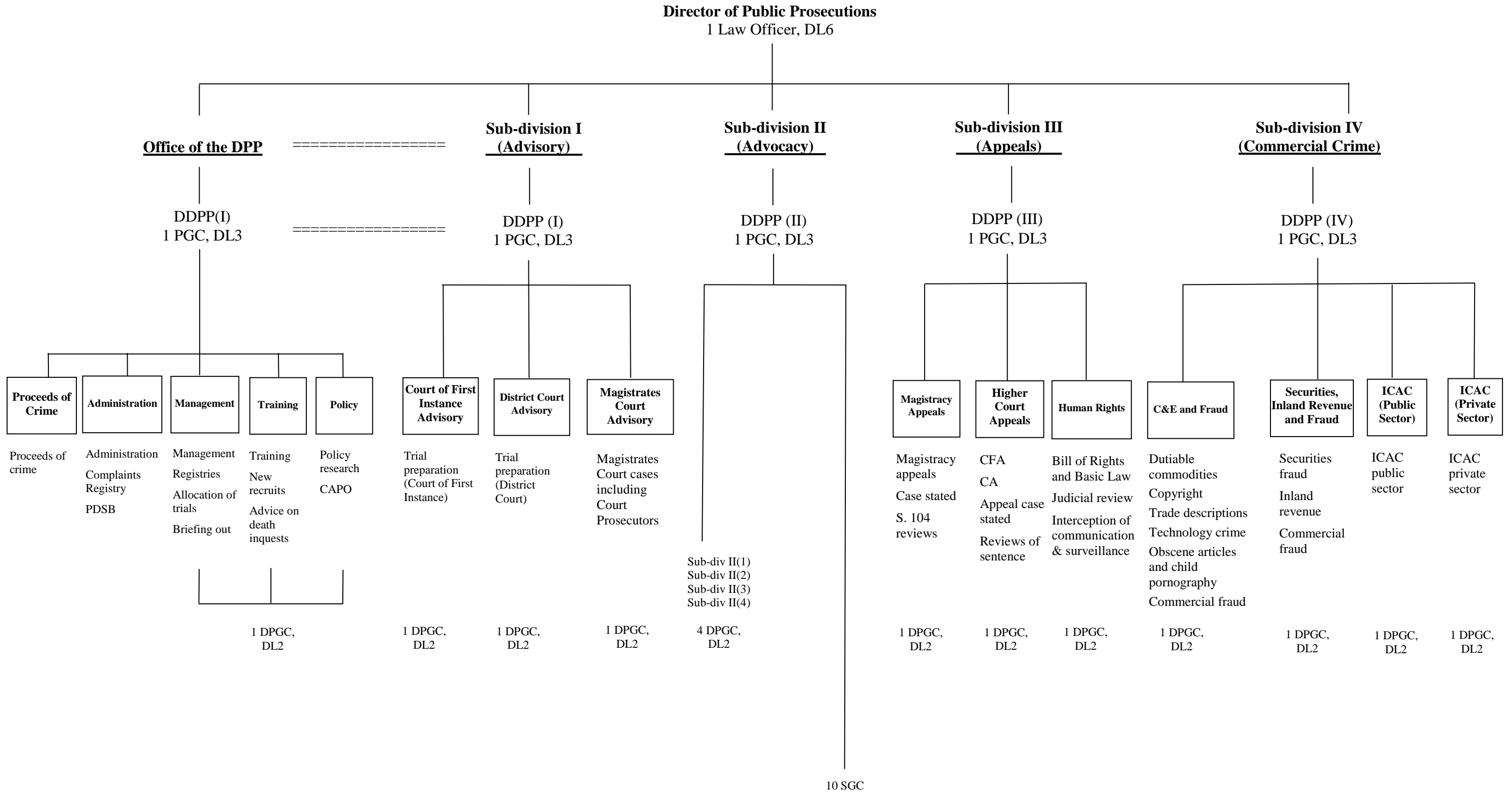
ADVICE SOUGHT

56. Members are invited to comment on the proposal. Subject to Members' support, we will seek the approval of Establishment Sub-Committee/Finance Committee to create the rank and posts with effect from 1 March 2011.

**Summary of Views of
The Standing Commission on Civil Service Salaries
and Conditions of Service**

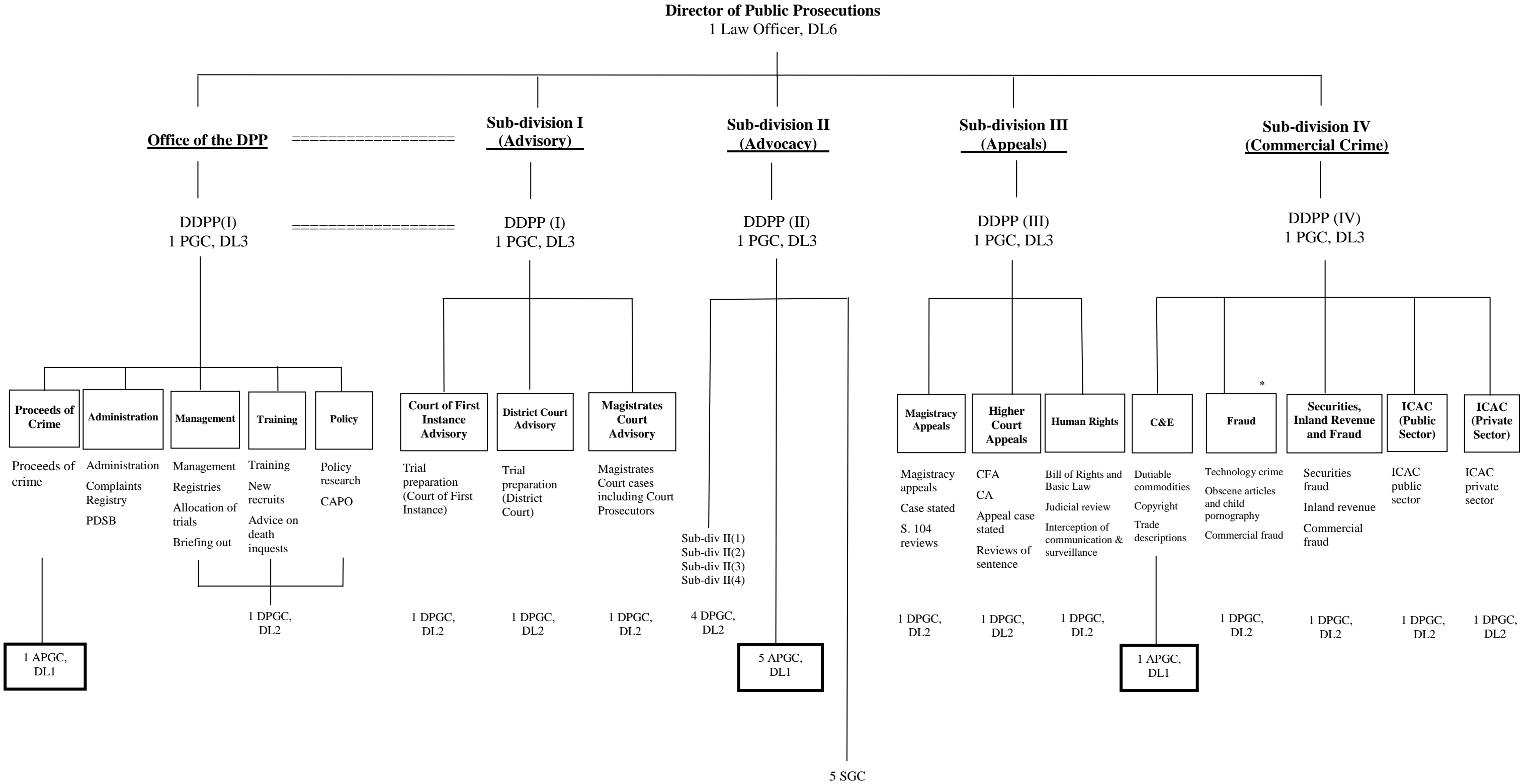
The Standing Commission on Civil Service Salaries and Conditions of Service (Standing Commission) notes that the role and responsibilities of the Government Counsel (GC) grade have increased substantially in terms of scope and complexity over the past two decades. As the core rank of the GC grade, the Senior Government Counsel (SGC) rank bears the brunt and is expected to rise to the new challenges with competence and confidence. The Standing Commission forms the view that there is scope for exploring the possibility of addressing the retention issue from a holistic and longer-term perspective by re-examining the grade structure of the GC grade. It considered that there is a prima facie case for reviewing some of the SGC posts to determine whether they should be upgraded on a functional basis to the next higher rank beyond the senior professional rank. The creation of such a higher rank for those appropriate positions will help the Department retain experienced and capable officers to handle the more important and complicated tasks required of the GC grade. One option would be to re-create a rank at DL1 on the Directorate (Legal) Pay Scale in the GC grade to accommodate those SGC positions considered justified for upgrading. Such an option, if pursued, would also have the incidental benefit of enhancing the avenue for the Department to retain and motivate meritorious and experienced SGC.

Existing Organisation Chart of the Prosecutions Division



10 SGC

Proposed Organisation Chart of the Prosecutions Division



Legend :
 DDPP – Deputy Director of Public Prosecutions
 PGC – Principal Government Counsel
 DPGC – Deputy Principal Government Counsel
 APGC – Assistant Principal Government Counsel
 SGC – Senior Government Counsel
 [] – Proposed APGC post(s)

* Renaming C&E and Fraud Section to Fraud Section

Job Description
Assistant Principal Government Counsel
(Advocacy)

Rank : Assistant Principal Government Counsel (DL1)

Responsible to : Principal Government Counsel (PGC) of Sub-Division II of the Prosecutions Division

Main Duties and Responsibilities –

1. To conduct trials of serious and complicated cases in the Court of First Instance.
2. To prosecute cases of importance in the District Court and magistrates courts.
3. To conduct appeals.
4. To lead junior counsel and help mentor them in trials.
5. To take up special advocacy assignments, as and when required.

Job Description
Assistant Principal Government Counsel
(Customs & Excise)

Rank : Assistant Principal Government Counsel (DL1)

Responsible to : Principal Government Counsel (PGC) of Sub-Division IV of the Prosecutions Division

Main Duties and Responsibilities –

1. To advise on and prosecute cases investigated by the Customs & Excise Department in relation to the smuggling of goods into and out of Hong Kong; contraventions of trade control requirements under the Import and Export Ordinance, and offences under the Dutiable Commodities Ordinance.
2. To advise the Customs & Excise Department on cases of copyright infringement and false trade description, and conduct the prosecutions which result.
3. To prosecute intellectual property cases.
4. To discharge the managerial functions and duties of a Directorate Officer including supervising the work of Senior Government Counsel and Government Counsel.

Job Description
Assistant Principal Government Counsel
(Proceeds of Crime)

Rank : Assistant Principal Government Counsel (DL1)

Responsible to : Principal Government Counsel (PGC) of Sub-Division I of the Prosecutions Division

Main Duties and Responsibilities –

1. To handle litigation and advice in relation to proceeds of crime legislation, including preparing or settling court papers, appear in court and advise on any matters under the legislation.
2. To conduct appeals and advise on domestic asset recovery cases as and when required.
3. To advise on terrorist financing issues.
4. To discharge the managerial functions and duties of a Directorate Officer including supervising the work of Senior Government Counsel and Government Counsel

Job Description
Assistant Principal Government Counsel
(General Legal Policy)

Rank : Assistant Principal Government Counsel (DL1)

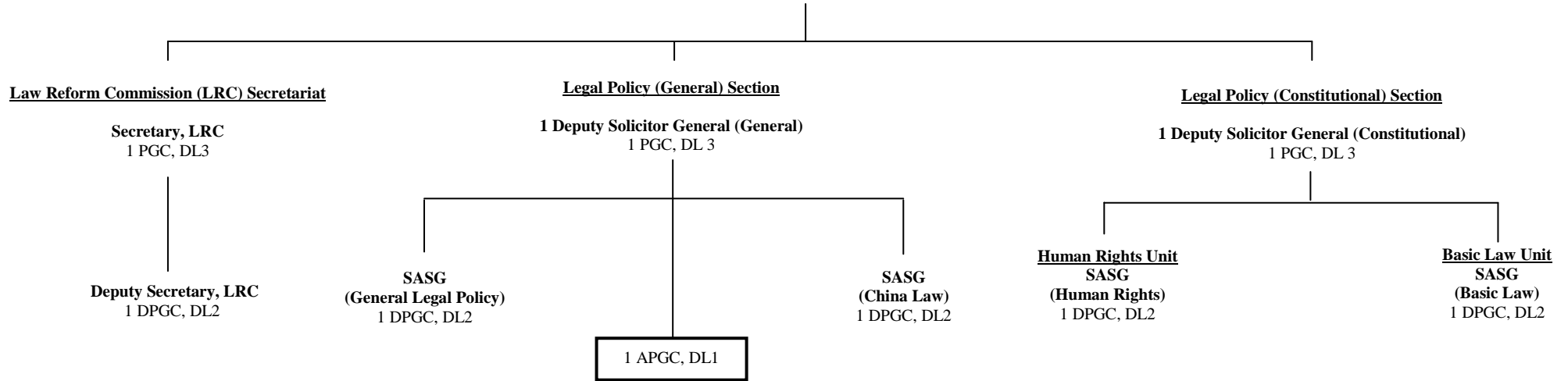
Responsible to : Principal Government Counsel (PGC) of the Legal Policy (General) Section in the Legal Policy Division

Main Duties and Responsibilities –

1. To direct and supervise the day to day work of a team of counsel to provide dedicated legal support in relation to matters arising from various types of petitions and statutory appeals.
2. To prepare draft Solicitor General's notes dealing with petitions from prisoners in order to assist the Solicitor General in advising the Chief Executive on those petitions.
3. To provide advice on petitions to the Chief Executive under Article 48(13) of the Basic Law and on statutory appeals to the Chief Executive or the Chief Executive in Council.
4. To oversee the processing of and to give legal advice on petitions made by CAT claimants against removal orders issued against them under the Immigration Ordinance (Cap 115).
5. To advise on public enquiries and complaints.
6. To be responsible for the general administration of the GLPU(2).
7. To perform any other duties as and when required in order to assist in the efficient and effective performance of the Legal Policy Division.

Existing and Proposed Organisation Chart of the Legal Policy Division

Solicitor General
1 Law Officer, DL6



Legend :

- SASG – Senior Assistant Solicitor General
- PGC – Principal Government Counsel
- DPGC – Deputy Principal Government Counsel
- APGC – Assistant Principal Government Counsel
- Proposed APGC post(s)

Job Description
Assistant Principal Government Counsel
(Civil Litigation Unit) 1

Rank : Assistant Principal Government Counsel (DL1)

Responsible to : Deputy Law officer (Civil Law) (Litigation)

Main Duties and Responsibilities –

1. To conduct hearings which are complex, important in nature in courts or tribunals and to apply the necessary legal knowledge and skills in presenting cases in an accurate, candid and comprehensive manner.
2. To prepare and conduct the more complex and significant civil litigation (particularly in those areas relating to judicial review, proceedings, personal injuries claims, insider dealing/market misconduct, commercial litigation cases) in courts and tribunals.
3. To provide legal analysis and advice to the Financial Secretary on suspected insider dealing/market misconduct cases, if required.
4. To prepare instructions and briefs for outside counsel representing the Government in complicated civil litigation cases.
5. To provide legal advice in relation to formulation of policies; legislative proposals and drafting instructions.
6. To appear before Executive Council and Legislative Council committees or panels, Working Groups and Committees.
7. To perform such other duties as may be assigned from time to time by the Law Officer (Civil Law) and the Deputy Law Officer (Civil Law) (Litigation).

Job Description
Assistant Principal Government Counsel
(Civil Litigation Unit) 2

Rank : Assistant Principal Government Counsel (DL1)

Responsible to : Deputy Law Officer (Civil Law) (Litigation)

Main Duties and Responsibilities –

1. To supervise the day to day work of a dedicated team responsible for the collection and recovery of debts for the government and the handling of court costs claimed by and against the government.
2. To coordinate the work of the dedicated team to ensure prompt action is taken to recover outstanding debts and costs by prioritizing and taking all costs effective means for speedy disposal of cases.
3. To provide supervision and training to counsel, law clerks and other support staff in the Dedicated Team.
4. To be responsible for the general administration of the Dedicated Team.
5. To appear before Executive Council and Legislative Council committees or panels, Working Groups and Committees.
6. To perform such other duties as may be assigned from time to time by the Law Officer (Civil Law) and the Deputy Law Officer (Civil Law) (Litigation).

Job Description
Assistant Principal Government Counsel
(Planning, Environment, Lands & Housing)

Rank : Assistant Principal Government Counsel (DL1)

Responsible to : Deputy Law Officer (Civil Law)
(Planning, Environment, Lands & Housing)

Main Duties and Responsibilities –

1. To advise Bureaux and Departments on major public projects and initiatives from the town planning, environmental impact, land use, building regulatory, heritage conservation perspectives and on the application of such other relevant laws that fall within the portfolio of Planning, Environment, Lands & Housing (PEL&H) Unit to these projects and initiatives.
2. To handle the more complex and significant civil litigation (including arbitration and mediation) relating to or arising from the implementation of the major projects and initiatives and to prepare briefs for outside counsel representing the Government in such civil litigation cases.
3. To advise on draft drafting instructions for bills concerning town planning, environmental protection, building regulatory framework, heritage conservation, and land related contractual agreements for the implementation of major Government projects and initiatives.
4. To prepare instructions and briefs for outside counsel for advice on complicated issues in cases relating to the implementation of the major Government projects and initiatives.
5. To advise on and vet Policy Committee papers, ExCo memoranda, and LegCo briefs relating to the major Government projects and initiatives, and to attend meetings at the Policy Committee, ExCo and LegCo as appropriate.
6. To represent the Unit or Civil Division on high level working groups or dedicated teams for the implementation of major Government projects and initiatives.

7. To assist DLO(PEL&H) in the supervision and co-ordination of the work of PEL&H(Advisory) and PEL&H(Litigation) counsel involved in major Government projects and initiatives and litigation arising therefrom.
8. To perform such other duties as may be assigned from time to time by the Law Officer (Civil Law) and the Deputy Law Officer (Civil Law) (PEL&H).

Job Description
Assistant Principal Government Counsel
(Advisory)

Rank : Assistant Principal Government Counsel (DL1)

Responsible to : Deputy Law Officer (Civil Law) (Advisory)

Main Duties and Responsibilities –

1. To provide legal advice on complex matters with due regard to all relevant concerns and, to provide appropriate comments to further enhance the quality of advice given within the Unit.
2. To provide advice on complex legislative proposals including vetting of drafting instructions for enactment of new legislation and amendments of existing legislation, particularly in relation to those matters which have administrative law implications.
3. To provide advice on and vetting of Executive Council, Policy Committee and Legislative Council papers on complex matters.
4. To attend before the Executive Council, Policy Committee and Legislative Council committees or panels as appropriate on matters within the province of his/her Unit.
5. To represent the Department on high level working parties and working groups including and serving as member of various working groups and committees.
6. To perform such other duties as may be assigned from time to time by the Law Officer (Civil Law) and the Deputy Law Officer (Civil Law) (Advisory).

Job Description
Assistant Principal Government Counsel
(Commercial) 1

Rank : Assistant Principal Government Counsel (DL1)

Responsible to : Deputy Law Officer (Civil Law) (Commercial)

Main Duties and Responsibilities –

1. To provide advice to Government on complex commercial matters, including advice on Public Private Partnership initiatives, privatisation and telecommunications and broadcasting.
2. To advise on major commercial projects, including legal input in contract negotiation, drafting and interpretation of commercial documents, such as tender documents, commercial contracts, guarantees and indemnities, franchises and licences, including advising on matters connected with the Hong Kong Disneyland (including future expansion of the theme park), the Scheme of Control regulatory regime for the electricity market in Hong Kong, Trust Fund in Support of Reconstruction in the Sichuan Earthquake Stricken Areas, Hong Kong Zhuhai Macao Bridge, development of private hospital services, West Kowloon Cultural District and Film Development Fund.
3. To advise on and vetting drafting instructions for enactment of new legislation and amendments of existing legislation, including the drafting instructions for the establishment of the Communications Authority, proposed legislation on Competition Law, the Telecommunications Ordinance and the Broadcasting Ordinance.
4. To advise on and vet Policy Committee papers, LegCo papers and ExCo memoranda and to appear before Policy Committee, LegCo and ExCo as appropriate.
5. To represent the Department of Justice on high level working parties and working groups including the Steering Committee on the development of the Hong Kong Disneyland, Working Group on Tourism and Related Policy Issues, and Steering Committee on MOU and Articles of Association for the Managing Body of Hong Kong Zhuhai Macao Bridge.
6. To perform such other duties as may be assigned from time to time by the Law Officer (Civil Law) and the Deputy Law Officer (Civil Law) (Commercial).

Job Description
Assistant Principal Government Counsel
(Commercial) 2

Rank : Assistant Principal Government Counsel (DL1)

Responsible to : Deputy Law Officer (Civil Law) (Commercial)

Main Duties and Responsibilities –

1. To provide advice to Government mainly on tax, public finance and financial services related matters.
2. To advise on and vetting drafting instructions for enactment of new legislation and amendments of existing legislation in relation to or involving issues on tax and public finance, including the annual Appropriation and related bills, amendment of the Inland Revenue Ordinance, Business Registration Ordinance, Dutiable Commodities Ordinance, etc.
3. To advise on and vetting drafting instructions for enactment of new legislation and amendment of existing legislation in relation to or involving issues on financial services related matters involving Anti-Money Laundering and Counter Financing of Terrorism Measures (Financial Institutions) Bill, amendments to Securities and Futures Ordinance, Banking Ordinance, Deposit Protection Scheme Ordinance, Mandatory Provident Fund Schemes Ordinance and the reform of Trustee Ordinance.
4. To advise the Government on the exercise of its regulatory functions under various Ordinances, including the Securities and Futures Ordinance, the Banking Ordinance, the Insurance Companies Ordinance.
5. To advise on and vet Policy Committee papers, ExCo memoranda and LegCo papers, and to appear before Policy Committee, LegCo and ExCo as appropriate.
6. To represent the Department of Justice on high level working parties and working groups.
7. To perform such other duties as may be assigned from time to time by the Law Officer (Civil Law) and the Deputy Law Officer (Civil Law) (Commercial).

Job Description
Assistant Legal Advisor (Works)
in the Legal Advisory Division (Works), Development Bureau

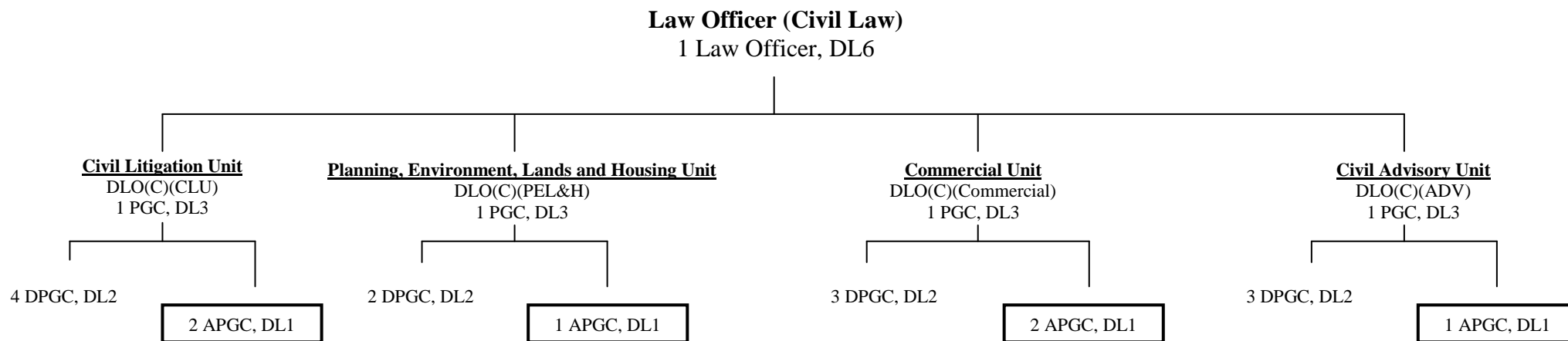
Rank : Assistant Principal Government Counsel (DL1)

Responsible to : Legal Advisor (Works)

Main Duties and Responsibilities –

1. To provide legal advice on the procurement process, contract negotiations and other construction law matters arising in the course of the implementation of Government's major infrastructure projects.
2. To draft and vet of tender documents, consultancy agreements, construction contracts and all other legal documents relating to the Government's major infrastructure project.
3. To advise works departments and the Development Bureau on the more complex legal issues encountered in the discharge of their duties, contractual issues and claims arising from consultancy agreement and construction contracts.
4. To assist in the dispute resolution process relating to the more complex construction disputes, including direct negotiation, mediation, adjudication, arbitration and other forms of dispute resolution and, where appropriate, co-ordinating and supervising the work of briefed-out lawyers and consultants engaged to handle certain construction disputes.
5. To perform such other duties as may be assigned from time to time by the Legal Advisor (Works).

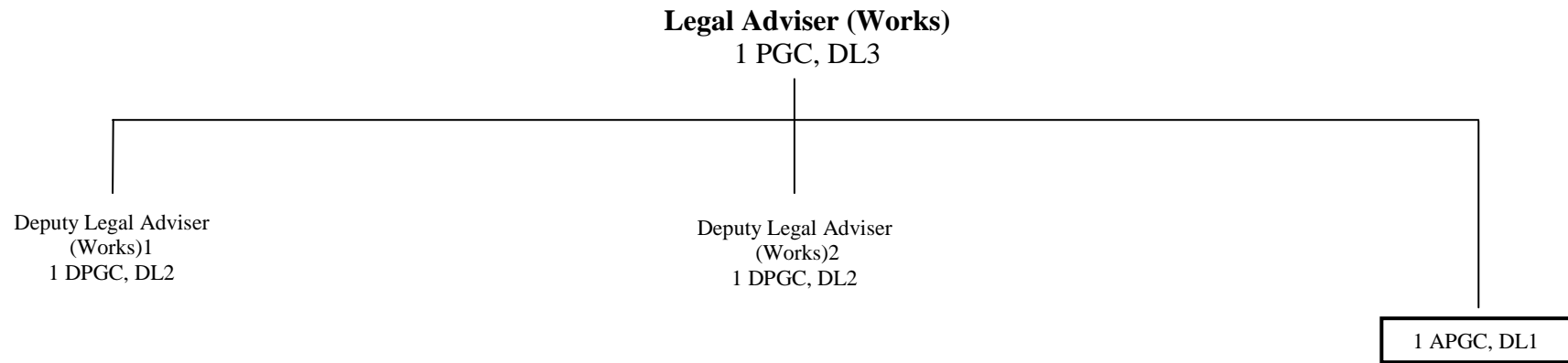
Existing and Proposed Organisation Chart of the Civil Division



Legend :

- DLO(C)(CLU) – Deputy Law Officer (Civil Law) (Civil Litigation Unit)
- DLO(C)(PEL&H) – Deputy Law Officer (Civil Law) (Planning, Environment, Lands & Housing)
- DLO(C)(Commercial) – Deputy Law Officer (Civil Law) (Commercial)
- DLO(C)(ADV) – Deputy Law Officer (Civil Law) (Advisory)
- PGC – Principal Government Counsel
- DPGC – Deputy Principal Government Counsel
- APGC – Assistant Principal Government Counsel
- Proposed APGC post(s)

Existing and Proposed Organisation Chart of the Legal Advisory Division (Works)



Legend :

- PGC – Principal Government Counsel
- DPGC – Deputy Principal Government Counsel
- APGC – Assistant Principal Government Counsel
- Proposed APGC post(s)