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29 December 2010

Miss Flora Tai  
Clerk to Panel on Administration of  
Justice and Legal Services  
Legislative Council Secretariat  
3/F Citibank Tower  
3 Garden Road,  
Hong Kong

By Fax & By Post  
Fax No: 2509 9055

Dear Miss Tai,

**Panel on Administration of Justice and Legal Services  
Proposal on Creation of  
a new Assistant Principal Government Counsel rank and posts**

At the meeting of the Panel on Administration of Justice and Legal Services on 22 November 2010, in considering LC Paper No. CB(2)315/10-11(04), Panel members asked us to elaborate in the Administration's paper to be submitted to the Establishment Sub-Committee (ESC) the need to create an Assistant Principal Government Counsel post to handle, amongst others, appeals by torture claimants. Members noted in particular that funding was provided earlier on for the creation of another Directorate post in the Department to deal with torture claims. Members also requested information on the workload statistics and calculation on the cost of the proposal to create 15 posts of Assistant Principal Government Counsel in the Department of Justice to be offset by deletion of 15 posts of Senior Government Counsel. A note setting out the requested information is annexed. You may wish to note that the information in the annexed note has also been incorporated in the paper (EC(2010-11)12) which was issued by the LegCo Secretariat to ESC members on 28 December.

I should be grateful if you would bring this letter to the attention of the Panel Members.

Yours sincerely

A handwritten signature in black ink, appearing to read "Susie Ho". The signature is written in a cursive, slightly slanted style.

( Susie Ho )  
Director of Administration and Development  
Department of Justice

**Annex**

- (a) The need to create an Assistant Principal Government Counsel (APGC) post to handle appeals by torture claimants following the earlier funding request for the creation of another Directorate post to deal with torture claims

In February 2010, approval was given by the Finance Committee (FC) to create a Deputy Principal Government Counsel (DPGC) post in the Civil Division (CD) to head a dedicated legal team in CD to cope with the new and additional workload arising from Government's obligation to screen the claims lodged under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It was then envisaged that petitions by torture claimants would be dealt with by the non-directorate counsel in Legal Policy Division (LPD) under the supervision of the DPGC in the General Legal Policy Unit. There is a need for such segregation to ensure fairness for torture claimants, so that CD advises the Director of Immigration on the handling of torture claims, while LPD advises on the processing of petitions by torture claimants aggrieved by the Director of Immigration's decisions. As the intention was to have these cases dealt with at the Senior Government Counsel (SGC) level in LPD, the ESC paper on the creation of the DPGC post in CD did not explain such an arrangement.

2. At present, the petitions made by torture claimants are indeed handled at the SGC level in LPD subject to clearance by the incumbent DPGC. However, due to the expansion of the work portfolio of the incumbent DPGC, we see a need for upgrading one SGC post to APGC to take over the new types of work created since late 2008. However, it should be noted that the advisory work in relation to petitions by torture claimants only accounts for a small proportion of the work of General Legal Policy Unit (2). The bulk of its workload is expected to come from other types of petitions and statutory appeals (which may arise under different statutes and straddle a wide spectrum of different areas of law). Some of these cases have gone beyond the senior professional level and justify the creation of an APGC post.

- (b) Workload Statistics

3. In the past five years (i.e. from 2005 to 2009), the average number of active civil litigation cases handled by the Civil Division 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. The Division 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.

4. In the past five years (i.e. from 2005 to 2009), the average number of legal advice provided by the Prosecutions Division has maintained at a high level of around 15 000 a year. The average number of court days undertaken by in-house counsel is around 4 200 a year. The Division prepared around 330 cases for trial in the Court of First Instance, and 1 300 cases for trial in the District Court a year. Compared with 2007, there was an increase of 15%, 12%, 36% and 16% in the number of legal advice provided, the number of court days undertaken, the cases prepared for the Court of First Instance and for the District Court respectively in 2009. In addition to court work, counsel in the Division are involved in a wide range of administrative and policy matters.

5. The number of petitions from prisoners handled by the General Legal Policy Unit was 53 in 2005, 41 in 2006, 41 in 2007, 36 in 2008 and 55 in 2009. Since taking on new duties in providing advice on legal issues arising out of other types of petitions and statutory appeals in late 2008, the Unit has provided a total of 195 items of advice on such new types of petitions and appeals.

(c) Cost of the Proposal

6. The additional notional annual mid-point salary cost (NAMS) of this proposal is –

	<b><u>NAMS</u></b> <b><u>per post</u></b>	<b><u>No. of</u></b> <b><u>posts</u></b>	<b><u>Total</u></b> <b><u>NAMS</u></b>
	\$		\$
New permanent posts APGC (DL1)	1,265,400	15	18,981,000
<b>Less</b> Permanent posts to be deleted SGC (MPS 45-49)	996,720	15	14,950,800
	_____	—	_____
Total	268,680	0	4,030,200
	=====	==	=====

7. The additional full annual average staff cost of the proposal, including salaries and staff on-costs is \$5,392,000. We have sufficient provision in the 2010-11 Estimates to meet the cost of this proposal, which is estimated at \$336,000 for the remainder of the financial year. Thereafter, we will include the necessary provision in the Estimates to meet the cost of this proposal.

8. APGC is a new rank. For estimate purposes, the NAMS and annual staff cost of Assistant Principal Solicitor is used for projecting the additional NAMS and full annual average staff cost required for the APGC rank.