

ITEM FOR ESTABLISHMENT SUBCOMMITTEE OF FINANCE COMMITTEE

**HEAD 137 – GOVERNMENT SECRETARIAT:
ENVIRONMENT BUREAU**

Subhead 000 Operational expenses

HEAD 92 – DEPARTMENT OF JUSTICE

Subhead 000 Operational expenses

Members are invited to recommend to Finance Committee the creation of the following supernumerary posts for a period of two years with effect from 10 February 2014 –

Environment Bureau

1 Administrative Officer Staff Grade C
(D2) (\$136,550 - \$149,350)

Department of Justice

1 Assistant Principal Government Counsel
(DL1) (\$115,050 - \$125,800)

PROBLEM

The Government will conduct a major time-critical review on the future regulatory framework for the electricity market after the expiry of the current Scheme of Control Agreements (SCAs) in 2018. There is a need to strengthen the staffing support in the Environment Bureau (ENB) and Department of Justice (DoJ) to undertake the mammoth and highly-demanding tasks involved in the review.

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PROPOSAL

2. We propose to create the following supernumerary posts for a period of two years with effect from 10 February 2014 to take forward the review of the future regulatory framework for the electricity market after the expiry of the current SCAs in 2018 –

- (a) one Administrative Officer Staff Grade C (AOSGC) (D2) post in ENB; and
- (b) one Assistant Principal Government Counsel (APGC) (DL1) post in DoJ.

JUSTIFICATION*Need to review the regulatory framework for the electricity market*

3. Power supply is an essential infrastructure underpinning the social and economic developments of Hong Kong. It is the Government's energy policy to ensure that the energy needs of the community are met safely, reliably, efficiently and at reasonable prices, while minimising the environmental impact of electricity generation.

4. The Government has been regulating the economic aspect of electricity supply mainly through the SCAs signed between the Government and the two power companies¹. The SCAs respectively set out the returns in respect of electricity-related² operations for shareholders of the power companies, and the arrangements by which the Government monitors their financial affairs in so far as they are electricity-related. The current SCAs run for a term of ten years and will expire in 2018, with an option exercisable by the Government to extend the term for five years until 2023.

5. As stipulated in the current SCAs due to expire in 2018, before implementing any changes to the regulatory regime, the Government will take into

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¹ The two power companies are CLP Power Hong Kong Limited, ExxonMobil Energy Limited and Castle Peak Power Company Limited on one hand (collectively referred to as CLP), and the Hongkong Electric Company Limited (HEC) and Power Assets Holdings Ltd on the other.

² Activities that are directly or indirectly appertaining to the generation, transmission, distribution, sale of electricity, energy efficiency and conservation, or emissions reduction are regarded as "electricity-related" for the purposes of the SCAs and this paper.

account all relevant factors, including the availability of new reliable and environmentally sound supply sources, safety, reliability and efficiency, and compatibility with the environmental and economic needs of the community. The Government will discuss with the power companies market readiness, potential future changes to the electricity supply regulatory framework and transition issue before 2016.

6. Meanwhile, in accordance with the relevant provisions of the SCAs, the Government conducted a mid-term review of the SCAs with the two power companies in 2013, outcome of which was reported to Legislative Council (LegCo) and the public in November 2013. During the course of the review, we received comments on how the future electricity market should be regulated and how the SCAs regime should be modified if it remains to be the future regulatory tool. We have undertaken to take into account these comments and views in reviewing the future regulatory framework.

Scope of work entailed by the review

7. With a view to exploring the feasibility of introducing more competition to the electricity market to bring benefits to electricity users, we will commence the review of the regulatory framework for the post-2018 electricity market. The review will have a profound impact on the way that electricity will be provided and how this important public utility will be regulated. It will cover a wide range of policy, economic, legal, technical and financial issues that require thorough examination, and entail substantial work, including –

- (a) studies on possible regulatory options that may be suitable for Hong Kong, segregation of electricity generation from the power grid, and enhancing the interconnection of the two power grids and other possible sources of electricity supply;
- (b) public consultation and stakeholders engagement to gauge the views of the public and various stakeholders;
- (c) discussion with the two power companies;
- (d) financial analyses relating to determination of Stranded Costs under existing SCAs to be recovered by the power companies arising from any major market change, and measures to mitigate such costs; and
- (e) transitional arrangements which have to be put in place, if changes are to be made to the post-2018 electricity supply regulatory framework, to minimise any possible impact on the reliable supply of energy in Hong Kong and Stranded Costs implication for electricity users.

8. On the legal side, the review and formulation of the future regulatory framework for the electricity market require extensive research, in particular, on the legal regulatory framework adopted in other jurisdictions. The regulatory issues involved are wide-ranging, complex and technical. For example, legal research will be required on local and overseas legislation relevant to supply of electricity, as well as contractual and other arrangements adopted in this connection. Related legal issues need to be examined, and legal analysis of the possible regulatory options will be required.

9. Opening up the electricity market is a highly controversial topic and will likely generate various legal issues. For example, segregation of electricity generation from the power grid to allow access to power grids, if pursued, may give rise to Basic Law and human rights issues, and specialist legal advice from outside Counsel may be required. With the enactment of the Competition Ordinance (Cap. 619), careful examination of related competition law issues will also be necessary.

10. Looking ahead, subject to the results of the review and public consultation, negotiations with existing and prospective electricity suppliers may be needed. To protect the position of the Administration in these subsequent steps, it is important that the decisions or actions taken by the Administration during the course of the review, the conduct of the public consultation (including the preparation of consultation papers) as well as the formulation of the future regulatory framework for the electricity market are legally in order.

Need for Dedicated Teams

11. Taking into account the nature, scope and complexity of the tasks to be performed, as well as the timeline that the Government needs to discuss with the power companies potential future changes to the electricity supply regulatory framework (i.e. before 2016), we consider that two dedicated teams each of which headed by one directorate post should respectively be set up under ENB and DoJ to undertake the review and handle the mammoth and highly-demanding tasks involved in time. The job descriptions of the proposed AOSGC and APGC posts are at Enclosures 1 and 2 respectively.

Encls.1
& 2

12. It is proposed that the AOSGC in ENB be underpinned by a team of four non-directorate posts, namely two Senior Administrative Officers, one Senior Executive Officer and one Personal Secretary I. One of the four posts will be redeployed from the Energy Division (EGD) of ENB, and the other posts will be created on a time-limited basis for two years. The new team will work closely with the Financial Monitoring Division (FMD) and the Electricity Team (ET) in ENB in

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undertaking the review. Headed respectively by an Assistant Director of Accounting Services (D2) and a Chief Electrical and Mechanical Engineer (D1), FMD and ET are responsible for monitoring the existing power companies in the financial and technical aspects.

13. For DoJ, it is proposed that the APGC in the Commercial Unit of the Civil Division (CD) be supported by a team of three time-limited non-directorate posts for two years, namely one Senior Government Counsel, one Government Counsel and one Assistant Clerical Officer.

Encls. 3 & 4 14. The existing and proposed organisation charts of ENB and DoJ showing the proposed posts of AOSGC and APGC are at Enclosures 3 and 4 respectively.

ALTERNATIVES CONSIDERED

15. Under the current establishment, the EGD of ENB is headed by one AOSGC (designated as Principal Assistant Secretary for the Environment (Energy) (PAS(EG))) responsible for overseeing all energy policy matters in Hong Kong. In the past few years, amidst rising public concerns over electricity tariffs and escalating community's aspirations for more efficient use of energy, the energy portfolio has been expanding substantially. PAS(EG) is responsible for overseeing energy efficiency and conservation policies and initiatives, which include the Energy Efficiency (Labelling of Products) Ordinance (Cap. 598); implementation of the District Cooling System in the Kai Tak Development; promotion of energy conservation in government buildings; and launching of various Energy Saving Charter Schemes and publicity activities to promote public awareness of energy efficiency and conservation as well as application of renewable energy. Owing to the introduction and implementation of the newly enacted Buildings Energy Efficiency Ordinance (Cap. 610) and the conduct of reviews of various energy efficiency standards and relevant codes under the concerned legislation, the workload has risen significantly.

16. Apart from the regular duties, PAS(EG) has taken on new tasks arising from the provision of secretariat support to the Task Force on External Lighting which has been set up to advise the government on the appropriate strategy and measures for tackling light nuisance and energy wastage problems caused by external lighting, having regard to international experience and practices. She is also responsible for supporting an inter-departmental Steering Committee on the Promotion of Green Building set up in January 2013 to coordinate efforts by various bureaux and departments in promoting green building in Hong Kong in a holistic manner. The post is therefore fully stretched and cannot absorb further duties arising from the electricity review.

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17. As the existing EGD has already been fully stretched, a six-month supernumerary AOSGC post was created under delegated authority from August 2013 to undertake two time-critical tasks, namely, the 2013 mid-term review of the SCAs as well as the review on future fuel mix for power generation. The mid-term review of the SCAs entailed formulation of proposals to improve the SCAs, negotiations with the two power companies on the proposals and implementation of the review outcome. For the fuel mix review, the post holder has been tasked with the formulation of various fuel mix options, liaison and engagement with stakeholders and relevant parties, as well as the preparation of a major public consultation exercise to solicit views of the public, which will provide important parameters to the review of the future regulatory framework for the electricity market. The current supernumerary post will lapse in end January 2014.

18. We have also considered the possibility of redeploying other directorate officers in ENB to undertake the review but found it not feasible. The FMD and ET have already been fully engaged in monitoring the power companies from the financial and technical aspects. They will also be working closely with the proposed team on the review which as noted above will involve lots of financial and technical issues and studies. The Sustainable Development Division, headed by an AOSGC, is responsible for handling policy matters relating to sustainable development and providing secretariat support to the Council for Sustainable Development (SDC). The latter includes supporting the SDC's territory-wide public engagement process on key sustainability issues, and arranging publicity and education programmes. All these ongoing work requires full-time attention of the directorate officers in ENB.

19. In the case of DoJ, advice on electricity-related matters falls within the purview of the Commercial Unit of the CD. The alternative of absorbing the workload generated from the review has been carefully considered but found not feasible.

20. The Commercial Unit advises bureaux and departments on all aspects of commercial law relating to the Government's own commercial activities and regulation of certain commercial activities. On top of the drafting and interpretation of commercial contracts, and contract negotiation, it also advises on a broad range of legal matters generated by the Government's own commercial requirements, regulation of utilities, franchisees and licensees, and certain commercial services provided to the community. The Commercial Unit also advises on legislative amendments to statutes governing commercial activities in the market and the exercise of statutory regulatory powers.

21. The Commercial Unit has been experiencing a consistently high level of workload with considerable and growing complexity. The existing directorate structure of the Commercial Unit of the CD comprises one Principal Government Counsel (PGC) (DL3), three Deputy Principal Government Counsel (DPGC) (DL2) and two APGC (DL1). The PGC, DPGC and existing APGC are already heavily over-committed with their existing duties in respect of the whole range of subjects mentioned in paragraph 20 above. It is not possible to further stretch the manpower at the APGC (or DPGC) level to absorb the additional work arising from the legal support required for electricity market review exercise without adversely affecting the discharge of their duties and compromising the quality of work.

22. We have also considered the possibility of redeployment from other teams of the CD. Other APGC (as well as DPGC) in the CD are tasked with, and fully tied up with, their respective directorate supervision, management functions and professional work, and it would not be feasible for any of them to take up the task on top of their current duties without causing adverse impacts. Details of the duties and workload of the APGC and DPGC in the various units of CD (other than the Commercial Unit) are set out in Enclosure 5.

Encl. 5

FINANCIAL IMPLICATIONS

23. The proposed creation of two supernumerary directorate posts will bring about an additional notional annual salary cost at mid-point of \$3,204,600 as follows –

Rank	Notional annual salary cost at mid-point	No. of posts
	\$	
Supernumerary posts		
AOSGC (D2)	1,739,400	1
APGC (DL1)	1,465,200	1
Total	3,204,600	2

The additional full annual average staff cost, including salaries and staff on-cost, is \$4,405,000. For the six time-limited non-directorate civil service posts mentioned in paragraphs 12 and 13 above, the notional annual salary cost at mid-point is \$4,578,420 and the full annual average staff cost, including salaries and staff on-cost, is \$6,668,000. Subject to the Finance Committee's approval of the proposal to create the above directorate posts, we will include sufficient provision in the draft Estimates of the relevant financial years to meet the cost of the proposal.

PUBLIC CONSULTATION

24. The LegCo Panel on Economic Development was consulted on the staffing proposal at its meeting on 10 December 2013. Members were generally supportive of the staffing proposal.

ESTABLISHMENT CHANGES

25. The establishment changes of Head 137 Government Secretariat: ENB and Head 92 DoJ for the past two years are as follows –

Establishment (Note)	Number of posts			
	Existing (as at 1 December 2013)	As at 1 April 2013	As at 1 April 2012	As at 1 April 2011
ENB				
A	6+(1) #	6 + (1)	6	6
B	16	16	14	14
C	23	22	19	19
Total	45 + (1)	44 + (1)	39	39
DoJ				
A	87 + (3)#	87 + (3)	87	87
B	355	355	339	335
C	785	776	757	748
Total	1 227 + (3)	1 218 + (3)	1 183	1 170

Note:

- A – ranks in the directorate pay scale or equivalent
- B – non-directorate ranks, the maximum pay point of which is above MPS point 33 or equivalent
- C – non-directorate ranks, the maximum pay point of which is at or below MPS point 33 or equivalent
- () – number of supernumerary directorate posts
- # – as at 1 December 2013, there was no unfilled directorate post in ENB and DoJ

CIVIL SERVICE BUREAU COMMENTS

26. The Civil Service Bureau supports the proposed creation of the two supernumerary directorate posts. The grading and ranking of the posts are considered appropriate having regard to the level and scope of responsibilities required.

/ADVICE

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

27. As the posts are proposed on a supernumerary basis, their creation, if approved, will be reported to the Standing Committee on Directorate Salaries and Conditions of Service in accordance with the agreed procedure.

Environment Bureau
Department of Justice
December 2013

Job Description
Principal Assistant Secretary for the Environment
(Electricity Reviews)

Rank : Administrative Officer Staff Grade C (D2)

Responsible to : Deputy Secretary for the Environment

Main Duties and Responsibilities –

- (a) To conduct stakeholders engagement activities on the future fuel mix for power generation.
- (b) To take forward the outcome of the public consultation on the fuel mix review and liaise with the power companies and other relevant parties as appropriate to implement the outcome.
- (c) To formulate possible options for the future regulatory framework for the electricity market, having regard to the financial, technical, legal and economic implications.
- (d) To handle with other relevant teams consultancy studies to be conducted in relation to the possible changes to the regulatory framework for the electricity market.
- (e) To launch a public consultation exercise on the future regulatory framework for the electricity market and conduct related engagement activities.
- (f) To consolidate the feedbacks received during the public consultation exercise and take forward the outcome.
- (g) To formulate plans to implement changes to the regulatory framework for the electricity market.
- (h) To discuss and negotiate with the two existing power companies on possible changes to the regulatory framework for the electricity market and the implementation arrangements, etc.

Job Description
Assistant Law Officer (Civil Law) (Commercial)

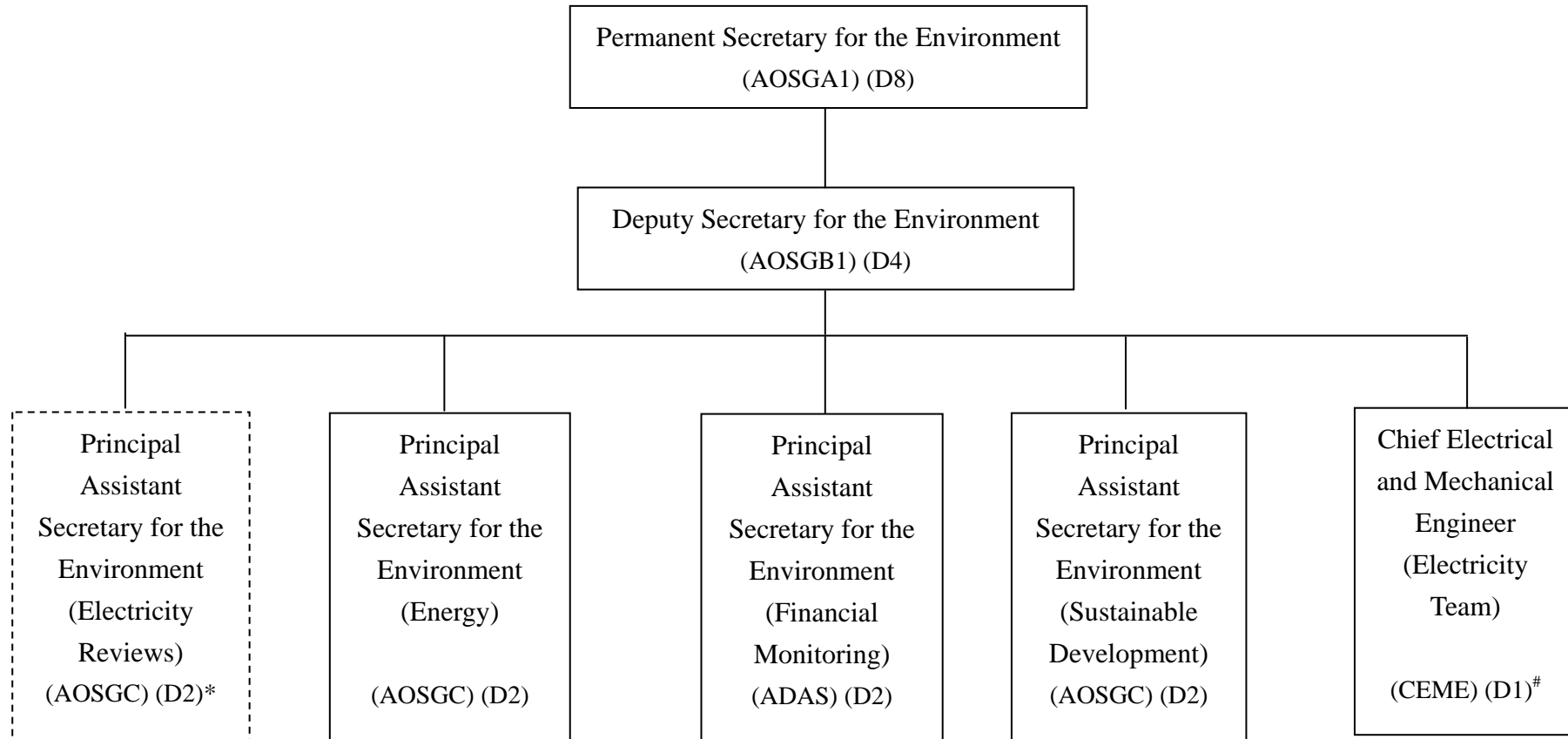
Rank : Assistant Principal Government Counsel (DL1)

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

Main Duties and Responsibilities –

- (a) To lead and guide the dedicated team in the Commercial Unit to provide legal support for the review of the regulatory framework for the electricity market after the expiry of the current Scheme of Control Agreements in 2018.
- (b) To provide legal advice on more complex matters relating to the review, in particular on financial and commercial law issues arising from the review, and implementation of appropriate regulatory and other market changes.
- (c) To conduct necessary legal research on more complex issues relating to the legislation, and contractual and other regulatory arrangements adopted in other comparable jurisdictions for regulating the electricity market.
- (d) To advise on all the drafting of legislative proposals that may be required.
- (e) To advise on legal issues arising from any transitional arrangements of the electricity market that may need to be devised and implemented.
- (f) To draft and settle a broad range of consultancy agreements and instructions to Counsel as may be necessary for the review.
- (g) To attend meetings and negotiations with the existing power companies and other stakeholders.

Existing and Proposed Organisation chart of Environment Bureau



Legend:

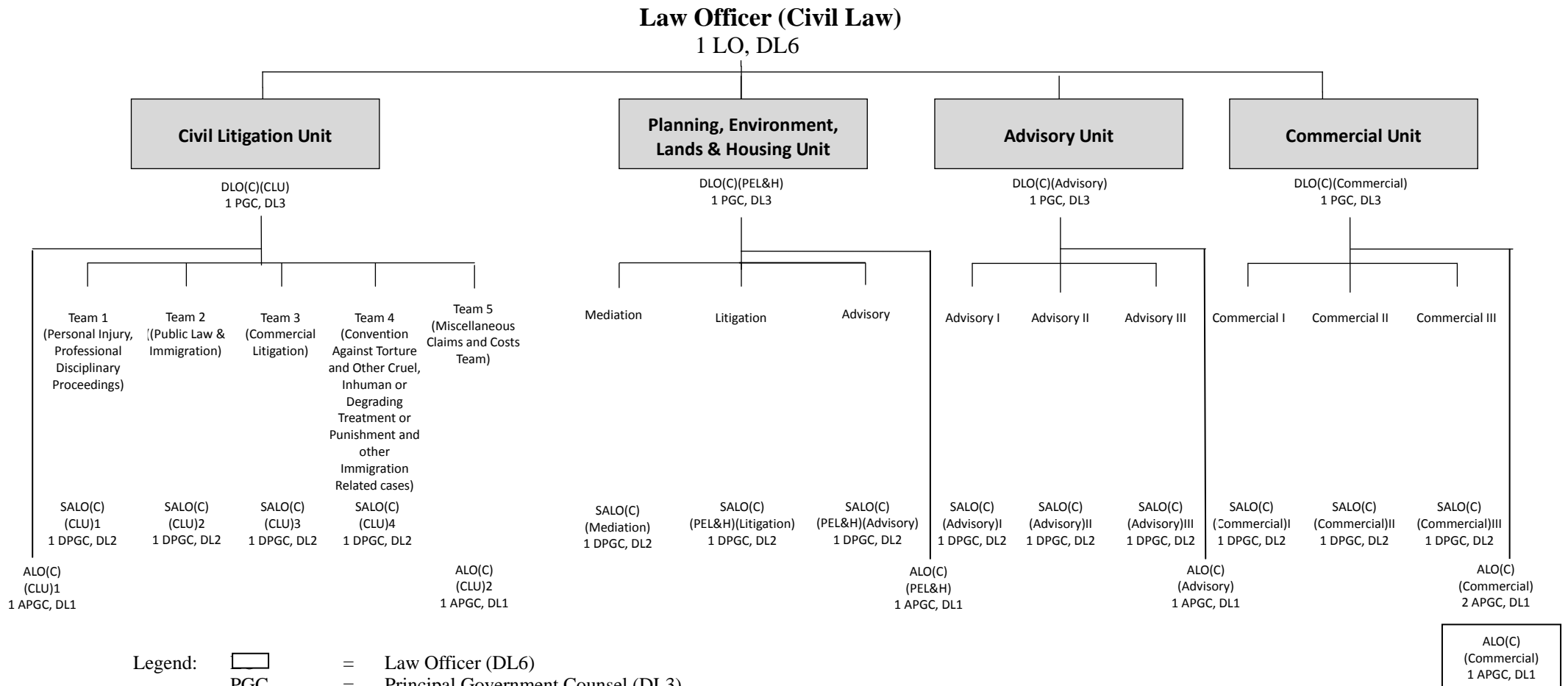
AOSGA1: Administrative Officer Staff Grade A1
 AOSGB1: Administrative Officer Staff Grade B1

AOSGC: Administrative Officer Staff Grade C
 ADAS: Assistant Director of Accounting Services
 CEME: Chief Electrical and Mechanical Engineer

* Proposed post.

This post was created under Head 42 - Electrical and Mechanical Services Department.
 In addition, a Principal Assistant Secretary is on loan to Environmental Protection Department.

Existing and Proposed Organisation Chart of the Civil Division of Department of Justice



**Major Responsibilities and Current Workload of the
Deputy Principal Government Counsel (DPGC) and
Assistant Principal Government Counsel (APGC) in
the various units of the Civil Division of the Department of Justice
(other than the Commercial Unit)**

Civil Litigation Unit (CLU)

- The four DPGC in this Unit are responsible for advising and representing the Government bureaux and departments and other related public bodies before courts and tribunals in all forms of civil litigation and dispute resolution. Each DPGC is responsible for the supervision of a team of counsel in the conduct of cases. The Unit handles a wide range of litigation cases involving the Government in particular those involving Basic Law issues, civil service matters, immigration matters, revenue matters, commercial related matters, personal injuries and other damages claims, etc. The workload of CLU has increased over the past few years in terms of number of litigation cases, their urgency, complexity and significance and the DPGC cannot be spared for other duties.
- There are two APGC in this Unit. One APGC is responsible for overseeing a dedicated team which handles a large number of recovery cases, enforcement of money judgments and costs matters. The APGC takes on heavy management responsibilities of the team which include coordination of the work among the sub-units in the team, and provision of steer and directions to a large pool of support staff for improving the efficiency of the sub-units. The APGC also provides professional guidance and supervision to counsel and support staff in the team in their day to day work. The APGC has been fully occupied and will not be able to take up the additional duties of the proposed APGC post.
- The other APGC in this Unit is tasked to handle complex projects and litigation cases which often have serious read-across implications and raise important legal principles in diverse areas. The APGC works either alone or leads dedicated teams of counsel in conducting such difficult projects or cases independently with minimum supervision. Given the number and scale of such projects which often require close consultation and coordination with different work contacts, and the difficulty and complexity of the work required, the APGC has to devote all efforts in discharging the current heavy workload and will not be able to take up the additional duties of the proposed APGC post.

Planning, Environment, Lands and Housing Unit

- There are three DPGC in this Unit heading respectively the Advisory Team, the Litigation Team, and the Mediation Team. There is also one APGC who is responsible for handling significant projects assigned by the PGC of the Unit. The Advisory Team and the Litigation Team of the Unit are responsible for providing legal advice to and acting in litigation cases for Government bureaux and departments in relation to planning, lands, building, heritage issues, road and transport issues, housing, and environment issues, etc. There are recently substantial increases in the number and complexity of town planning and environmental protection judicial review applications, disputes on land and building matters. In view of the number of new policy initiatives including developments in North East New Territories Development, the workload of these two teams will become heavier and the work capacities of the two DPGC are fully stretched. The Mediation Team supports the Steering Committee on Mediation and its three Sub-committees on the development of mediation in Hong Kong. There are a number of on-going initiatives and studies including the organizing of a Mediation conference and Mediation Week in 2014, and the examination of merits of legislation on apology. The Team is at the same time organizing training events for government counsel and relevant officers of other bureau and departments. The DPGC heading the mediation team (who is holding a time-limited post which will end in March 2015) is also not able to spare any capacity to cover the work of the proposed APGC post. As for the APGC of the Unit, she is handling many complex projects with wide implications including those relating to planning. The APGC is also not able to cover the duties of the proposed APGC post.

Advisory Unit

- The three DPGC in this Unit are responsible for advising Government bureaux and departments on civil law issues relating to their functions and duties as well as arising from their exercise of discretion and powers under the law. Each DPGC is responsible for handling high profile and complex matters involving difficult and sensitive issues. In addition, each DPGC is required to supervise a team of counsel in providing legal advice to Government bureaux and departments on a wide range of areas relating to the interpretation of legislation, statutory powers and duties, legislative proposals and amendments, Government's civil liability, etc.
- With the increase in the number of requests for legal advice coupled with the increasing level of complexity, urgency and sensitivity of the matters which render an extremely heavy demand for legal support from the Unit on a cross-divisional/departmental basis, the DPGC are not able to take up other additional duties. Neither is it possible for the APGC of the Unit to take up any

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additional duties given the present heavy workload in handling many complex matters including to provide advice on complex legislative proposals in respect of enactment of new legislation and amendments to existing legislation and on the implementation of various Law Reform Commission reports on highly sensitive matters as well as a wide range of family and children matters. The APGC does not have the spare capacity to take up the duties in respect of the proposed APGC post.
