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Replies to initial written questions raised by Finance Committee Members in examining the Estimates of Expenditure 2017-18

Director of Bureau : Secretary for Justice

Session No. : 5

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CONTROLLING OFFICER'S REPLY

SJ001

(Question Serial No. 2775)

Head: (92) Department of Justice

Subhead (No. & title): (000) Operational expenses

Programme: (3) Legal Policy

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

To follow up on the Court of Final Appeal case of *W v Registrar of Marriages*, the Department of Justice (“DoJ”) set up a few years ago the Inter-departmental Working Group on Gender Recognition (“IWG”) to consider the legislation and incidental administrative measures required for protecting the rights of transsexual persons in Hong Kong in all legal contexts, and to make recommendations for reform as appropriate. In this connection, would the Government inform this Committee of the following:

- (1) What were the manpower and expenditure for the IWG in the past year?
- (2) What are the estimated manpower and expenditure for the IWG in the coming year?
- (3) How many meetings were conducted by the IWG? Please set out in a table the topics deliberated and the names of the government departments participated in each of the meetings.
- (4) How many experts or professionals were consulted and invited for assistance by the DoJ? What were their status and background? Were transgenders and bisexuals represented among them? If yes, who were invited? If not, what were the reasons?
- (5) Last year, the IWG undertook to submit by the end of 2016 the consultation report on gender recognition, which is however yet to be published. Please advise the work progress in respect of the report and its expected date of publication.
- (6) What were the research projects conducted by the IWG?
- (7) What is the work progress of the IWG to date? What topics have been dealt with? And what is the work direction envisaged for the coming year?

Asked by: Hon CHAN Chi-chuen (Member Question No. 8)

Reply:

- (1) and (2) The existing one Senior Government Counsel post and one Government Counsel post, which were extended for 2 years starting from 2016-17 will continue to provide legal support to the IWG chaired by the Secretary for Justice. The estimated annual staff cost of the above posts is around \$2.2 million in 2016-17 and around \$2.3 million in 2017-18. For other officers providing support to the IWG, their work in this regard is undertaken among their other duties, and the staff costs, as well as other related expenses, cannot be separately identified.
- (3) to (7) In addition to the fifteen formal meetings held, the IWG has held nine informal meetings to-date to consult a range of individuals and organisations, including doctors, psychiatrists, academic experts and transgender people (including those who have undergone full sex reassignment surgery). Both the formal and informal meetings were attended by IWG members including representatives from DoJ, Constitutional and Mainland Affairs Bureau, Security Bureau, and Food and Health Bureau as well as non-government members. To ensure the IWG can have a full and frank discussion on the subject, the content of the meetings are treated as confidential and will generally not be disclosed to the public. This approach is no different from that adopted by similar committees or working groups.

The scope of the IWG's study includes both recognition and post-recognition issues. On recognition issues, the IWG has been reviewing various issues, including the condition known as gender identity disorder or gender dysphoria, whether there should be a gender recognition scheme, the various options for a gender recognition scheme, and the relevant qualification criteria and the application procedure. In this connection, the IWG has been undertaking a comparative study of the legislation, schemes and case law on gender recognition in a wide range of jurisdictions, as well as the standards of different international bodies. As the work of the IWG is complicated and involves the study of different legal arrangements in various countries, the time needed is longer than originally expected.

As regards post-recognition issues, the IWG will focus on reviewing all the existing legislative provisions and administrative measures in Hong Kong which may be affected by legal gender recognition, so that any required legislative or procedural reform may be followed up by the Government.

The IWG is currently focusing on the completion and translation of a consultation paper to seek the views of the public on recognition issues, which the IWG will endeavour to publish as early as possible within the first half of this year. The IWG will also continue to consult widely in the course of its work before finalising its recommendations to the Government.

- End -

CONTROLLING OFFICER'S REPLY**SJ002****(Question Serial No. 2887)**Head: (92) Department of JusticeSubhead (No. & title): (-) Not SpecifiedProgramme: (2) CivilControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

In respect of Programme (2) Civil, would the Government inform this Committee of the establishment and estimated annual expenditure on the emoluments involved, as well as the operational expenses for 2017-18? What is the annual expenditure involved on the emoluments of the Government Counsel under this Programme for 2017-18? What are the estimated annual expenditure on the hire of legal services and related professional fees for 2017-18? The Government stated that provision for 2017-18 is \$129.2 million (19.6%) higher than the revised estimate for 2016-17. This is mainly due to the anticipated increase in briefing-out expenses and court costs, filling of vacancies, and net creation of 7 posts to meet operational needs. Would the Government inform this Committee of the estimated amount of court costs and the estimated briefing-out expenses under this Programme for 2017-18?

Asked by: Hon CHAN Chi-chuen (Member Question No. 41)Reply:

The estimated establishment in respect of Programme (2) Civil as at 31 March 2018 is 425, as set out below –

Grades	Establishment
Government Counsel	177
Para-legal	56
Executive, Clerical and Secretarial	192
Total	425

The estimated expenditure of the Programme for 2017-18 is about \$787.5 million, out of which, the estimated personal emoluments involved are about \$306.7 million (including \$235.9 million for Government Counsel), the estimated general departmental expenses are

about \$78.1 million while the estimated expenses for the hire of legal services and related professional fees (i.e. briefing-out expenses) is around \$ 253.4 million. The estimated amount of court costs under the Programme is about \$132.3 million.

- End -

CONTROLLING OFFICER'S REPLY

SJ003

(Question Serial No. 3255)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (1) Prosecutions

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Under this Programme, the Government states that the estimate for this Programme for 2017-18 is \$243.0 million higher than that for 2016-17 and is partly due to the anticipated increase in court costs. Would the Government inform this Committee of:

- (1) the reasons for the anticipated increase in court costs for 2017-18?
- (2) the estimated court costs of this Programme for 2017-18 and its increase over that for 2016-17?

Asked by: Hon CHAN Chi-chuen (Member Question No. 53)

Reply:

For Programme (1), the estimate for court costs for 2017-18 is \$196.86M, 79% or \$86.86M higher than the revised estimate of \$110M for 2016-17. The annual expenditure on court costs varies from year to year, depending on the number of cases involved, their complexity and development. While the estimate was worked out on information available at the time of preparing the estimates, the actual expenditure to be incurred in 2017-18 would ultimately depend on subsequent development and outcome of the cases concerned (which are not entirely within the control of DoJ).

The anticipated increase in court costs for 2017-18 is mainly due to provisions that need to be made for the amount likely to be required for new cases that will/may arise (including some mega cases), as well as a number of cases to be rolled-over from 2016-17. That said, we do notice a general increase in counsel fees as well as the complexity of the cases over the years, which may contribute to a higher court costs payment for individual cases.

- End -

CONTROLLING OFFICER'S REPLY**SJ004****(Question Serial No. 6842)**Head: (92) Department of JusticeSubhead (No. & title): (000) Operational expensesProgramme: (2) CivilControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

1. Please list in table form the government expenditure incurred in the review of the qualification of Legislative Councillors and the responsible officers of the Department of Justice (DoJ) in the past 5 years.

Year	Court case number	Legislative Councillor whose qualification was reviewed	Expenditure involved in engaging outside counsel team(s)	List of DoJ officers involved

2. What are DoJ's estimated expenditure and the manpower involved in the review of the qualification of Legislative Councillors in 2017-2018?

3. Why did the DoJ engage outside counsel teams to handle the proceedings for the review of the qualification of Legislative Councillors? What were the policy and legal basis for it? What criteria were used for selecting the outside counsel teams?

Asked by: Hon CHAN Tanya (Member Question No. 31)Reply:

(1) & (2) In the past five years, legal proceedings initiated by the Government on the review of Legislative Councillors' qualifications (including appellate proceedings arising therefrom brought by the Councillors concerned) include -

Year	Court case number	Legislative Councillor whose qualification was reviewed
2016-17	HCAL 185/2016 HCMP 2819/2016	LEUNG Chung-hang, Sixtus and YAU Wai-ching
	CACV 224/2016 CACV 227/2016 FAMV 9/2017 FAMV 10/2017	LEUNG Chung-hang, Sixtus
	CACV 225/2016 CACV 226/2016 FAMV 7/2017 FAMV 8/2017	YAU Wai-ching
	HCAL 223/2016 HCMP 3379/2016	LAW Kwun-chung, Nathan
	HCAL 224/2016 HCMP 3382/2016	LEUNG Kwok-hung
	HCAL 225/2016 HCMP 3381/2016	LAU Siu-lai
	HCAL 226/2016 HCMP 3378/2016	YIU Chung-yim

The total expenditure for the above proceedings is not yet finalized or available as the legal proceedings are still on-going. The final amount of expenditure involved will be subject to development of the cases concerned and is not entirely within the control of the Department of Justice (DoJ).

It is relevant to note that the Civil Division of the DoJ deals with all civil litigation and tribunal work involving the Government. The said proceedings are mainly handled by the Civil Division which may seek inputs or advice from other divisions in the Department and/or outside Counsel instructed. As such, while in general the legal proceedings come under the purview of the Civil Division, the officer or the team of officers involved in advising or handling the different aspects of the proceedings may vary depending on, for example, the nature of the issues, the complexity, etc. Hence, the expenditure and manpower involved in this regard cannot be separately identified.

- (3) The DoJ is responsible for providing legal advice to Government bureaux and departments, and represents the Government in courts for judicial proceedings. Where necessary, the DoJ engages solicitors or barristers in private practice to provide assistance in handling cases. Briefing out is mainly to meet operational needs. Generally speaking, the DoJ may resort to briefing out when-
- (i) there is a need for expert assistance where the requisite skill is not available in the DoJ;
 - (ii) there is no suitable in-house counsel to appear in court for the Hong Kong Special Administrative Region;
 - (iii) the size, complexity, quantum and length of a case so dictate;
 - (iv) it is deemed appropriate to obtain independent outside counsel's advice or services so as to address possible perception of bias or issues of conflict of

- interest;
- (v) there is a need for continuity or economy, e.g. where a former member of the DoJ who is uniquely familiar with the subject matter is in private practice at the time when the legal services are required; and
 - (vi) there is a need for independent advice or services in respect of matters or proceedings involving members of the DoJ.

The selection of briefed out counsel for a particular case will be made based on criteria including the briefed out counsel's years of experience and suitability in terms of areas of expertise and availability for the case concerned. The level of fees charged by the briefed out counsel is also one of the factors to be taken into account, since public money is involved.

The DoJ instructed outside counsel to advise and represent the Government in the legal proceedings in question having regard to the relevant operational needs and selection criteria.

- End -

CONTROLLING OFFICER'S REPLY

SJ005

(Question Serial No. 5461)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (4) Law Drafting

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

In a reply (Reply Serial No. SJ021) to this Committee last year (2016-17) on the translation of legislation, the Government indicated that a pilot scheme was being introduced to make improvements in this area. Please inform this Committee: (a) whether the Government has evaluated the effectiveness of the pilot scheme? If it is found to be effective, when will the Government launch the scheme in full as a policy? If not, what other improvement options does the Government have? and (b) which bills were drafted under this scheme? Which of them were still challenged by Councillors for their expressions and wording when introduced to the bills committees of the Legislative Council for scrutiny?

Asked by: Hon CHEUNG Chiu-hung, Fernando (Member Question No. 1037)

Reply:

The Government places equal emphasis on the use of clear language in the Chinese and English text of legislation. The Law Drafting Division of the Department of Justice (the Division) is committed to making legislation user-friendly. One of the measures introduced as part of this commitment has been a pilot scheme involving an additional reading of the draft Chinese text in particular cases. After a drafting counsel has prepared the draft provisions, the scheme involves another officer in the Division reading the provisions to see whether the text could be made more user-friendly. This additional reading is done without reference to the corresponding English provisions. The reader will comment on the language of the draft with a view to enhancing readability and user-friendliness. The drafting counsel will then take the reader's comments into account in finalizing the draft provisions.

It is important to note that Chinese and English are official languages for use by the legislature and other entities under Article 9 of the Basic Law. Not only is it a requirement that all Ordinances are enacted and published in both official languages (section 4 of the Official Languages Ordinance (Cap. 5)), both texts are equally authentic (section 10B of the

Interpretation and General Clauses Ordinance (Cap. 1)). Neither the Chinese text nor the English text of legislation is a translation of the other and therefore the pilot scheme is not intended for the translation of legislation.

Up to now, eight legislative items have been studied under the scheme, namely –

- (i) Companies (Winding Up and Miscellaneous Provisions) (Amendment) Bill 2015 (6 clauses);
- (ii) Inland Revenue (Amendment) (No.3) Bill 2015;
- (iii) Promotion of Recycling and Proper Disposal (Product Container) (Amendment) Bill 2015;
- (iv) Air Pollution Control (Ocean Going Vessels)(Fuel at Berth) Regulation(Gazetted in March 2015);
- (v) Travel Industry Bill2017 (Parts 1 and 2) [57 pages out of the 237 page Bill];
- (vi) Inland Revenue (Amendment) (No.2) Bill 2017[41 pages];
- (vii) Private Healthcare Facilities Bill (Parts 1 to 8)[85 pages-not yet gazetted]; and
- (viii) Waste Disposal (Charging for Municipal Solid Waste) (Amendment) Bill 2017 (Parts 1 and 2) [12 pages - not yet gazetted]

We are not aware of any challenge made by Legislative Council (LegCo) Members or LegCo Legal Advisers to the Chinese text of any of the first four items during the scrutiny in the LegCo. Items (v) and (vi) are yet to be scrutinized by LegCo and items (vii) and (viii) are yet to be gazetted and introduced into LegCo. We will closely monitor the situation.

We intend to conclude the pilot scheme after having 10 pieces of legislation read and scrutinized by LegCo under the scheme. We will then review the effectiveness of the scheme and decide on the way forward.

- End -

CONTROLLING OFFICER'S REPLY**SJ006****(Question Serial No. 5462)**Head: (92) Department of JusticeSubhead (No. & title): (-) Not SpecifiedProgramme: (3) Legal PolicyControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

In regard to the growing cross-boundary co-operation between Hong Kong and the Mainland in recent years, please provide relevant information on Hong Kong/Mainland cross-boundary projects or programmes in which your bureau and the departments under your purview have been involved.

(a) For Hong Kong/Mainland cross-boundary projects or programmes, please provide information for 2014-15 to 2016-17 as per the following table:

Project/ Programme	Details, objective and whether it is related to the Framework Agreement on Hong Kong/Guangdong Co-operation (the Framework Agreement) or the National 13th Five-year Plan	Expenditure involved	Mainland official(s) and department(s)/ organisation(s) involved	Has any agreement been signed and whether it has been made public? If not, what are the reasons?	Progress (% completed, commencement date, target completion date)	Have the details, objectives, amount involved or impact on the public, society, culture and ecology been released to the public? If so, through what channel(s) and what were the manpower and expenditure involved? If not, what are the reasons?	Has any public consultation on the cross-boundary project been conducted in Hong Kong?	Details of the legislative amendments or policy changes involved in the project/ programme

(b) Has provision been earmarked for Hong Kong/Mainland cross-boundary projects or programmes in this year (2017-18)? If yes, please provide information in respect of Hong Kong/Mainland cross-boundary projects or programmes for 2017-18 as per the following table:

Project/ Programme	Details, objective and whether it is related to the Framework Agreement on Hong Kong/Guangdong Co-operation (the Framework Agreement) or the National 13th Five-year Plan	Expenditure involved	Mainland official(s) and department(s)/ organisation(s) involved	Has any agreement been signed and whether it has been made public? If not, what are the reasons?	Progress (% completed, commencement date, target completion date)	Have the details, objectives, amount involved or impact on the public, society, culture and ecology been released to the public? If so, through what channel(s) and what were the manpower and expenditure involved? If not, what are the reasons?	Has any public consultation on the cross-boundary project been conducted in Hong Kong?	Details of the legislative amendments or policy changes involved in the project/ programme

(c) Apart from the projects or programmes listed above, are there any other modes of Hong Kong/Mainland cross-boundary cooperation? If so, in what modes are they taken forward? What were the manpower and expenditure involved last year? How much financial and manpower resources has been earmarked in the 2017-18 Estimates?

Asked by: Hon CHEUNG Chiu-hung, Fernando (Member Question No. 1038)

Reply:

(a)

Project/ Programme	Details, objective and whether it is related to the Framework Agreement on Hong Kong/Guangdong Co-operation (the Framework Agreement) or the National 13th Five-year Plan	Expenditure involved	Mainland official(s) and department(s)/ organisation(s) involved	Has any agreement been signed and whether it has been made public? If not, what are the reasons?	Progress (% completed, commencement date, target completion date)	Have the details, objectives, amount involved or impact on the public, society, culture and ecology been released to the public? If so, through what channel(s) and what were the manpower and expenditure involved? If not, what are the reasons?	Has any public consultation on the cross-boundary project been conducted in Hong Kong?	Details of the legislative amendments or policy changes involved in the project/ programme
Enhance Legal Co-operation with Guangdong	Pursuant to the Framework Agreement on Hong Kong/ Guangdong Co-operation, we have reinforced the existing communication mechanism in legal matters with Guangdong. This has covered exchange of legal information as well as conducting meetings and / or seminars to discuss specific legal issues.	The staff cost and other related expenses have been and will continue to be absorbed from within the available resources of the Department and the expenditure for this specific programme cannot be separately identified.	The Legislative Affairs Office and the Justice Department of the Guangdong Province, depending on the subject matter concerned.	N/A	The programme commenced in 2010 and is continuing.	The Agreement and related initiatives were presented to the Legislative Council Panel on Administration of Justice and Legal Services (AJLS Panel) in October 2010. It was also mentioned in the Department's Policy Initiatives provided to the AJLS Panel in the past years, including the 2017 Policy Initiatives. The staff costs and other related expenses were absorbed from within the available resources of the Department and the expenditure in this regard cannot be separately identified.	N/A	Apart from the cooperative initiatives contained in the Agreement, the programme does not involve a change of law or policy of the Government.

Project/ Programme	Details, objective and whether it is related to the Framework Agreement on Hong Kong/Guangdong Co-operation (the Framework Agreement) or the National 13th Five-year Plan	Expenditure involved	Mainland official(s) and department(s)/ organisation(s) involved	Has any agreement been signed and whether it has been made public? If not, what are the reasons?	Progress (%) completed, commencement date, target completion date)	Have the details, objectives, amount involved or impact on the public, society, culture and ecology been released to the public? If so, through what channel(s) and what were the manpower and expenditure involved? If not, what are the reasons?	Has any public consultation on the cross-boundary project been conducted in Hong Kong?	Details of the legislative amendments or policy changes involved in the project/ programme
Co-operation between Shenzhen and Hong Kong	The Co-operative Arrangement on Legal Matters was signed between the Department and the Shenzhen Municipal Government on 25 November 2011 for a period of 5 years subject to extension. The main purpose was to establish a mechanism to promote legal co-operation between the two governments.	Same as above	Shenzhen Municipal Government	The Co-operative Arrangement on Legal Matters was signed between the Department and the Shenzhen Municipal Government on 25 November 2011. The Department informed the AJLS Panel of the signing of the Arrangement and its main purpose in late November 2011. Main details of the Co-operative Arrangement are also available on the Department's website.	The co-operation has been continuing and is expected to continue for some time. We are in active discussion with the Shenzhen side in relation to the renewal of the Arrangement.	The Co-operative Arrangement was signed at the HK/Shenzhen Co-operation meeting on 25 November 2011. The matter was covered in the press release on the meeting issued by the Government. The AJLS Panel was also informed of the signing of the Arrangement and its main purpose in late November 2011. The staff costs and other related expenses were absorbed from within the available resources of the Department and the expenditure in this regard cannot be separately identified.	N/A	Same as above

(b) As indicated in (a) above, we expect the relevant programmes to continue in 2017-18. In addition, we shall continue to keep in view cross-boundary projects or programmes that may be pursued to enhance Hong Kong's position as a leading centre for international legal

and dispute resolution services in the Asia-Pacific region, particularly in the context of the Belt and Road Initiative and the National 13th 5-year Plan.

(c) The Department of Justice (DoJ) has also been conducting the following Hong Kong/Mainland cross-boundary projects or programmes which aim to enhance legal co-operation in the following areas-

- (i) DoJ continues to promote legal co-operation in civil and commercial matters between Hong Kong and the Mainland, so as to facilitate the resolution of civil and commercial disputes in a more cost-effective manner. DoJ will continue to monitor the implementation of the existing legal arrangements with the Mainland.
- (ii) DoJ has also been discussing with the Mainland authorities a proposed arrangement on mutual recognition and enforcement of judgments in relevant matrimonial matters. This initiative is generally supported by the legal and dispute resolution communities and the relevant stakeholders. DoJ will continue to discuss with the Mainland side on the proposed arrangement and the LegCo AJLS Panel, which has all along been kept informed, will be provided with updates on the relevant development in the second quarter of 2017.
- (iii) DoJ has received and exchanged information with a number of delegations from the Mainland on matters of mutual interests. We have also worked with the relevant professional bodies and institutions as well as the relevant Mainland authorities on ways to take forward the provision of Hong Kong's international legal and dispute resolution services in the Mainland. The main objectives pursued include: the extension of the pilot areas (previously covering only Qianhai, Nansha and Hengqin) to the three cities of Shenzhen, Guangzhou and Zhuhai, where Hong Kong and Mainland law firms may operate in association in the form of partnership; promoting the use of Hong Kong law as the applicable law in commercial contracts concluded by enterprises conducting business in the Mainland, such as in new development areas like Qianhai in Shenzhen (except in obviously inappropriate situations, such as the sale and purchase of real estate in the Mainland); and designating Hong Kong as the seat of arbitration should disputes arise.
- (iv) We have been working and will continue to work in collaboration with the relevant Economic and Trade Offices of the Hong Kong Special Administrative Region (HKSAR) Government in the Mainland as well as the legal and dispute resolution services sectors of Hong Kong in organising and participating in promotional events in various Mainland cities. For example, in November 2016, DoJ co-organised with Hong Kong's legal and arbitration institutions the latest (4th) biennial Legal Services Forum in Nanjing.

The staff costs and other related expenses for the programmes and initiatives mentioned in (b) and (c) above have been and will be absorbed from within the available resources of the

Department and the estimated expenditure for this specific area of activity cannot be separately identified.

- End -

CONTROLLING OFFICER'S REPLY**SJ007****(Question Serial No. 5463)**Head: (92) Department of JusticeSubhead (No. & title): (-) Not SpecifiedProgramme: (-) Not SpecifiedControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

Please give details of the duty visits of the Secretary for Justice for the past year by setting out the following information for each trip in chronological order: (a) purpose and place; (b) titles of local officials met; (c) number of Hong Kong officials in entourage and their post titles; (d) length of the trip; as well as (e) total expenses involved; and (i) transportation expenses (air tickets and local transportation); (ii) accommodation expenses; (iii) meal expenses; (iv) banquet or entertainment expenses; and (v) gift expenses.

Date	(a)	(b)	(c)	(d)	(e)	(i)	(ii)	(iii)	(iv)	(v)

Asked by: Hon CHEUNG Chiu-hung, Fernando (Member Question No. 1039)Reply:

Relevant information on the overseas duty visits of the Secretary for Justice in the past year (2016-17) is as follows -

Date of visit ^{Note 1}	Place of visit	Size of entourage ^{Note 2}	Purpose of visit	Hotel accommodation expenses	Transportation expenses	Other expenses	Total Expenditure ^{Note 3}
2016-17 (13 times)	Australia (Sydney, Brisbane, Melbourne and Gold Coast) Thailand (Bangkok), Korea (Seoul), United Arab Emirates (Dubai), Beijing,	1-2	To lead delegation to promote Hong Kong as a centre for international legal and dispute resolution services in the Asia Pacific region, strengthen mutual relationship, attend meetings	About \$80,000	About \$360,000	About \$116,000	About \$556,000

	Shanghai, Shenzhen, Shenzhen Qianhai, Zhengzhou, Chongqing, Nanjing		and events with relevant officials and representatives from legal / dispute resolution / business sectors (e.g. 4 th Hong Kong Legal Services Forum, 5 th Asia Pacific ADR ^{Note 4} Conference, Chartered Institute of Arbitrators International Conference 2017, 2016 Annual Meeting of the Chinese Judicial Studies Association, Signing Ceremony of the Agreement on Mutual Taking of Evidence in Civil and Commercial Matters between the Courts of the Mainland and the Hong Kong Special Administrative Region with the Supreme People's Court, Opening Ceremony of the new office of the Shenzhen Court of International Arbitration				
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Remarks:

- Note 1 Except for visit to multiple cities, the duty visits were day trips or short trips of three days or less.
- Note 2 The entourage usually comprised Administrative Assistant and/or Press Secretary to the Secretary for Justice.
- Note 3 Total expenditure includes charges for accommodation and passage, subsistence allowance for duty outside Hong Kong and sundry expenses (if applicable).
- Note 4 “ADR” is the acronym for “Alternative Dispute Resolution”.

No expenses for overseas official entertainment were incurred in 2016-17.

In line with the Government's green policy, public officers should as far as possible refrain from bestowing gifts/souvenirs to others during the conduct of official activities. According to the existing guidelines, where bestowal of gifts/souvenirs is necessary or unavoidable due to operational, protocol or other reasons, the gift/souvenir items should not be lavish or extravagant and the number should be kept to a minimum. Also, the exchange of

gifts/souvenirs should only be made from organisation to organisation. We do not specifically maintain separate accounts for gift and souvenir expenses.

- End -

CONTROLLING OFFICER'S REPLY

SJ008

(Question Serial No. 5464)

Head: (92) Department of Justice

Subhead (No. & title): (234) Court costs

Programme: (1) Prosecutions

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

- (1) What were the numbers of cases in which the Government applied for a review of decisions over the past 5 years?
- (2) Regarding the cases for which applications were made for a review of decisions, what were the reasons for the Government's decision to seek a review for each of them?
- (3) As regards the cases in which the Government applied for a review of decisions, what were the respective numbers of cases with the sentences upheld, enhanced or reduced by the court?

Asked by: Hon CHEUNG Chiu-hung, Fernando (Member Question No. 1040)

Reply:

The Secretary for Justice may apply to the court in appropriate cases for the review of a sentence on the basis that it has proceeded on an error of law or of principle or that it is manifestly inadequate or excessive. The number of cases in which the Government applied for a review of sentence under section 81A of the Criminal Procedure Ordinance, Cap. 221 over the past 5 years and their results (whether sentences were upheld, enhanced or reduced by the court) are set out below –

	Year				
	2012	2013	2014	2015	2016
Upheld	1	-	-	-	-
Enhanced	5	3	6	1	2
Reduced	-	-	-	-	-
Others	1 (application withdrawn)	1 (sentence quashed; hence no further action)	-	-	3 (hearing date not yet fixed)
Total number of “review of sentence” applications made	7	4	6	1	5

- End -

CONTROLLING OFFICER'S REPLY

SJ009

(Question Serial No. 5635)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (1) Prosecutions

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Against how many cases involving sexual abuse of “mentally incapacitated” persons were formal prosecutions instituted in the past 5 years? What were the numbers of convictions?

Asked by: Hon CHEUNG Chiu-hung, Fernando (Member Question No. 3033)

Reply:

We do not keep statistics on cases involving sexual abuse of “mentally incapacitated” persons. However, a number of provisions under the Crimes Ordinance (Cap. 200) are relevant to sexual offences involving mentally incapacitated persons, including –

- section 118E (Buggery with mentally incapacitated person)
- section 118I (Gross indecency by man with male mentally incapacitated person)
- section 125 (Intercourse with mentally incapacitated person)
- section 128 (Abduction of mentally incapacitated person from parent or guardian for sexual act)
- section 133 (Procurement of mentally incapacitated person to have unlawful sexual intercourse)
- section 136 (Causing or encouraging prostitution of mentally incapacitated person)
- section 142 (Permitting mentally incapacitated person to resort to or be on premises or vessel for intercourse, prostitution or homosexual act)

Information available on these offences are provided below -

Provisions under Cap. 200		Year of case concluded				
		2012	2013	2014	2015	2016 (up to third quarter)
Section 118E	Not convicted	0	0	0	0	0
	Convicted	1	0	0	0	0
	Total	1	0	0	0	0
Section 118I	Not convicted	0	0	0	0	1
	Convicted	0	0	0	0	0
	Total	0	0	0	0	1
Section 125	Not convicted	1	2	1	3	1
	Convicted	6	4	2	2	3
	Total	7	6	3	5	4
Sections 128, 133, 136 and 142	Not convicted	No case during the period concerned				
	Convicted					
	Total					

- End -

CONTROLLING OFFICER'S REPLY

SJ010

(Question Serial No. 6419)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (1) Prosecutions

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Please provide a detailed breakdown of the following information and the nationality and male to female ratio involved for the past 5 years:

- 1) Criminal proceedings related to domestic violence:
 - 1.1) The number of successful prosecutions with a breakdown by penalty (e.g. length of sentence, service orders and orders of binding over issued, etc.).
 - 1.2) The number of unsuccessful prosecutions and the reasons.
- 2) The number of criminal proceedings related to domestic violence where prosecutions were not pursued and the reasons.
- 3) The number of criminal proceedings related to domestic violence where the victims withdrew support for the prosecution.
- 4) The number of criminal proceedings related to domestic violence with the further charge of “attempting to pervert the course of public justice”.
- 5) The respective numbers of criminal proceedings related to domestic violence which involved assault, inflicting an injury or threatening to injure.
- 6) The number of criminal proceedings related to domestic violence which involved deaths with a breakdown by male to female ratio, age and nationality of the deceased.
- 7) The number of criminal proceedings related to domestic conflicts/disputes:
 - 7.1) The number of successful prosecutions with a breakdown by penalty (e.g. length of sentence, service orders and orders of binding over issued, etc.); the number of unsuccessful prosecutions and the reasons.

Asked by: Hon CHEUNG Chiu-hung, Fernando (Member Question No. 1764)

Reply:

Information available is provided below -

(1), (2) & (7)

The number of domestic violence / domestic conflicts or disputes cases which were concluded with a breakdown by prosecution result and year of arrest are as follows -

Prosecution Result	Year of Arrest				
	2012	2013	2014	2015	2016
Unsuccessful Prosecutions@	394	392	361	275	260
Total number of Conviction	177	165	163	192	186
Immediate imprisonment*	53	36	40	44	36
Probation Order	25	11	25	28	24
Community Service Order	13	17	10	17	18
Suspended Imprisonment	32	64	55	68	70
Bound-over / Conditional Discharge	5	1	0	0	1
Others#	49	36	33	35	37
Total	571	557	524	467	446

@Remarks - Including those prosecutions not further taken forward.

*Remarks - Not including life imprisonment.

#Remarks - Including life imprisonment.

The number of domestic violence / domestic conflicts or disputes cases which were concluded with the male to female ratio to persons convicted and year of arrest are as follows -

Gender	Year of Arrest				
	2012	2013	2014	2015*	2016
Male	157 (88.7%)	144 (87.3%)	142 (87.1%)	180 (93.8%)	167 (89.8%)
Female	20 (11.3%)	21 (12.7%)	21 (12.9%)	12 (6.3%)	19 (10.2%)
Total	177 (100%)	165 (100%)	163 (100%)	192 (100%)	186 (100%)

*Remarks - Percentages do not add up to 100% due to rounding.

The number of convicted domestic violence / domestic conflicts or disputes cases which were concluded involving immediate imprisonment sentenced (but not including life imprisonment) with a breakdown by the duration of imprisonment and year of arrest are as follows -

Duration of Imprisonment	Year of Arrest				
	2012	2013	2014	2015	2016
Six months or less	48	32	37	41	30
Over six months to one year	2	0	1	2	2
Over one year	3	4	2	1	4
Total	53	36	40	44	36

The Government does not maintain statistics on nationality and reasons for unsuccessful prosecution or prosecution not pursued.

(3) & (4) The Government does not maintain information on criminal proceedings related to domestic violence where the victims withdrew support for the prosecution or where the further charge of “attempting to pervert the course of public justice” was involved.

(5) The number of criminal cases reported to the Police related to domestic violence which involved wounding / serious assault, criminal intimidation and other criminal cases are as follows -

Domestic Violence (Crime) cases	2012	2013	2014	2015	2016
Wounding / serious assault	1 145	1 101	948	862	879
Criminal intimidation	515	443	419	358	340
Other criminal cases*	342	326	302	244	290
Total	2 002	1 870	1 669	1 464	1 509

* Remarks - Other criminal cases include murder / manslaughter, rape, arson, indecent assault, fighting in public place, criminal damage and possession of offensive weapon, etc.

(6) The number of criminal cases reported to the Police related to domestic violence which involved murder / manslaughter are as follows -

	2012	2013	2014	2015	2016
Murder / manslaughter Total	9	8	5	4	6

The Government does not maintain statistics on male to female ratio, age and nationality of the deceased.

- End -

CONTROLLING OFFICER'S REPLY

SJ011

(Question Serial No. 6421)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (1) Prosecutions

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Please provide a detailed breakdown of the following information and the nationality and male to female ratio involved for the past 5 years:

- 1) Criminal proceedings related to sexual violence:
 - 1.1) The number of successful prosecutions with a breakdown by penalty (e.g. length of sentence, service orders and orders of binding over issued, etc.).
 - 1.2) The number of unsuccessful prosecutions and the reasons.
- 2) The number of criminal proceedings related to sexual violence where prosecutions were not pursued and the reasons.
- 3) The number of criminal proceedings related to sexual violence where the victims withdrew support for the prosecution.
- 4) The number of criminal proceedings related to sexual violence with the further charge of “attempting to pervert the course of public justice”.
- 5) The respective numbers of criminal proceedings related to sexual violence which involved assault, inflicting an injury or threatening to injure.
- 6) The number of criminal proceedings related to sexual violence which involved deaths with a breakdown by male to female ratio, age and nationality of the deceased.
- 7) The number of civil proceedings related to sexual harassment:
 - 7.1) The number of successful prosecutions and claims.
 - 7.2) The number of unsuccessful prosecutions and the reasons.

Asked by: Hon CHEUNG Chiu-hung, Fernando (Member Question No. 1762)

Reply:

Information available is provided below -

(1) The number of prosecutions and convictions under section 118 (Rape) of the Crimes Ordinance (Cap. 200) are listed as follows -

	Year of case concluded				
	2012	2013	2014	2015	2016 (up to third quarter)
Not convicted	28	44	26	23	18
Convicted	20	18	17	10	4
Total	48	62	43	33	22

The number of prosecutions and convictions under section 122 (Indecent assault) of the Crimes Ordinance (Cap. 200) are listed as follows -

	Year of case concluded				
	2012	2013	2014	2015	2016 (up to third quarter)
Not convicted	178	194	145	124	90
Convicted	441	376	328	275	205
Total	619	570	473	399	295

The Government does not maintain statistics on nationality, male to female ratio, penalty or reasons for unsuccessful prosecution.

(2) to (6) The Government does not maintain requested information on criminal proceedings related to sexual violence.

(7) As the Department of Justice is not generally involved in those civil litigation cases involving sexual harassment between members of the public, we are not able to provide the required statistics.

- End -

CONTROLLING OFFICER'S REPLY

SJ012

(Question Serial No. 6424)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (1) Prosecutions

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Please provide a detailed breakdown of the following information and the nationality involved for the past 5 years:

- 1) Criminal proceedings related to transgender persons :
 - 1.1) The number of successful prosecutions with a breakdown by penalty (e.g. length of sentence, service orders and orders of binding over issued, etc.).
 - 1.2) The number of unsuccessful prosecutions and the reasons.
- 2) The number of criminal proceedings related to transgender persons where prosecutions were not pursued and the reasons.
- 3) The number of criminal proceedings related to transgender persons where the victims withdrew support for the prosecution.
- 4) The number of criminal proceedings related to transgender persons with the further charge of “attempting to pervert the course of public justice”.
- 5) The respective numbers of criminal proceedings related to transgender persons which involved assault, inflicting an injury or threatening to injure.
- 6) The number of criminal proceedings related to transgender persons which involved deaths with a breakdown by age and nationality of the deceased.
- 7) The number of civil proceedings related to transgender persons:
 - 7.1) The number of successful prosecutions and claims.
 - 7.2) The number of unsuccessful prosecutions and the reasons.

Asked by: Hon CHEUNG Chiu-hung, Fernando (Member Question No. 1765)

Reply:

As the prosecution authority, our objective is to see that appropriate cases are presented fairly to the court. The gender of parties involved in a criminal case is taken into account in the handling of the case if but only if that is of direct relevance to the merit of the case and hence our prosecutorial decision.

Similarly, as the department responsible for representing the Government in courts in civil cases, the gender of individuals involved in a civil case is taken into account in the handling of the case if but only if that is of direct relevance to the subject matter and hence how the case is handled.

We do not keep statistics on cases related to transgender persons.

- End -

CONTROLLING OFFICER'S REPLY

SJ013

(Question Serial No. 6428)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (-) Not Specified

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

- 1) Please list the number of applications for injunctions related to domestic violence and sexual violence in the last 5 years as well as the average time taken to handle these applications.
- 2) Please list the number of applications for custody orders in emergency cases related to domestic violence and sexual violence in the last 5 years as well as the average time taken to handle these applications.
- 3) Please list the number of applications for habeas corpus related to domestic violence and sexual violence in the last 5 years as well as the average time taken to handle these applications.

Asked by: Hon CHEUNG Chiu-hung, Fernando (Member Question No. 1763)

Reply:

The Department of Justice is not generally involved in applications by the individuals concerned for injunctions involving domestic violence or sexual violence, or applications for custody orders in emergency cases involving domestic violence or sexual violence. Injunction applications are generally made by the parties concerned, while applications for custody orders may be made by the parties concerned or by the Social Welfare Department or the Police as the case may be. We are therefore not able to provide the relevant statistics. We also do not maintain statistics on applications for habeas corpus related to domestic violence and sexual violence.

- End -

CONTROLLING OFFICER'S REPLY

SJ014

(Question Serial No. 6446)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (-) Not Specified

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Please provide a detailed breakdown of the following information for the past 5 years:
In respect of services for male batterers, what was the designated funding for such services?
What was the work involved? What is the designated funding for the coming year? How
many cases were involved and how many were there in which the batterers were mandated
by the court to receive such services?

Asked by: Hon CHEUNG Chiu-hung, Fernando (Member Question No. 1779)

Reply:

The function of the Department of Justice is, inter alia, to represent the Government in
courts. The provision of services for batterers does not fall within our purview. We are also
not aware of criminal cases or civil cases handled by the Department in which batterers
were mandated by the court to join a Batterer Intervention/Treatment Programme.

- End -

CONTROLLING OFFICER'S REPLY**SJ015****(Question Serial No. 6616)**Head: (92) Department of JusticeSubhead (No. & title): (-) Not SpecifiedProgramme: (-) Not SpecifiedControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

Please set out the monthly salaries, allowances and other expenses of the Secretary for Justice, Mr Rimsky Yuen, SC, in the past 5 years, the monthly pension he will receive on retirement and the total expenditure on his pension.

Asked by: Hon CHEUNG Chiu-hung, Fernando (Member Question No. 2242)Reply:

The monthly salaries and non-accountable entertainment allowance of Mr Rimsky Yuen, SC since he assumed office as Secretary for Justice in July 2012 are set out below.

	Cash Remuneration (per month)	Non-accountable entertainment allowance (per month)
July 2012 to March 2013	\$291,985	\$16,000
April 2013 to March 2014	\$291,985	\$16,658
April 2014 to March 2015	\$291,985 (\$308,585 wef February 2015)	\$17,375
April 2015 to March 2016	\$308,585	\$18,142
April 2016 to March 2017	\$308,585	\$18,683

The terms of employment and conditions of service for Politically-Appointed Officers serving the fourth term of Hong Kong Special Administrative Region Government, including the Secretary for Justice, do not attract any pension benefits. Apart from the mandatory provident fund contribution made by the Government, the Secretary for Justice and other Politically-Appointed Officers are not entitled to a monthly pension on retirement.

- End -

CONTROLLING OFFICER'S REPLY

SJ016

(Question Serial No. 0908)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (1) Prosecutions

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

1. What were the actual numbers of cases in 2015 and 2016 that upon receipt of enquiries from law enforcement agencies, advice could not be provided within 14 working days or, for a complex case, interim reply could not be provided within 14 working days?
2. Regarding the above cases to which advice was not provided in accordance with the target, how many were related to the illegal Occupy Central movement and the violent Occupy Mong Kok movement?
3. Regarding the above cases to which advice was not provided in accordance with the target, please give a breakdown of the number of cases by law enforcement agency and the nature of the cases requesting advice.

Asked by: Hon CHOW Ho-ding, Holden (Member Question No. 33)

Reply:

- (1) The Prosecutions Division at all times strives to provide legal advice to law enforcement agencies as quickly as practically possible. The actual time taken to provide substantive advice on individual cases would however depend on a number of factors, including the nature and complexity of the case, and the quantity of the evidence and materials involved. In 2015 and 2016, the total number of request for written legal advice received were 12 098 and 12 312 respectively. Of these requests, substantive advice was provided within 14 days for 9 045 (or 74.8%) of them in 2015, and 9 158 (or 74.4%) in 2016. For those cases where legal advice could not be provided within 14 working days, the Department had issued 2 384 and 2 418 interim replies within 14 working days in 2015 and 2016 respectively. There were also 669 cases and 736 cases in 2015 and 2016 respectively with which interim replies were not provided within 14 working days. To achieve better compliance with our performance pledge, we will continue to strengthen our monitoring system and remind counsel to handle requests for advice with due regard to the response time pledged.

We will continue to closely monitor the compliance trend and provide additional resources to the relevant teams for handling complicated cases or requests, where necessary.

- (2) and (3) The Government does not maintain breakdown of the above figures in respect of cases related to the “Occupy Movement” and the incident involving violence in the early hours of 9 February 2016 in Mong Kok, or by law enforcement agencies or nature of cases requesting advice.

- End -

CONTROLLING OFFICER'S REPLY

SJ017

(Question Serial No. 2169)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (2) Civil

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

(1) Regarding the oath-taking incident last year, please set out the total expenditure for the judicial review initiated by the Government against LEUNG Chung-hang, Sixtus and YAU Wai-ching (HCAL 185/2016), and the respective expenditure involved in respect of Government Counsel and briefed outside barristers or solicitors.

(2) Please set out the estimated expenditure for the judicial review initiated by the Government against LEUNG Kwok-hung, LAW Kwun-chung, Nathan, YIU Chung-yim and LAU Siu-lai, and the respective estimated expenditure involved in respect of Government Counsel and briefed outside barristers or solicitors.

Asked by: Hon CHU Hoi-dick (Member Question No. 56)

Reply:

- (1) The total expenditure for the concerned legal proceedings is yet to be finalised in view of their pending applications for leave to appeal to the Court of Final Appeal (in respect of the judgment of the Court of Appeal). The final amount of expenditure involved will be subject to development of the cases concerned and is not entirely within the control of the Department of Justice (DoJ).
- (2) The estimated expenditure for the concerned legal proceedings is not yet available as the legal proceedings before the Court of First Instance are still on-going. The final amount of expenditure involved will be subject to development of the cases concerned and is not entirely within the control of DoJ.

It is also relevant to note that the Civil Division of the DoJ deals with all civil litigation and tribunal work involving the Government. The legal proceedings in question are mainly

handled by the Civil Division which may seek inputs or advice from other divisions in the DoJ and/or outside Counsel instructed. As such, while in general the legal proceedings come under the purview of the Civil Division, the officer or the team of officers involved in advising or handling the different aspects of the proceedings may vary depending on, for example, the nature of the issues, the complexity, etc. The expenditure in this regard cannot be separately identified.

- End -

CONTROLLING OFFICER'S REPLY**SJ018****(Question Serial No. 2357)**Head: (92) Department of JusticeSubhead (No. & title): (-) Not SpecifiedProgramme: (1) ProsecutionsControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

Would the Department of Justice (DoJ) inform this Committee of the following:

- (1) the respective expenditure of DoJ on instructed barristers and solicitors in respect of the Magistrates' Court, the District Court and the Court of First Instance in the past 5 years in table form by year;
- (2) the average expenditure on cases conducted by instructed barristers and solicitors in the past 5 years in table form by year;
- (3) a detailed explanation of the conditions and criteria for deciding to engage barristers or solicitors in private practice.

Asked by: Hon CHU Hoi-dick (Member Question No. 54)Reply:

- (1) The briefing out expenditures for criminal cases in respect of the Magistrates' Court, the District Court and the Court of First Instance in the past 5 years are tabulated below –

Level of Court	Briefing Out expenditure (in HKD)				
	2012-13	2013-14	2014-15	2015-16	2016-17 (as at 31.1.2017)
Magistrates' Courts	37,345,990	49,528,803	52,028,547	56,031,068	47,428,984
District Courts	27,563,769	27,855,105	26,755,558	25,888,373	20,229,105
Court of First Instance	12,790,246	27,073,166	69,062,100	27,328,630	20,001,800

- (2) We do not maintain separate breakdown of cases briefed out to barristers and solicitors, or the average involved in cases briefed out. Moreover, the expenditure for briefing out varies from case to case, depending on its complexity, number of defendants involved,

number of trial days, the need for expert witnesses to testify, etc. It is therefore neither appropriate nor helpful to make a comparison amongst briefed out cases solely on the basis of their expenditure. Further, it is also not possible to provide the average briefing out expenditure for cases at the magistracy level because fiat counsel engaged to prosecute in the Magistrates' Court in place of Court Prosecutors are required to attend to all cases before a particular magistrate on each day or half day, hence their engagement is on court-day basis rather than case-base.

- (3) In general, the DoJ may resort to briefing-out when –
- (a) there is a need for expert assistance where the requisite skill is not available in the DoJ;
 - (b) there is no suitable in-house counsel to appear in court for the Hong Kong Special Administrative Region;
 - (c) the size, complexity, quantum and length of a case so dictate;
 - (d) it is deemed appropriate to obtain independent outside counsel's advice or services so as to address possible perception of bias or issues of conflict of interests;
 - (e) there is a need for continuity and economy, e.g. where a former member of the DoJ who is uniquely familiar with the subject matter is in private practice at the time when legal services are required; and
 - (f) there is a need for independent advice or services in respect of matters or proceedings involving members of the DoJ.

- End -

CONTROLLING OFFICER'S REPLY**SJ019****(Question Serial No. 3286)**Head: (92) Department of JusticeSubhead (No. & title): (-) Not SpecifiedProgramme: (1) ProsecutionsControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

Please advise (i) the number of prosecutions, (ii) the salaries and allowances for staff and (iii) the government rent involved in respect of the offence of “failing to put dogs on leash or under control in public places” under section 23 of the Rabies Ordinance (Cap. 421) in the past 5 years.

Asked by: Hon CHU Hoi-dick (Member Question No. 37)Reply:

Given the nature of the cases in respect of the offence of “failing to put dogs on leash or under control in public places” under section 23 of the Rabies Ordinance (Cap. 421), the prosecution of these cases is mostly handled by way of summons issued by the relevant enforcement agencies. The Agriculture, Fisheries and Conservation Department (AFCD) is the key enforcement agency in handling these cases. For cases which are more complicated or expected to involve complicated legal issues in the court proceedings, legal advice from the Department of Justice (DoJ) will be sought, and if considered necessary, the advising counsel will recommend the cases to be prosecuted by DoJ prosecutors or fiat counsel.

Statistics of the number of successful prosecutions against the offence under section 23 of the Rabies Ordinance in the past five years as maintained by AFCD are tabulated below –

	2012	2013	2014	2015	2016
Number of successful prosecutions	355	296	331	246	174

The level of involvement of DoJ in the prosecution of these cases, if any, would generally be low. In case inputs from DoJ are required, they will be handled by existing staff among their other duties and the expenditure cannot be separately identified. We are also not aware of figures being separately maintained regarding the government rent involved in the cases concerned.

- End -

CONTROLLING OFFICER'S REPLY

SJ020

(Question Serial No. 3287)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (1) Prosecutions

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Regarding the confrontation arising from the “Occupy Central Movement” in 2014 and the “Mong Kok Riot” in 2016 which illegally disrupted social order in Hong Kong, would the Government inform this Committee of:

whether the related prosecution work against the three initiators and other participants are expected to be completed within the term of the current Government?

Asked by: Hon HO Kwan-yiu, Junius (Member Question No. 10)

Reply:

The “Occupy Movement” and “Mong Kok Riot” incidents are important incidents in the history of Hong Kong. The Department of Justice (DoJ) fully understands the concern of the Hong Kong community as to how the criminal liability of those who had been suspected of unlawful conduct during the two incidents should be dealt with. As a matter of fact, DoJ and the Police have all along been actively following up the cases, with a view to dealing with the relevant matters appropriately.

Criminal procedures for various cases relating to the two incidents are taken forward in accordance with the applicable procedure, with some cases being concluded, while criminal proceedings or criminal procedures in respect of others still on-going. DoJ will continue to work with the Police to follow up on the cases, with a view to appropriately handling the relevant matters as quickly as practicable. However, since matters are not entirely within DoJ's control, it is inappropriate for us to suggest a specific timing by which the prosecution work for cases related to these two incidents would be completed.

- End -

CONTROLLING OFFICER'S REPLY**SJ021****(Question Serial No. 2640)**Head: (92) Department of JusticeSubhead (No. & title): (-) Not SpecifiedProgramme: (1) ProsecutionsControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

Please provide the following information in respect of prosecutions work:

- (a) The establishment, actual manpower and expenditure of the Prosecutions Division in 2016-17; and
- (b) The number of cases conducted by Government Counsel and by barristers or solicitors instructed to prosecute at different levels of courts in 2016-17.

Asked by: Hon HUI Chi-fung (Member Question No. 17)Reply:

- (a) The establishment and strength of the Prosecutions Division **as at 1 March 2017** are as follows -

Grades	Establishment	Strength
Government Counsel	136	124
Para-legal	133	103
Executive, Clerical and Secretarial	216	199
Total	485	426

The estimated expenditure of the Prosecutions Division for 2016-17 is about \$551 million.

(b) The number of cases conducted by Government Counsel and by barristers and solicitors instructed to prosecute at different levels of court in 2016-17 -

No. of cases conducted		2016-17 (latest figures up to 31 January 2017)	
		Government Counsel	Barristers and solicitors instructed to prosecute
Appeal Court	Court of Final Appeal	90	21
	Court of Appeal	424	6
	Magistracy Appeal	540	0
Court of First Instance		329	203
District Court		576	451
Magistracy		176	778
Death Inquest		18	0
Total		2 153	1 459

-End -

CONTROLLING OFFICER'S REPLY**SJ022****(Question Serial No. 2651)**Head: (92) Department of JusticeSubhead (No. & title): (000) Operational expensesProgramme: (-) Not SpecifiedControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

1. Please give a breakdown of the full expenditure on salary, regularly-paid allowances and job-related allowances for the Secretary for Justice in 2016-17 and the estimates for the same for 2017-18.
2. Please advise how the non-accountable entertainment allowance for the Secretary for Justice is calculated.

Asked by: Hon KWOK Ka-ki (Member Question No. 49)Reply:

The estimates for the salaries and non-accountable entertainment allowance of the Secretary for Justice in 2016-17 and 2017-18 are set out below -

	Salary (\$ million)	Non-accountable entertainment allowance (\$ million)
2016-17 (Revised Estimates)	3.70	0.22
2017-18 (Draft Estimates)	4.04	0.23

The rate of the non-accountable entertainment allowance payable is adjusted annually in accordance with the movement of the average monthly Composite Consumer Price Index (CCPI) for a 12-month period ending December as compared with that for the preceding 12-month period. For 2017-18, the allowance payable to the Secretary for Justice will be increased by 2.4% with effect from 1 April 2017 based on the CCPI movement.

- End -

CONTROLLING OFFICER'S REPLY

SJ023

(Question Serial No. 1388)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (-) Not Specified

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

It is noted in the "Information note on legal expenses for briefing out cases not covered by Approved Fee Schedules of the Department of Justice for in 2015-16" that a significant portion of the cases have been assigned to barristers from a certain set of chambers. Will the Administration inform this committee:

- (i) the fees and details of the occasions which barristers in private practice have been briefed out by Secretary for Justice and Solicitor General in 2016-17;
- (ii) the reasons for assigning a significant proportion of work to this one set of chambers;
- (iii) whether the Administration has an internal policy in tendering the above-mentioned briefs and the details of such (if any); and
- (iv) whether the Administration will consider briefing out barristers in private practice in a more even manner among different sets of barrister chambers in 2017-18?

Asked by: Hon KWOK Wing-hang, Dennis (Member Question No. 81)

Reply:

The Department of Justice (DoJ) has been briefing out certain criminal and civil cases, according to fee schedules approved by the Finance Committee, or at negotiated fees having regard to the circumstances of the case. Briefing out is mainly to meet operational needs. Generally speaking, the DoJ may resort to briefing out when -

- (a) there is a need for expert assistance where the requisite skill is not available in the DoJ;
- (b) there is no suitable in-house counsel to appear in court for the Hong Kong Special Administrative Region;
- (c) the size, complexity, quantum and length of a case so dictate;
- (d) it is deemed appropriate to obtain independent outside counsel's advice or services so as to address possible perception of bias or issues of conflict of interests;

- (e) there is a need for continuity and economy, e.g. where a former member of the DoJ who is uniquely familiar with the subject matter is in private practice at the time when legal services are required; and
- (f) there is a need for independent advice or service in respect of matters or proceedings involving members of the DoJ.

Further, where appropriate, some criminal cases are briefed out with the objective, among others, of promoting a strong and independent local Bar by providing work, particularly to the junior Bar, and of securing a pool of experienced prosecutors to supplement those within the DoJ. This practice is also intended to help change the commonly-held perception that all prosecutors must be Government lawyers whereas the private Bar can represent only the defence in criminal cases.

Our specific response to the question is as follows -

- (i) During the financial year of 2016-17 (up to 28 February 2017), the DoJ paid out a total of \$238,690,648 as briefing out expenses. The breakdown of the expenditure is as follows -

Payment for hire of legal services and related professional fees[#]

(a)	Briefing out of cases according to approved fee schedule [*]	\$84,648,816
(b)	Briefing out of cases at fees not covered by the approved scales	\$104,704,969
		<u>\$189,353,785</u>

Payment for legal services for construction dispute resolution[#]

(c)	Briefing out of construction dispute resolution cases at fees not covered by approved scales	\$49,336,863
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Total expenditure for 2016-17 (up to 28 February 2017)	<u>\$238,690,648</u>
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[#] We do not maintain separate breakdown for payments to barristers only.

^{*} The approved scale of fee is only for criminal cases. It is not possible to fix scale fees for construction or other civil cases which vary by complexity and nature.

Regarding payment under (a) above, the amount of \$84,648,816 incurred in the financial year of 2016-17 (up to 28 February 2017) involved 1 572 cases conducted by fiat counsel instead of Government counsel, plus 5 090 court days undertaken by fiat counsel to prosecute instead of court prosecutors.

Regarding payment under (b) above, the DoJ briefs out various matters which are not covered by the approved scale of fees to lawyers, accountants, expert witnesses,

consultants and appointed arbitrators. The amount of \$104,704,969 incurred in the financial year of 2016-17 (up to 28 February 2017) involved 518 cases.

As regards payment under (c) above, the DoJ briefs out various matters which are not covered by any approved scale of fees to private practitioners engaged to undertake specialised work relating to construction dispute resolution. The amount of \$49,336,863 incurred in the financial year of 2016-17 (up to 28 February 2017) involved 13 cases.

- (ii) and (iii) Unless under special circumstances (e.g. the engagement of a junior counsel for a selected senior counsel in the same chambers for better work efficiency where the circumstances so require), the chamber to which a counsel belongs is not one of the considerations of selecting a briefed out counsel. As such, we do not keep separate records on the sets of chambers involved.
- (iv) The selection of briefed out counsel is made in accordance with established internal guidelines on briefing out. For briefing out according to approved fee schedules (i.e. items under (i)(a) above)), cases are assigned to fiat counsel on a rotation basis. For briefing out not covered by approved fee schedules (i.e. items under (i)(b) and (c) above)), outside counsel are selected based on established selection criteria including the briefed out counsel's years of experience and suitability in terms of areas of expertise and availability for the case concerned. The level of fees charged by the briefed out counsel is also one of the factors to be taken into account, as public money is involved. We will continue to brief out counsel in private practice in accordance with these guidelines to ensure the propriety of the process.

- End -

CONTROLLING OFFICER'S REPLY

SJ024

(Question Serial No. 1390)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (3) Legal Policy

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

It is noted that the Department of Justice Civil Division advises on legal aspects of government projects, including the Guangzhou-Shenzhen-Hong Kong Express Rail Link. In relation to the co-location arrangement for the Express Rail Link, please inform this committee whether the Administration has advised any bureau and/or government department on the matter in 2016-2017 and the details of such, including but not limited to (i) the size establishment and the ranks of the team responsible for the provision of advice; (ii) the number of times and dates which the Administration has given advice on the matter and to which bureaus and/or government departments; and (iii) the contents of the advice.

Asked by: Hon KWOK Wing-hang, Dennis (Member Question No. 74)

Reply:

The Department of Justice advises Government bureaux and departments on legal issues as required from time to time, including those arising from projects under their purview. The co-location arrangement in respect of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (XRL) project (primarily under the purview of the Transport and Housing Bureau) is one such example. Such legal advice has been and will be, from time to time, tendered among other advisory duties of the Department and the relevant manpower resources/work involved therefore cannot be separately identified.

Relevant Government bureaux and departments (including the Transport and Housing Bureau, Security Bureau, Constitutional and Mainland Affairs Bureau and the Department of Justice) have been studying the implementation of co-location, and have held discussions with relevant Mainland authorities, with a view to implementing a co-location arrangement consistent with the Basic Law and the "One Country, Two Systems" policy at the commissioning of the XRL. The Government will provide such information as appropriate when it is in a position so to do to the public and the Legislative Council in due course.

- End -

CONTROLLING OFFICER'S REPLY**SJ025****(Question Serial No. 1392)**Head: (92) Department of JusticeSubhead (No. & title): (-) Not SpecifiedProgramme: (-) Not SpecifiedControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

The Prosecution Code expressly states that a prosecutor should refer to international standards and practices concerning victims of trafficking in appropriate cases where there is a credible claim that a defendant or intended defendant is a victim of trafficking (para 18.2 of the Prosecution Code). In this regard, will the Administration inform this committee:

- (i) whether there were any criminal cases of abovementioned (irrespective of whether a prosecution was made) in the past three years and the relevant details;
- (ii) whether the Department of Justice has a designated team of officers focusing on issues related to human trafficking and the its details (if any), such as its size establishment and scope of work;
- (iii) whether the Administration has any plan to adopt international conventions related to human trafficking, such as the Protocol to Prevent, Suppress and Punish Trafficking in Persons (the Palermo Protocol); and
- (iv) whether it will consider criminalising acts of human trafficking (on top of section 129 of the Crimes Ordinance criminalising human trafficking for prostitution purposes) and the legislative timetable for such? If not, the reasons.

Asked by: Hon Dennis Kwok (Member Question No. 72)Reply:

- (i) Human exploitation refers to a collection of cases, of which the offenders have been prosecuted with different offences, and we have not maintained statistics on them. That said, some enforcement statistics in relation to sex trafficking offences are hereby appended for reference : during January to September 2016, there were 18 convictions on various offences relating to sex trafficking under the Crimes Ordinance (Cap. 200) including (a) trafficking in persons to or from Hong Kong (section 129); (b) control over persons for purpose of prostitution (section 130); (c) causing prostitution (section 131); and (d) living on earnings of prostitution of others (section 137).
- (ii) In early 2013, the Prosecutions Division of the Department of Justice appointed a Coordinator of Human Exploitation Cases. Her responsibility includes, inter alia,

being notified of any cases submitted to the Division for legal advice which have human exploitation/trafficking connotations. The progress of such cases could then be coordinated and monitored holistically with proper attention be paid to the issues of human trafficking/exploitation.

- (iii) and (iv) Most specific conduct within the meaning of “human trafficking” in the Palermo Protocol is caught by various existing common law and statutory offences, including : Part XII of the Crimes Ordinance (Cap. 200) (on “Sexual and Related Offences” and “Exploitation of other persons for sexual purposes”), the Crimes Ordinance (sections 118, 122-127, 130-137), Immigration Ordinance (Cap. 115), Protection of Children and Juvenile Ordinance (Cap. 213), Employment Ordinance (Cap. 57), Offences against the Persons Ordinance (Cap. 212) and Prevention of Child Pornography Ordinance (Cap. 579). The existing laws are extensive and detailed. They have been flexibly and effectively used over the years to combat various forms of human trafficking and exploitation such as physical abuse, false imprisonment, criminal intimidation, unlawful custody of personal valuables, child abduction, child pornography and exploitation of children, illegal employment, withholding of wages, rest days, statutory holidays, etc.

- End -

CONTROLLING OFFICER'S REPLY

SJ026

(Question Serial No. 1737)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (3) Legal Policy

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

It is noted that the Department of Justice Legal Policy Division is responsible for providing legal advice on the Basic Law. In this relation, would the Administration further inform this committee:

- (i) whether the same division is responsible for advising the government bureaux, the government departments and the government officials on constitutional affairs in judicial review cases and in relation to the government officials' conduct while attending meetings of the Legislative Council;
- (ii) the extent of the Secretary for Justice's direct involvement in advising the Chief Executive on constitutional matter;
- (iii) the extent of the Secretary for Justice's direct involvement in advising the politically appointed officers on constitutional matter, particularly the Chief Secretary and the Financial Secretary;
- (iv) the number of times which the Department of Justice has given the Chief Executive, the Chief Secretary, the Secretary for Finance and other politically appointed officers advice on constitutional affairs, whether the Department of Justice gave the advice upon request by the government official, the identity of the government officials concerned and the dates of the relevant advice.
- (v) that on 5 December 2016, the then Financial Secretary stated in his opening remarks at a meeting of the Panel on Financial Services that public officers including himself would not respond to the questions and comments from the four LegCo Members before the court made the final judgment pursuant to the Department of Justice's legal advice, whether the legal advice was given upon request and which government bureau or government officer requested for the legal advice?

Asked by: Hon KWOK Wing-Hang, Dennis (Member Question No. 79)

Reply:

The Department of Justice (DoJ) advises Government bureaux and departments on legal issues as required from time to time. Within the DoJ, the work of the Legal Policy Division includes, inter alia, providing advice to the Government on the Basic Law as well as the Legislative Council procedures and practice. As regards the conduct of judicial review cases and matters incidental thereto, the Civil Division of the Department is the division having the primary responsibility. However, where necessary or desirable, the Legal Policy Division and the Civil Division will work together so as to provide the requisite legal services.

The Secretary for Justice is the head of the DoJ. As one of the Principal Officials of the Hong Kong Special Administrative Region (HKSAR) Government, the Secretary for Justice discharges a wide range of duties. Chief among these is to act as the principal legal advisor to the Chief Executive, to the HKSAR Government, and to Government bureaux and departments. The Secretary for Justice is also a member of the Executive Council. In this role, the Secretary for Justice provides advice to the Chief Executive and other Principal Officials of the HKSAR Government on various legal issues, including constitutional matters and matters relating to the Basic Law, as required from time to time.

Given the large volume of advice given over the very many different issues each year, the Department does not keep any statistical breakdown of the number of each piece of advice given by reference to the party seeking the advice nor the date of the advice given.

It is inappropriate to respond to questions over individual incidents engaging communications made during the course of the provision of legal advice, since such communications are covered by legal professional privilege.

- End -

CONTROLLING OFFICER'S REPLY

SJ027

(Question Serial No. 6693)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (5) International Law

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

One of the aims of the programme of International Law of the Department of Justice is to participate in the negotiation and also advise on international agreements, including those on surrender of fugitive offenders, mutual legal assistance and transfer of sentenced persons. It has also been reported that the Secretary for Justice visited Macau in July and December 2014 to negotiate with his counterpart in the Macau Government for the agreements on the surrender of fugitive offenders and mutual legal assistance in criminal matters. In this connection, will the Government inform this Committee of:

- (i) the current progress and the timetable for the establishment of a bilateral extradition agreement with Macau; and
- (ii) what other countries and jurisdictions with which the Department of Justice is currently negotiating on similar international agreements on surrender of fugitive offenders, mutual legal assistance and/or transfer of sentenced persons?

Asked by: Hon KWOK Wing-hang, Dennis (Member Question No. 82)

Reply:

- (i) Under Article 95 of the Basic Law, the Hong Kong Special Administrative Region may, through consultations and in accordance with law, maintain juridical relations with the judicial organs of other parts of the country, and they may render assistance to each other. The discussion between the Hong Kong Special Administrative Region Government (HKSARG) and the Macau Special Administrative Region Government on the proposed arrangements for surrender of fugitive offenders and mutual legal assistance is underway. Given the differences in the legal systems between the two jurisdictions and the complexity of the issues involved, the two governments are still working to sort out all relevant issues as well as to formulate the texts of the proposed arrangements which will be acceptable to both sides. There is currently no set timetable for the conclusion of the arrangements.

- (ii) So far, the HKSARG have signed 19 agreements on surrender of fugitive offenders, 31 agreements on mutual legal assistance in criminal matters and 15 agreements on transfer of sentenced persons. Except for the agreements on mutual legal assistance in criminal matters signed with Argentina and Sweden respectively, all of the agreements are in force. Negotiations are proceeding with various other jurisdictions. After initialling, the HKSARG and its negotiating partners must complete their necessary internal procedures to obtain approval to sign the agreement. Taking this into account, it is not desirable to disclose such negotiations, including the identity of the negotiating partners.

- End -

CONTROLLING OFFICER'S REPLY

SJ028

(Question Serial No. 6800)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (2) Civil

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

It is mentioned in the Estimates that the work of the Civil Division of the Department of Justice (DoJ) in 2016-17 included advising on the legal aspects of the West Kowloon Cultural District (WKCD). In this connection, would the Government inform this Committee if the DoJ provided legal advice to other government departments or officials on matters involving the development of the Palace Museum in the WKCD and/or the enhanced financial arrangement for the WKCD Authority in the past? If yes, what are the details (including the items of legal advice, date and the government departments involved)?

Asked by: Hon KWOK Wing-hang, Dennis (Member Question No. 80)

Reply:

The Department of Justice (DoJ) advises Government bureaux and departments on legal issues as required from time to time, including those concerning the West Kowloon Cultural District. It is inappropriate for DoJ to disclose details of advice given to individual Government bureaux and departments seeking legal advice, as such legal advice is covered by legal professional privilege.

- End -

CONTROLLING OFFICER'S REPLY**SJ029****(Question Serial No. 2411)**Head: (92) Department of JusticeSubhead (No. & title): (-) Not SpecifiedProgramme: (1) ProsecutionsControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

The Government is invited to advise on the following:

- 1) The details of the establishment of Government Counsel and Court Prosecutors (including the ranks, numbers of officers and salary points) and the numbers of vacancies.
- 2) The details of the briefing out of prosecution cases to barristers and solicitors in private practice in the past 3 years by using the table below.

	Barristers		Solicitors	
	Numbers of cases briefed out (breakdowns by local and overseas barristers)	The average, lowest and highest costs involved in cases briefed out	Numbers of cases briefed out (breakdowns by local and overseas solicitors)	The average, lowest and highest costs involved in cases briefed out
Magistrates' Court				
District Court				
Court of First Instance of the High Court				
Court of Appeal of the High Court				
Court of Final Appeal				

3) The Government's considerations for briefing out criminal cases, the reasons for engaging overseas barristers and solicitors, and how it ensures and enhances the efficiency and professionalism of its in-house staff in handling prosecutions?

Asked by: Hon LAM Kin-fung, Jeffrey (Member Question No. 11)

Reply:

The information sought is provided as follows -

(1) The ranking of the Government Counsel Grade, as well as the establishment and strength, vacancy and salary band of Government Counsel grade officers in the Prosecutions Division (as at 1 March 2017)

Rank	Establishment	Strength	Vacancy	Salary Band*
Law Officer	1	1	0	DL6
Principal Government Counsel	4	3	1	DL3
Deputy Principal Government Counsel	16	14	2	DL2
Assistant Principal Government Counsel	7	7	0	DL1
Senior Government Counsel	67	48	19	MPS 45-49
Government Counsel	41	51	-10 ^{Note}	MPS 32-44
Total	136	124	12	-

*DL = Directorate Legal Pay Scale

MPS = Master Pay Scale

Note: The over-strength at the Government Counsel rank denotes Government Counsel rank officers on acting appointment as Senior Government Counsel.

The ranking, establishment and strength, vacancy and salary band of Court Prosecutor grade officers (as at 1 March 2017)

Rank	Establishment	Strength	Vacancy	Salary band
Chief Court Prosecutor	2	2	0	MPS 40-44
Senior Court Prosecutor I	8	8	0	MPS 34-39
Senior Court Prosecutor II	33	29	4	MPS 28-33
Court Prosecutor	57	33	24	MPS 13-27
Total	100	72	28	-

- (2) The number of cases briefed out to Counsel instructed to prosecute at different levels of court in the past 3 years

No. of cases conducted		2014-15	2015-16	2016-17 (as at 31 Jan 2017)
Appeal Court	Court of Final Appeal	17 [including 1 overseas counsel]	7 [including 3 overseas counsel]	21 [including 2 overseas counsel]
	Court of Appeal	5 [including 3 overseas counsel]	24	6
	Magistracy Appeal	3	8	0
Court of First Instance		282	270 [including 1 overseas counsel]	203
District Court		602	627	451
Magistracy (prosecution conducted by fiat counsel in place of Government Counsel)		751 [plus 5 152 court days undertaken by fiat counsel to prosecute in place of Court Prosecutors*]	956 [plus 5 617 court days undertaken by fiat counsel to prosecute in place of Court Prosecutors*]	778 [plus 4 680 court days undertaken by fiat counsel to prosecute in place of Court Prosecutors*]
Death Inquest		2	1	0
Bail Applications		0	0	1
Total [not covering court days at the Magistracy level undertaken by fiat counsel to prosecute in place of Court Prosecutors*]		1 662 [including 4 overseas counsel]	1 893 [including 4 overseas counsel]	1,460 [including 2 overseas counsel]

**Fiat counsel engaged to prosecute in the Magistrates' Courts in place of Court Prosecutors are required to attend to all cases before a particular magistrate on each day or half day, hence their engagement is on court-day basis rather than case-base.*

We do not maintain separate breakdown of cases briefed out to barristers and solicitors, or the average involved in cases briefed out. Moreover, the expenditure for briefing out varies from case to case, depending on various factors including its complexity, number of defendants involved, number of trial days, the need for expert witnesses to testify, etc.

It is therefore neither appropriate nor helpful to make a comparison amongst briefed out cases solely on the basis of their expenditure.

- (3) In general, the DoJ may resort to briefing-out when –
- (a) there is a need for expert assistance where the requisite skill is not available in the DoJ;
 - (b) there is no suitable in-house counsel to appear in court for the Hong Kong Special Administrative Region;
 - (c) the size, complexity, quantum and length of a case so dictate;
 - (d) it is deemed appropriate to obtain independent outside counsel's advice or services so as to address possible perception of bias or issues of conflict of interests;
 - (e) there is a need for continuity and economy, e.g. where a former member of the Department who is uniquely familiar with the subject matter is in private practice at the time when legal services are required; and
 - (f) there is a need for independent advice or services in respect of matters or proceedings involving members of the DoJ.

It should be pointed out that the DoJ has been acting cautiously to ensure that cases are briefed out to overseas counsel only where circumstances so warrant, having regard to, for example, complexity regarding points of law, significant constitutional, policy or financial implications or public interest, sensitivity of the issues involved, the legal representation of the opposite party etc. Besides, admission of overseas barristers to conduct cases before the Hong Kong court is ultimately subject to the court's approval.

At the same time, we seek to enhance the efficiency and professionalism of our in-house prosecutors in handling prosecutions through various means, including the following –

- (a) the creation of an additional six Government Counsel posts in 2017-18 so as to provide additional manpower to allow counsel more opportunities to handle court work;
- (b) the continued provision of training programmes to our in-house prosecutors, including seminars on different topics under the Continuing Legal Education Programme, and talks/seminars delivered by experienced private practitioners and other professionals;
- (c) the provision of guidance to prosecutors from time to time through the issue and updating of circulars and reference materials;
- (d) maintaining coordinators or specific units for handling particular types of cases (including cases relating to public order events, human exploitation, money laundering, cybercrime, those involving vulnerable witnesses, as well as matters concerning court costs of criminal cases, so as to allow for better development of expertise within the Division in such areas of laws, and hence more effective and efficient handling of these cases; and
- (e) the continued operation of the quick advisory system known as "FAST" to promptly deal with relatively simple and straightforward cases. Legal advices processed through the system are normally provided on the same day. FAST

has proven to be extremely effective in ensuring the overall efficiency of the advisory function of the Division whilst, at the same time, reducing the workload of counsel from advisory sections to free them up for more advocacy work. It also serves as another important training ground for our in-house prosecutors, as counsel from teams other than the few advisory sections would have the opportunities to regularly handle such FAST cases which help hone and consolidate their advisory skills and legal knowledge in respect of a broad spectrum of general criminal cases.

- End -

CONTROLLING OFFICER'S REPLY

SJ030

(Question Serial No. 0429)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (-) Not Specified

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

In recent years, Government works and policies were subject to judicial reviews repeatedly. The Department of Justice had to provide legal advice to Government bureaux and departments and represent the Government in court proceedings in respect of these judicial reviews. Solicitors or barristers in private practice were also engaged to assist in handling the cases when necessary. In this connection, would the Government inform this Committee of:

- 1.) the numbers and detailed statistical breakdown of the cases in respect of judicial reviews handled by the Department of Justice in the past 5 years?
- 2.) the expenses incurred by the Government in engaging solicitors or barristers in private practice to assist in handling judicial reviews in the past 5 years? What was the amount of court costs paid as a result of adverse rulings?

Asked by: Hon LAU Ip-keung, Kenneth (Member Question No. 10)

- (1) The Department of Justice (DoJ) is responsible for providing legal advice to Government bureaux and departments, and represents the Government in courts for legal proceedings including judicial review proceedings. Where necessary, DoJ engages solicitors or barristers in private practice to provide assistance in handling cases. The number of judicial review (JR) cases handled by DoJ in the past five years is as follows –

Year	Total no. of JR cases
2012	206
2013	135
2014	172
2015	211
2016	170

- (2) The relevant briefing out expenses and court costs incurred by DoJ In respect of the handling of JR cases in the past five years are as follows –

Year	Briefing Out	Net court costs incurred Expenses (received)
2012	\$36,986,566	(\$4,428,247.3)
2013	\$28,624,329	(\$12,224,897.6)
2014	\$37,084,182	(\$8,332,797.9)
2015	\$29,187,195	\$6,285,639.0
2016	\$45,858,530	\$15,063,957.8

-End-

CONTROLLING OFFICER'S REPLY

SJ031

(Question Serial No. 0467)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (1) Prosecutions

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

The estimate for Programme (1) : Prosecutions for 2016-17 was wrong by as much as 31.9% with the revised estimate even lower than the actual expenditure in 2015-16. The estimate for 2017-18 again sees a significant increase of 39.6%, i.e. about \$240 million. In this regard, would the Government inform this Committee:

- 1) What are the reasons for the estimate for 2016-17 to go wrong by 31.9%?
- 2) What are the reasons for the significant increase of 39.6% in the estimate for 2017-18?
- 3) Regarding the net creation of 13 posts in the establishment, what are their respective areas of work?

Asked by: Hon LAU Ip-keung, Kenneth (Member Question No. 26)

Reply:

The 2016-17 revised estimate is 31.9% (or about \$287.4 million) lower than the original provision for 2016-17. The revision is mainly due to lower-than-expected court costs and briefing-out expenses for 2016-17. This does not mean that the relevant estimate is “wrong” as suggested in the question.

The annual expenditure for court costs and briefing-out varies from year to year, depending on the number of cases involved, their complexity and development. It should be noted that as the estimate was worked out based on information available at the time of preparing the estimate, the actual expenditure incurred in 2016-17 would ultimately depend on the subsequent development and outcome of the cases concerned (which are not entirely within our control).

The increase of \$243 million (or 39.6%) in provision for 2017-18 over that of the 2016-17 revised estimate is due to the anticipated increase in briefing-out expenses and court costs, filling of vacancies and net creation of 13 posts to meet operational needs.

The details of the posts to be created in 2017-18 are set out below –

Post(s)	Nature of Duties	NAMS*
Eight Government Counsel	Providing additional manpower to allow counsel more opportunities to handle court work and strengthening legal support for advisory work	\$970,860 x 8 = \$7,766,880
Two Senior Government Counsel	Strengthening legal support for handling cases related to proceeds of crime and implementing the Trade Descriptions (Unfair Trade Practices)(Amendment) Ordinance	\$1,363,920 x 2 = \$2,727,840
Three Law Translation Officer	Strengthening support to cater for the significant increase in translation work of court documents	\$970,860 x 3 = \$2,912,580
One Assistant Clerical Officer	Strengthening clerical support to handle finance and accounting matters	\$255,060
One Clerical Officer	Strengthening clerical support to handle appointment and personnel matters	\$409,020
One Workman II	Strengthening support for receipt and dispatch services	\$158,280
Offset by deletion of three time-limited posts which will lapse on 1.10.2017.		

*NAMS means notional annual mid-point salary

- End -

CONTROLLING OFFICER'S REPLY

SJ032

(Question Serial No. 5450)

Head: (92) Department of Justice

Subhead (No. & title): (000) Operational expenses

Programme: (4) Law Drafting

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Would the Government provide the information on the pilot scheme for the translation of legislation:

- (1) Which bills have been vetted under the pilot scheme up to now? During the scrutiny in the Legislative Council, were they challenged by Councillors for their translation or fluency?
- (2) When does the Government expect to conduct a review of the pilot scheme?

Asked by: Hon LAU Siu-lai (Member Question No. 3158)

Reply:

- (1) The Government places equal emphasis on the use of clear language in the Chinese and English text of legislation. The Law Drafting Division of the Department of Justice (the Division) is committed to making legislation user-friendly. One of the measures introduced as part of this commitment has been a pilot scheme involving an additional reading of the draft Chinese text in particular cases. After a drafting counsel has prepared the draft provisions, the scheme involves another officer in the Division reading the provisions to see whether the text could be made more user-friendly. This additional reading is done without reference to the corresponding English provisions. The reader will comment on the language of the draft with a view to enhancing readability and user-friendliness. The drafting counsel will then take the reader's comments into account in finalizing the draft provisions.

It is important to note that Chinese and English are official languages for use by the legislature and other entities under Article 9 of the Basic Law. Not only is it a requirement that all Ordinances are enacted and published in both official languages (section 4 of the Official Languages Ordinance (Cap. 5)), both texts are equally authentic

(section 10B of the Interpretation and General Clauses Ordinance (Cap. 1)). Neither the Chinese text nor the English text of legislation is a translation of the other and therefore the pilot scheme is not intended for the translation of legislation.

Up to now, eight legislative items have been read under the pilot scheme, namely –

- (vii) Companies (Winding Up and Miscellaneous Provisions) (Amendment) Bill 2015 (6 clauses);
- (viii) Inland Revenue (Amendment) (No.3) Bill 2015;
- (ix) Promotion of Recycling and Proper Disposal (Product Container) (Amendment) Bill 2015;
- (x) Air Pollution Control (Ocean Going Vessels)(Fuel at Berth) Regulation (Gazetted in March 2015);
- (xi) Travel Industry Bill 2017 (Parts 1 and 2) [57 pages out of the 237 page Bill];
- (vi) Inland Revenue (Amendment) (No.2) Bill 2017[41 pages];
- (vii) Private Healthcare Facilities Bill (Parts 1 to 8)[85 pages-not yet gazetted]; and
- (viii) Waste Disposal (Charging for Municipal Solid Waste) (Amendment) Bill 2017 (Parts 1 and 2) [12 pages - not yet gazetted]

We are not aware of any challenge made by Legislative Council (LegCo) Members or LegCo Legal Advisers to the Chinese text of any of the first four items during the scrutiny in the LegCo. Items (v) and (vi) are yet to be scrutinized by LegCo and items (vii) and (viii) are yet to be gazetted and introduced into LegCo. We will closely monitor the situation.

- (2) We intend to conclude the pilot scheme after having 10 pieces of legislation read and scrutinized by LegCo under the scheme. We will then review the effectiveness of the scheme and decide on the way forward.

- End -

CONTROLLING OFFICER'S REPLY

SJ033

(Question Serial No. 5452)

Head: (92) Department of Justice

Subhead (No. & title): (000) Operational expenses

Programme: (1) Prosecutions

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

- (1) What were the numbers of cases in which the Government applied for a review of decisions from 2016 up to the present?
- (2) Regarding the cases in which applications were made for a review of decisions, what were the reasons for the Government's decision to seek a review for each of them?
- (3) As regards the cases in which the Government applied for a review of decisions, what were the respective numbers of cases with the sentences upheld, enhanced or reduced by the court?

Asked by: Hon LAU Siu-lai (Member Question No. 3159)

Reply:

The Secretary for Justice may apply to the court in appropriate cases for the review of a sentence on the basis that it has proceeded on an error of law or of principle or that it is manifestly inadequate or excessive. The number of cases in which the Government applied for a review of sentence under section 81A of the Criminal Procedure Ordinance, Cap. 221 from 2016 up to present and their results (whether sentences were upheld, enhanced or reduced by the court) are set out below –

	Year	
	2016	2017 (up to end-February)
Upheld	-	-
Enhanced	2	-
Reduced	-	-
Others	3 (hearing date not yet fixed as at end-February 2017)	3 (hearing date not yet fixed)
Total number of “review of sentence” applications made	5	3

- End -

CONTROLLING OFFICER'S REPLY

SJ034

(Question Serial No. 5776)

Head: (92) Department of Justice

Subhead (No. & title): (000) Operational Expenses

Programme: (1) Prosecutions

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Over two years have lapsed since the CHU King-wai Franklin case took place, during which the Independent Police Complaints Council (IPCC) confirmed on three occasions the alleged assault on a member of the public as substantiated and referred the findings to the Department of Justice for advice. However, neither prosecution has been instituted nor other actions been taken so far. In this connection, please inform this Committee of:

- (1) the manpower and expenditure allocated for this case by the Administration;
- (2) whether more manpower and expenditure will be allocated by the Administration for handling this case to expedite the process; if not, the reasons for it?

Asked by: Hon LAU Siu-lai (Member Question No. 3160)

Reply:

The Department of Justice (DoJ) and the Police have all along maintained communication regarding the concerned case. In December 2016 and January 2017, the DoJ issued further legal advice to the Police. The Complaints Against Police Office (CAPO) of the Police and DoJ are working on this matter closely. It is not appropriate to comment further on the case at this stage.

The case concerned is handled by existing staff among their other duties. The expenditure cannot be separately identified. The other expenditure involved is part of the Department's general departmental expenses and a separate breakdown is not available. The departmental management will continue to ensure that sufficient resources are made available for the handling of the case.

- End -

CONTROLLING OFFICER'S REPLY**SJ035****(Question Serial No. 1013)**Head: (92) Department of JusticeSubhead (No. & title): (-) Not SpecifiedProgramme: (3) Legal PolicyControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

Regarding "Basic Law seminars conducted", would the Government provide the following information:

a. On the seminars conducted in 2016:

	Date and time	Venue	Number of participants	Background of participants (e.g. lawyers, businessmen, students, members of the Chinese People's Political Consultative Conference, academic etc.)	Expenditure involved	Topic of seminar	Effectiveness of seminar (e.g. facilitating exchanges, promoting Basic Law provisions etc.)

b. On the seminars to be conducted in 2017:

	Expected date and time	Expected venue	Expected number of participants	Expected background of participants (e.g. lawyers, businessmen, students, members of the Chinese People's	Expected expenditure involved	Expected topic of seminar	Expected effectiveness of seminar (e.g. facilitating exchanges, promoting Basic Law provisions etc.)

				Political Consultative Conference, academic etc.)			

Asked by: Hon LAW Kwun-chung, Nathan (Member Question No. 41)

Reply:

a. On the seminars conducted in 2016:

Counsel of the Department of Justice conduct Basic Law seminars organized principally by other Government bureaux and departments to promote knowledge and understanding of the Basic Law of civil servants, teachers, etc. As reported in the Controlling Officer's Report, a total of eleven such seminars were conducted in 2016, with relevant details known to us as follows -

	Date and time	Venue	Number of participants	Background of participants (e.g. lawyers, businessmen, students, members of the Chinese People's Political Consultative Conference, academic etc.)	Expenditure involved*	Topic of seminar	Effectiveness of seminar (e.g. facilitating exchanges, promoting Basic Law provisions etc.)
1	16.1.2016 a.m.	Yew Chung International School, 3 To Fuk Rd, Kowloon Tong, HK	30	Teachers of secondary & primary schools	0	The Basic Law Courses: Creatively Learn and Teach	Promotion of Basic Law
2	15.4.2016 p.m.	Lecture Theatre at Hong Kong Central Library	235	Civil servants	0	Basic Law Foundation Course	Promotion of Basic Law
3	20.4.2016 a.m.	8/F Hall CGCC Bldg, 24-25 Connaught Rd Central	25	Mainland officials	0	Chinese General Chamber of Commerce Seminar – Constitutional Affairs	Promotion of Basic Law
4	6.5.2016 p.m.	Auditorium, 5/F, North Point Govt. Offices, 333 Java Road	99	Civil servants	0	Basic Law Briefing	Promotion of Basic Law
5	19.5.2016 p.m.	3/F, North Point Govt. Offices, 333 Java Road	86	Civil servants	0	Basic Law Seminar – The Interpretation of the Basic Law and the Protection of Rights under the Basic Law	Promotion of Basic Law

	Date and time	Venue	Number of participants	Background of participants (e.g. lawyers, businessmen, students, members of the Chinese People's Political Consultative Conference, academic etc.)	Expenditure involved*	Topic of seminar	Effectiveness of seminar (e.g. facilitating exchanges, promoting Basic Law provisions etc.)
6	16.6.2016 a.m.	Auditorium, 5/F, North Point Govt. Offices, 333 Java Road	170	Civil servants	0	Basic Law Thematic Seminars	Promotion of Basic Law
7	24.8.2016 p.m.	3/F, North Point Govt. Offices, 333 Java Road	59	Civil servants	0	Basic Law Seminar – The Interpretation of the Basic Law and the Protection of Rights under the Basic Law	Promotion of Basic Law
8	6.10.2016 a.m.	Auditorium, 5/F, North Point Govt. Offices, 333 Java Road	180	Civil servants	0	Basic Law Seminar – The Interpretation of the Basic Law and the Protection of Rights under the Basic Law	Promotion of Basic Law
9	18.11.16 a.m.	8/F Hall CGCC Bldg, 24-25 Connaught Rd Central	35	Mainland officials	0	Chinese General Chamber of Commerce Seminar – Constitutional Affairs	Promotion of Basic Law
10	24.11.16 p.m.	Auditorium, 5/F, North Point Govt. Offices, 333 Java Road	165	Civil servants	0	Basic Law Thematic Seminars	Promotion of Basic Law
11	1.12.16 p.m.	5/F, North Point Govt. Offices, 333 Java Road	55	Civil servants	0	Basic Law Thematic Seminars	Promotion of Basic Law

* As the seminars were organized principally by other Government bureaux and departments, no special expenditure is incurred by the Department of Justice.

b. On the seminars to be conducted in 2017:

We will continue to conduct such Basic Law seminars to be organized by other Government bureaux and departments in 2017 to help promote knowledge and understanding of the Basic Law, subject to demand from relevant Government bureaux and departments, and our own resources available. The details are not yet available at this stage.

- End -

CONTROLLING OFFICER'S REPLY

SJ036

(Question Serial No. 1014)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (3) Legal Policy

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

In respect of the work of the Law Reform Commission, would the Department of Justice (DoJ) inform this Committee of the following:

How many completed projects are pending further action by the Government and what are the topics involved? What is the progress and expected completion time of each of the 5 ongoing projects (including Review of Sexual Offences; Causing or Allowing the Death of a Child; Archives Law; Access to Information; Periodical Payments for Future Pecuniary Loss in Personal Injury Cases)? And, whether new projects will be launched this year? If yes, what are the projects and their timeframes?

Asked by: Hon LAW Kwun-chung, Nathan (Member Question No. 42)

Reply:

The Secretary for Justice submits an annual report on the progress of implementation of the Law Reform Commission (LRC) published reports to the Legislative Council Administration of Justice and Legal Services Panel (AJLS Panel) for discussion every year. The plan is to submit the annual report to the AJLS Panel this year for discussion at its meeting in June 2017.

The LRC is now handling five ongoing formal references which are as follows-

(a) Review of sexual offences:

The LRC Sub-committee was set up in September 2006 and is in the process of completing a large-scale review of the sexual offences in Hong Kong and related consultation which consists of four stages, with a view to ultimately preparing and issuing one global report. (In addition, the LRC published a report on *Sexual Offences Records Checks for Child-related Work: Interim Proposals* in

February 2010 and a report on *The Common Law Presumption that a Boy under 14 is Incapable of Sexual Intercourse* in December 2010.)

The LRC Sub-committee's first stage consultation paper on *Rape and Other Non-consensual Offences* was published in September 2012. The second stage consultation paper on *Sexual Offences involving Children and Persons with Mental Impairment* was published in November 2016, with the consultation period extended to end on 10 March 2017. The LRC Sub-committee is also working on the third stage consultation paper on Miscellaneous Sexual Offences.

(b) Causing or allowing the death of a child:

The LRC Sub-committee was set up in November 2006 and is in the final stages of completing a consultation paper on causing or allowing the death or serious harm of children or vulnerable persons.

(c) Archives law:

The LRC Sub-committee was set up in May 2013 and is preparing a consultation paper on the subject of archives law.

(d) Access to information:

The LRC Sub-committee was set up in May 2013 and is preparing a consultation paper on the subject of access to information.

(e) Periodical Payments for Future Pecuniary Loss in Personal Injury Cases:

The LRC Sub-committee was set up in March 2015 and is preparing a consultation paper on the subject of periodic payments for future pecuniary loss in personal injury cases.

The Sub-committees are each working to complete their work as soon as practically possible. Given the complexity of many of the issues involved, and extensive local and overseas research required to be undertaken, it is not possible to give an indication at this stage of when these projects will be completed.

In 2017, it is expected that two further topics relating to criminal law, i.e. cybercrime in Hong Kong and revenge porn, will be referred to the LRC for study.

- End -

CONTROLLING OFFICER'S REPLY

SJ037

(Question Serial No. 3800)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (1) Prosecutions

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Regarding the near 49.4% conviction rate of Magistrates' Court cases in 2016, please provide the following information:

- the fees and court costs paid by the Government as a result of adverse rulings;
- the number of such trial cases prosecuted by Court Prosecutors and briefed counsel respectively; and
- the offences involved in such cases given adverse rulings.

Asked by: Hon LAW Kwun-chung, Nathan (Member Question No. 78)

Reply:

In 2016, the court costs that the Government had to pay for criminal cases at the Magistracy level as a result of adverse rulings were \$39,220,725.

In 2016, the number of cases conducted by fiat counsel in place of Government Counsel at the Magistracy level was 957. For fiat counsel engaged to prosecute in the Magistrates' Court in place of Court Prosecutors, they are required to attend to all cases before a particular magistrate on each day or half day, hence their engagement is on court-day basis rather than case-base. Our statistics of prosecution work handled by Court Prosecutors are accordingly counted on the same basis. In 2016, the number of court days undertaken by Court Prosecutors and that undertaken by fiat counsel in place of Court Prosecutors are 8 939 and 5 636 respectively.

For cases with adverse rulings, we have not maintained information on whether such cases were prosecuted by Court Prosecutors or fiat counsel, or the offences involved. Insofar as may be necessary, we wish to point out that a lot of factors may affect the result of court cases (including, for example, whether witnesses come up to proof or whether new evidence emerged at a late stage), and these factors are not entirely within the control of the Department of Justice or the prosecutors.

- End -

CONTROLLING OFFICER'S REPLY**SJ038****(Question Serial No. 3809)**Head: (92) Department of JusticeSubhead (No. & title): (-) Not SpecifiedProgramme: (1) ProsecutionsControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

Would the Government provide the following figures in respect of Magistrates' Courts cases in 2016 :

Item	Figure
Number of Court Prosecutors (CPs)	
Average number of court days undertaken by each CP each year	
Average number of prosecution cases handled by each CP each month	
Conviction rate of cases conducted by CPs	
Number of instructed barristers and solicitors in place of CPs	
Conviction rate of cases conducted by instructed barristers and solicitors in place of CPs	

Asked by: Hon LAW Kwun-chung, Nathan (Member Question No. 79)

Reply:

The required information is as follows -

Item	Figure
Number of Court Prosecutors (CPs)	72 Court Prosecutor Grade Officers
Average number of court days undertaken by each CP each year	<p>The number of court days undertaken by Court Prosecutors in Magistrates' Courts in 2016 was 8 939 court days.</p> <p>It is not appropriate to provide the average number of court days undertaken by each CP each year, as</p>

	some CP grade officers who handle court work undertake such work among their other duties.
Average number of prosecution cases handled by each CP each month	<p>In 2016, the total caseload in the Magistracies is 147 857.</p> <p>Fiat counsel engaged to prosecute in the Magistrates' Courts in place of Court Prosecutors are required to attend to all cases before a particular magistrate on each day or half day. Hence, their engagement is on court-day basis rather than case-base. Our statistics of prosecution work handled by Court Prosecutors are also counted on the same basis. In this regard, CP Grade Officers handled 8 939 court days at the magistracy level in 2016. However, we are unable to provide a separate breakdown on the number of cases handled by CPs and fiat counsel in place of CPs.</p>
Conviction rate of cases conducted by CPs	We do not maintain separate breakdown of conviction rate of cases conducted by CPs.
Number of instructed barristers and solicitors in place of CPs	In 2016, we engaged counsel in place of CPs for 5 636 court days. We do not maintain figures in terms of the number of barristers and solicitors instructed.
Conviction rate of cases conducted by instructed barristers and solicitors in place of CPs	We do not maintain separate breakdown of conviction rate of cases conducted by instructed barristers and solicitors in place of CPs.

- End -

CONTROLLING OFFICER'S REPLY

SJ039

(Question Serial No. 3811)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (1) Prosecutions

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Regarding the case scheduled for trial in January 2018 for the offence of riot in Mong Kok, would the Government please provide the following information:

- the Government's estimated financial provision for the case; and
- manpower resources to be allocated by the Prosecutions Division of the Department of Justice for handling the case.

Asked by: Hon LAW Kwun-chung, Nathan (Member Question No. 80)

Reply:

In working out the 2017-18 estimates, we have taken into account the resources requirement for handling various cases, including cases regarding the incidents involving violence in the early hours of 9 February 2016 in Mong Kok. It is not appropriate for us to disclose information on anticipated expenditure in individual cases, as this may prejudice our position in on-going proceedings (as such disclosure may directly or indirectly reveal our assessment on matters concerning those cases).

In so far as the staff within the Department of Justice who handle those cases are concerned, they do so whilst discharging other duties, and the manpower resources concerned cannot be separately identified.

- End -

CONTROLLING OFFICER'S REPLY

SJ040

(Question Serial No. 3819)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (2) Civil

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

What were the total amounts of resources and manpower allocated by the Department of Justice for handling the cases on the review of Members' qualifications in 2016-17? Has the Government included counsel fees and court costs that may be incurred as a result of adverse rulings in the estimates for the coming year? What is the approximate estimate?

Asked by: Hon LAW Kwun-chung, Nathan (Member Question No. 81)

Reply:

The total amount of resources and manpower deployed by the Department of Justice (DoJ) for handling the cases in question in 2016-17 is yet to be finalised as the relevant legal proceedings are still on-going. The final amount involved will be subject to development of the cases concerned and is not entirely within the control of DoJ.

It is also relevant to note that the Civil Division of the DoJ deals with all civil litigation and tribunal work involving the Government. The legal proceedings in question are mainly handled by the Civil Division which may seek inputs or advice from other divisions in the Department and/or outside Counsel instructed. As such, while in general the legal proceedings come under the purview of the Civil Division, the officer or the team of officers involved in advising or handling the different aspects of the proceedings may vary depending on, for example, the nature of the issues, the complexity, etc. The expenditure in this regard cannot be separately identified.

In working out the 2017-18 estimates, we have taken into account the resources requirement for handling various cases, including the said legal proceedings. It is not appropriate for us to disclose information on anticipated expenditure in individual cases, as this may prejudice our position in on-going proceedings (e.g. by disclosing directly or indirectly our assessment of matters concerning those cases). Any counsel fee to be incurred for the handling of the said legal proceedings and any court costs that may be incurred in the said proceedings in 2017-18 will be met under the overall estimates for the hire of legal services

and related professional fees (including counsel fees) and the overall estimates of court costs payable under Programme (2) Civil respectively.

- End -

CONTROLLING OFFICER'S REPLY**SJ041****(Question Serial No. 2707)**Head: (92) Department of JusticeSubhead (No. & title): (000) Operational expensesProgramme: (2) CivilControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

Please provide in the table below the number of cases where the Department of Justice represented the Commissioner of Police or police officers in civil claims for damages against them for their actions taken in the course of duties, the outcome of the proceedings and the related expenses in the past 5 years. Please also provide in another table the reasons of claims in such proceedings in the past 5 years and their breakdowns by year.

Year	Number of cases where the Department of Justice represented the Commissioner of Police or police officers in civil claims for damages against them	Outcome of proceedings			Related expenses	
		Successful	Unsuccessful	Settled	Court costs	Amount of damages
2012-13						
2013-14						
2014-15						
2015-16						
2016-17						

Asked by: Hon LEUNG Kenneth (Member Question No. 2.05)Reply:

The information sought is provided as follows-

No. of claims and expenses with breakdown by outcome

Year	Number of cases ^{Note 1} where DoJ represented the Commissioner of Police or police officers in civil claims for damages against them	Outcome of proceedings ^{Note 2}			Related expenses	
		Successful	Unsuccessful	Settled	Court costs ^{Note 3} \$'000	Amount of damages ^{Note 3} \$'000
2012-13	71 [10]	23	1	37	718	1,485
2013-14	79 [16]	18	1	44	510	2,169
2014-15	115 [30]	30	3	52	498	2,174
2015-16	81 [32]	14	0	35	50	888
2016-17 (up to 28.2.17)	209 [64]	9	0	136	0	1,502

Note 1: The numbers of cases refer to new cases received in the relevant year. Figures in square brackets denote the number of cases that were not completed as at 28 February 2017.

Note 2: For cases completed as at 28 February 2017. The proceedings with "Successful" outcome refer to those cases with outcome in favour of the Government.

Note 3: The amount of court costs and damages refers to expenses incurred for those cases received in the relevant year which have been completed.

Breakdown by nature of claims

Year	Miscellaneous Claims	Personal Injuries Claims	Traffic Accidents Claims	Wrongful Detention Claims	Total no. of cases
2012-13	32	6	29	4	71
2013-14	24	10	44	1	79
2014-15	47	24	40	4	115
2015-16	32	8	39	2	81
2016-17 (up to 28.2.17)	142	9	53	5	209

- End -

CONTROLLING OFFICER'S REPLY**SJ042****(Question Serial No. 2708)**Head: (92) Department of JusticeSubhead (No. & title): (000) Operational ExpensesProgramme: (2) CivilControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

Please provide the numbers of cases involving civil claims for damages for personal injury and wrongful detention against the Commissioner of Police or police officers for their actions taken in the course of duties, the outcome of the proceedings and the related expenses in the past 5 years. Please provide the figures by year in the table below.

Claims for damages for personal injury

Year	Successful	Unsuccessful	Settled	Pending	Total	Related expenses	
						Court costs	Amount of damages
2012-13							
2013-14							
2014-15							
2015-16							
2016-17							

Claims for damages for wrongful detention

Year	Successful	Unsuccessful	Settled	Pending	Total	Related expenses	
						Court costs	Amount of damages
2012-13							
2013-14							
2014-15							
2015-16							
2016-17							

Asked by: Hon LEUNG Kenneth (Member Question No. 2.06)

Reply:

The information sought is provided as follows-

Claims for damages for personal injury

Year	Successful Note 1	Unsuccessful Note 1	Settled Note 1	Pending Note 1	Total Note 2	Related expenses	
						Court Costs \$'000 Note 3	Amount of damages \$'000 Note 3
2012-13	1	0	5	0	6	695	1,066
2013-14	2	0	6	2	10	510	917
2014-15	0	1	6	17	24	462	1,279
2015-16	0	0	3	5	8	49	292
2016-17 (up to 28.2.17)	0	0	2	7	9	0	245

Claims for damages for wrongful detention

Year	Successful Note 1	Unsuccessful Note 1	Settled Note 1	Pending Note 1	Total Note 2	Related expenses	
						Court Costs \$'000 Note 3	Amount of damages \$'000 Note 3
2012-13	1	0	1	2	4	22	45
2013-14	0	0	0	1	1	0	0
2014-15	1	0	0	3	4	0	0
2015-16	0	0	0	2	2	0	0
2016-17 (up to 28.2.17)	0	0	0	5	5	0	0

Note 1: The figures represent the position as at 28 February 2017. The proceedings with “Successful” outcome refer to those cases with outcome in favour of the Government.

Note 2: The numbers of cases refer to new cases received in the relevant year.

Note 3: The amount of court costs and damages refers to expenses incurred for those cases received in the relevant year which have been completed.

- End -

CONTROLLING OFFICER'S REPLY**SJ043****(Question Serial No. 2804)**Head: (92) Department of JusticeSubhead (No. & title): (000) Operational expensesProgramme: (1) ProsecutionsControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

Would the Government inform this Committee of:

1) the number of cases where the Department of Justice (DoJ) had to pay court costs as a result of adverse rulings, and the amount of court costs paid as a result in the past 5 years by filling in the following table:

	No. of cases the DoJ had to pay court costs as a result of adverse rulings	The amount of court costs that the DoJ had to pay in criminal cases as a result of adverse decisions (\$)
Magistrates' Courts		
2012		
2013		
2014		
2015		
2016		
District Court		
2012		
2013		
2014		
2015		

2016		
High Court		
2012		
2013		
2014		
2015		
2016		

Asked by: Hon LEUNG Kenneth (Member Question No. 2.09)

Reply:

The number of cases where the Department of Justice had to pay court costs as a result of adverse rulings, and the amount of court costs paid as a result in the past 5 years is as follows -

	No. of cases	The amount (\$)
Magistrates' Courts		
2012	279	24,521,472
2013	206	20,494,824
2014	273	43,728,391
2015	274	29,695,054
2016	283	39,220,725
District Court		
2012	33	17,586,766
2013	12	4,459,722
2014	12	4,702,800
2015	26	9,827,000
2016	15	6,292,683
High Court (Court of First Instance)		
2012	86	21,614,911
2013	60	18,350,144

2014	81	46,714,725
2015	6	18,389,065
2016	15	5,649,000

- End -

CONTROLLING OFFICER'S REPLY**SJ044****(Question Serial No. 2805)**Head: (92) Department of JusticeSubhead (No. & title): (000) Operational expensesProgramme: (1) ProsecutionsControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

How many criminal cases relating to public processions and gatherings that the Department of Justice received for advice on prosecutorial decisions each year? Against how many of them were prosecutorial decisions eventually taken? With reference to the legal advice on these cases, what is the percentage of cases by year for which a decision was made within 14 working days? What is the percentage of cases by year for which a decision was made in 28 working days or more? Please provide an itemised breakdown for the past 5 years.

Asked by: Hon LEUNG Kenneth (Member Question No. 2.10)Reply:

Information available is provided below -

The number of persons arrested and prosecuted for alleged illegal acts related to public order events from 2012 to 2016 are set out in the following table.

	2012	2013	2014	2015	2016
Number of public order events	7 529	6 166	6 818	6 029	13 158
Number of persons prosecuted for alleged illegal acts related to public order events in the respective year	35	43	264	71	70

We do not maintain separate statistics in respect of requests for legal advice, or the time taken to provide such advices, in respect of the criminal cases related to public processions and gatherings.

- End -

CONTROLLING OFFICER'S REPLY**SJ045****(Question Serial No. 5060)**Head: (92) Department of JusticeSubhead (No. & title): (-) Not SpecifiedProgramme: (-) Not SpecifiedControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

Would the Government inform this Committee of:

- (1) the respective estimated expenditures on the emolument and non-accountable entertainment allowance of the Secretary for Justice this year, and the estimated expenditure on the emolument of the Director of Public Prosecutions this year;
- (2) the explanation of the Department of Justice (DoJ) for the successful conviction rates of only about 50% in respect of defendants tried in Magistrates' Courts in 2015 and 2016, accounting for only 52% and 49.4% respectively, and if there was an abuse of prosecution;
- (3) the amount of court costs the DoJ had to pay in criminal cases as a result of adverse rulings in the Magistrates' Courts, District Court and Court of First Instance over the past 5 years by providing the information in the following table:

	Magistrates' Courts	District Court	Court of First Instance
2012			
2013			
2014			
2015			
2016			

- (4) whether provisions will be earmarked by the DoJ for payment of court costs incurred as a result of adverse rulings and, if yes, the estimated expenditure for this year.

Asked by: Hon LEUNG Kwok-hung (Member Question No. 1005)Reply:

(1) The estimated expenditure on the emoluments and non-accountable entertainment allowance of the Secretary for Justice in 2017-18 is \$4.04 million and \$0.23 million respectively. The notional annual mid-point salary of the Director of Public Prosecutions post in 2017-18 is \$2.95 million.

(2) As the prosecution authority, our objective is to see that appropriate cases are presented fairly to the court. Prosecutions are, in accordance with the guidelines set out in the Prosecution Code, pursued only if there is a reasonable prospect of conviction and that it is in the public interest to prosecute. Once it is decided that prosecution should be pursued, it is the duty of prosecutors to act in a fair and objective manner. The question of guilt or innocence is a matter for the court to decide, on the criminal law standard of proving “beyond reasonable doubt” (which is a threshold higher than the one for deciding whether to commence prosecution). Conviction rate is not an indicator of abuse or otherwise.

As shown in the conviction rates at the magistracy level set out below, the success rate of prosecutions (including defendants convicted after trial and defendants convicted on their own pleas) has remained relatively steady in the past six years.

Conviction Rate at Magistrates’ Courts	2011	2012	2013	2014	2015	2016
- defendants convicted after trial (%)	51.5	47.6	47.0	50.3	52.0	49.4
- defendants convicted after trial and defendants convicted on their own pleas (%)	74.4	73.3	72.3	74.6	74.6	74.0

(3) The amount of court costs that the Department of Justice (DoJ) had to pay in criminal cases as a result of adverse decisions in Magistrates’ Courts, District Court and Court of First Instance in the past 5 years is as follows –

	Magistrates’ Courts (\$)	District Court (\$)	Court of First Instance (\$)
2012	24,521,472	17,586,766	21,614,911
2013	20,494,824	4,459,722	18,350,144
2014	43,728,391	4,702,800	46,714,725
2015	29,695,054	9,827,000	18,389,065
2016	39,220,725	6,292,683	5,649,000

(4) The estimated expenditure of DoJ for court costs in respect of criminal cases in 2017-18 is \$196.86 million. The annual expenditure on court costs varies from year to year, depending on the number of cases involved, their complexity and development. While the estimate was worked out on information available at the time of preparing the estimates, the actual expenditure to be incurred in 2017-18 would ultimately depend on subsequent development and outcome of the cases concerned (which are not entirely within the control of DoJ).

- End -

CONTROLLING OFFICER'S REPLY

SJ046

(Question Serial No. 1079)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (3) Legal Policy

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Hong Kong is a diversified society, in which people from different backgrounds have diverse values and beliefs. With regard to issues related to the enactment of a sexual orientation discrimination ordinance, the Department of Justice (DoJ) informed this Committee in the 2016-17 Budget exercise that the expenses so incurred could not be separately identified. In this connection, would the Government inform this Committee of the following:

1. What resources has DoJ allocated to legal research policy on safeguarding freedom of religious belief and sexual orientation?
2. Has DoJ worked with other government departments on these issues? What is the expenditure involved?

Asked by: Hon LEUNG Mei-fun, Priscilla (Member Question No. 2)

Reply:

1. Legal research is conducted by the Department of Justice on legal issues relating to the human rights provisions of the Basic Law and the Hong Kong Bill of Rights Ordinance (including the right to freedom of religion and the right to equality and non-discrimination) mainly in the context of providing legal advice on these issues. Such work is handled by the Human Rights Unit of the Legal Policy Division, among its other works, for relevant policy bureaux and departments to ensure that the policies and measures they adopt or consider adopting are consistent with the applicable human rights law of the Hong Kong Special Administrative Region (HKSAR), and the expenditure involved cannot be separately identified.
2. Based on the above-mentioned research, the Human Rights Unit works with the relevant policy bureaux and departments by providing legal advice on human rights issues

(including those concerning the right to freedom of religion and the right to equality and non-discrimination). As explained above, the expenses so incurred cannot be separately identified.

- End -

CONTROLLING OFFICER'S REPLY

SJ047

(Question Serial No. 1087)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (3) Legal Policy

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Hong Kong is an international metropolis with an advanced and well-developed legal system. The Government has been publicising Hong Kong's arbitration regime and promoting Hong Kong as a centre for legal and dispute resolution services in the region. In this connection, would the Government inform this Committee of:

1. the resources allocated to promote Hong Kong as an arbitration centre for the Belt and Road countries? Please provide a detailed breakdown of the expenditure on the measures taken.
2. the resources to be allocated to promote and develop Hong Kong's mediation and arbitration services in the future?

Asked by: Hon LEUNG Mei-fun, Priscilla (Member Question No. 3)

Reply:

For the promotion and development of Hong Kong as an international arbitration centre, following the Legislative Council's approval in June 2016 of the creation of a DL2 (Deputy Principal Government Counsel) post in the Legal Policy Division (LPD) of the Department of Justice (DoJ), a dedicated Arbitration Unit was set up in September 2016 to, among other arbitration-related work, plan and organise regular promotional activities in the form of roadshows, conferences, seminars and forums to promote Hong Kong's international legal and arbitration services in places to be identified among the some 60 overseas countries along the Belt and Road. Consideration is also being given to reinforcing Hong Kong's role in the provision of international legal and dispute resolution-related training/capacity building opportunities for professionals and government officials from the Asia Pacific region and/or the Belt and Road countries.

The work of promoting and developing Hong Kong's mediation and arbitration services is primarily undertaken by the Mediation Team of the Civil Division and the new dedicated

Arbitration Unit of the LPD, supplemented by resources deployed from time to time as necessary from other parts of DoJ. The abovementioned activities are coordinated by the Joint Dispute Resolution Strategy Office, which is an internal set-up within DoJ to enhance the overall co-ordination of mediation and arbitration work.

The staff costs of the Mediation Team for 2016-17 and 2017-18 are set out in the table below-

	2016-17	2017-18
1 Deputy Principal Government Counsel [#] , 1 Senior Government Counsel, 1 Government Counsel*, 1 Law Clerk and 1 Personal Secretary I	\$4,218,780	\$5,189,640

[#]The Deputy Principal Government Counsel of the Mediation Team also takes up the function as Commissioner of the Joint Dispute Resolution Strategy Office, on top of her other duties, to act as the single point of contact on all matters related to the promotion of dispute resolution. The Office is set up using existing resources.

*Post to be created w.e.f. 1 April 2017

The staff costs of the Arbitration Unit for 2016-17 and 2017-18 are set out in the table below-

	2016-17	2017-18
1 Deputy Principal Government Counsel, 2 Senior Government Counsel, 1 Law Clerk and 1 Personal Secretary I	\$5,354,520 [#]	\$5,582,700

[#]The Deputy Principal Government Counsel post was created on 24 June 2016 while the Personal Secretary I post was created on 5 September 2016.

The overall expenditure involved in this specific area cannot be separately identified and all related expenses will continue to be absorbed from within the existing resources of the Department.

- End -

CONTROLLING OFFICER'S REPLY

SJ048

(Question Serial No. 1125)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (3) Legal Policy

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

The Department of Justice has mentioned that the matter on handling the legal issues involved in the “co-location” arrangements for the Guangzhou-Shenzhen-Hong Kong Express Rail Link (XRL) is under discussion with the relevant Mainland authorities, and that the present Government will inform the public of the resolution within its term of office. Would the Government inform this Committee of:

1. the resources allocated for the planning of the immigration facilities at the XRL West Kowloon Terminus?
2. the resources allocated to study the legal issues involved in the “co-location” arrangement?
3. whether other resources are allocated to resolve the legal issues involved in an arrangement other than the “co-location” method in case the latter cannot be implemented at the West Kowloon Terminus?

Asked by: Hon LEUNG Mei-fun, Priscilla (Member Question No. 4)

Reply:

The Department of Justice advises Government bureaux and departments on legal issues as required from time to time, including those arising from projects under their purview. The co-location arrangement in respect of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (XRL) project (primarily under the purview of the Transport and Housing Bureau) is one such example. Such legal advice has been and will be, from time to time, tendered among other advisory duties of the Department and the relevant expenditure therefore cannot be separately identified.

Relevant Government bureaux and departments (including the Transport and Housing Bureau, Security Bureau, Constitutional and Mainland Affairs Bureau and the Department

of Justice) have been studying the implementation of co-location, and have held discussions with relevant Mainland authorities, with a view to implementing a co-location arrangement consistent with the Basic Law and the “One Country, Two Systems” policy at the commissioning of the XRL.

- End -

CONTROLLING OFFICER'S REPLY

SJ049

(Question Serial No. 3423)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (-) Not Specified

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Regarding outsourcing of service in your department, please inform this Committee of the followings in respect of the past 3 years:

1. the total number of outsourced service staff employed by your department and the percentage of outsourced service staff against the total number of staff with the same types of duties in your department;
2. the total expenditure on staff of your department; the total amount paid to outsourced service providers; and the percentage of amount paid to outsourced service providers against the total expenditure on staff of your department; and
3. the nature of your department's outsourced services and the duration of the relevant contracts.

In addition, according to the Government's guidelines for tendering of outsourced services revised last year, if the procured service relies heavily on the deployment of non-skilled workers, and a marking scheme for assessing the tenders is adopted, the procuring department, when assessing the tenders, should include in the assessment criteria the evaluation of tenderers' proposed wage rates and working hours for non-skilled workers. In this regard, please inform this Committee of the followings:

1. the current number of outsourced service contracts involving a large number of non-skilled workers awarded by your department since implementation of the guidelines;
2. the departments which have adjusted their assessment criteria in respect of wage rates and working hours for the outsourced service contracts involving a large number of non-skilled workers in the light of the new guidelines since their implementation; how your department has made adjustment; and if no relevant information is available, the reasons for it;

3. whether there have been any rises in the average wage rates for workers in the contracts of outsourced services that rely heavily on deployment of non-skilled workers since the implementation of the guidelines; if yes, the number of contracts with rises in wage rates; if no relevant information is available, the reasons for it;
4. your department's measures to evaluate the effectiveness of the new tendering guidelines;
5. whether your department is required to adopt the existing mechanism of two-envelope assessment of the technical and price aspects when evaluating tenders for contracts of outsourced service; if no, the number of contracts awarded without adopting the existing mechanism of two-envelope assessment of the technical and price aspects in the past 3 years;
6. the annual numbers of cases of government service contractors breaching the service contracts, the Employment Ordinance or the Occupational Safety and Health Ordinance as revealed by the inspections conducted by your department, and the annual numbers of complaints lodged by the outsourced service staff;
7. the details of follow-up actions on the aforementioned non-compliance and complaint cases; and
8. the number and details of cases involving contractors being punished for non-compliance or sustained complaints.

Asked by: Hon LEUNG Yiu-chung (Member Question No. 116)

Reply:

The Department of Justice (DoJ) engages outside contractors to provide building management, cleaning and security services for the offices of the Department. The information in respect of these service contracts is set out below -

- (1) The total number of staff engaged in these service contracts during the period from 1.4.2014 to 31.3.2017 is **113**. The Department does not have staff with the same types of duties.
- (2) The personnel emolument related expenditure for DoJ for the three-year period from 1.4.2014 to 31.3.2017 is about **\$2.546 billion**.

The total amount paid to service providers for the period from 1.4.2014 to 31.3.2017 is **\$20.43 million**.

The percentage of amount paid to service providers against the personnel emolument related expenditure for DoJ for the period from 1.4.2014 to 31.3.2017 is **0.8%**.

- (3) The nature of services outsourced in the past three years and the duration of the relevant contracts are provided as follow -

Nature of Contract	Number of Contract	Duration of Contract
Security Services	2	One for one year (ended 31.3.2015) One for three months (ended 30.6.2015)
Cleaning Services	1	One year and six months (ended 31.12.2015)
Property and Facility Management Services	1	Three years
Horticultural and Maintenance Services	1	One year

In respect of the questions on the compliance with the revised guidelines on the tendering procedures issued last year, our replies are set out below -

- (1) to (4) Of the two currently valid service contracts in DoJ, one was signed after the issue of the revised guidelines on the tendering procedures, but it involves only one outsourcing staff. DoJ has not conducted tendering exercises that involve a large number of non-skilled workers since the implementation of the new guidelines for tendering of outsourced services promulgated in May 2016.
- (5) DoJ has adopted the existing mechanism of two-envelope assessment of the technical and price aspects when evaluating tenders for service contracts.
- (6) to (8) DoJ does not have any cases of government service contractors breaching the service contracts, the Employment Ordinance or the Occupational Safety and Health Ordinance.

- End -

CONTROLLING OFFICER'S REPLY

SJ050

(Question Serial No. 3442)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (-) Not Specified

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Does your department provide sign language interpretation services? If yes, what are the manpower and expenditure involved? If no, what are the reasons?

Asked by: Hon LEUNG Yiu-chung (Member Question No. 173)

Reply:

The Department of Justice gives legal advice to other Government bureaux and departments, represents the Government in legal proceedings, drafts Government bills, makes prosecution decisions, and promotes the rule of law. Taking into account the nature of its functions, the Department has not designated any staff to undertake sign languages interpretation duties. However, where necessary, the Department will engage part-time sign languages interpreters to provide interpretation service to meet operational requirements.

- End -

CONTROLLING OFFICER'S REPLY**SJ051****(Question Serial No. 1450)**Head: (92) Department of JusticeSubhead (No. & title): (000) Operational expensesProgramme: (1) ProsecutionsControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

With reference to the performance measures, the overall performance of the Prosecutions Division (PD) of the Department of Justice was satisfactory in 2016. However, filling of vacancies and net creation of 13 posts are required in the PD to meet operational needs. What will be the specific distribution of work among these 13 posts?

Asked by: Hon LIAO Cheung-kong, Martin (Member Question No. 36)Reply:

The work of the posts to be created in 2017-18 are set out below –

Post(s)	Nature of Duties
Eight Government Counsel	Providing additional manpower to allow counsel more opportunities to handle court work and strengthening legal support for advisory work
Two Senior Government Counsel	Strengthening legal support for handling cases related to proceeds of crime and implementing the Trade Descriptions (Unfair Trade Practices)(Amendment) Ordinance
Three Law Translation Officer	Strengthening support to cater for the increase in translation work of court documents
One Assistant Clerical Officer	Strengthening clerical support to handle finance and accounting matters
One Clerical Officer	Strengthening clerical support to handle appointment and personnel matters
One Workman II	Strengthening support for receipt and dispatch services
Offset by deletion of three time-limited posts which will lapse on 1.10.2017.	

- End -

CONTROLLING OFFICER'S REPLY**SJ052****(Question Serial No. 1994)**

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (3) Legal Policy
(4) Law Drafting

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

The Law Reform Commission established 2 sub-committees to consider the issues of access to information and archives law. What is the latest progress of the work of these 2 sub-committees? When will the findings be expected to be released to the public? Have manpower and resources been earmarked by the Department of Justice for preliminary work of the enactment of the archives law and the freedom of information law? If yes, what are the details? If not, what are the reasons?

Asked by: Hon MO Claudia (Member Question No. 11)

Reply:

The Law Reform Commission (LRC)'s Sub-committee on Archives Law and Sub-committee on Access to Information were both formed in May 2013 to review the current local situation and conduct comprehensive comparative studies of the relevant regimes and laws in overseas jurisdictions, with a view to making recommendations on possible options for reform where necessary.

These two Sub-committees have since been meeting regularly. Thus far, the Sub-committee on Archives Law has held a total of 38 meetings while the Sub-committee on Access to Information has held a total of 37 meetings. They are reviewing the current regimes and are undertaking a comparative study of the relevant situation in other jurisdictions. The Sub-committees will conduct public consultation after detailed deliberation of the relevant issues. They will take into account the responses received in the consultation exercise before finalising proposals for reform, if any. Upon consideration of the draft reports submitted by the Sub-committees, the LRC will publish its final reports. Given the importance and complexity of the issues involved, as well as the level of local and comparative research and analysis required, it is currently difficult for the two Sub-committees to commit to an expected completion date for the projects.

Nonetheless, the Sub-committees are working diligently on the projects and they will publish the relevant consultation papers as soon as are reasonably practicable.

As has been the case since its establishment, the LRC Secretariat, which is staffed and financed by the Department of Justice (DoJ), has been providing the necessary support, whether in terms of legal research or otherwise, to the work of the LRC (including its sub-committees) which is independent.

Upon the publication of an LRC report with recommendations for reform, the DoJ will, in collaboration with the LRC Secretariat, provide appropriate assistance to the relevant policy bureau(x) in the consideration and implementation of the recommendations. Depending on the nature and urgency of the reform, as well as the volume of work warranted, the relevant policy bureau(x) will decide if additional resources, including staff, are called for. Given the current stage of the work of the two Sub-committees, the DoJ has not earmarked additional manpower or other resources for the purpose of advising the relevant policy bureau(x) on any LRC recommendations on the subject matters.

- End -

CONTROLLING OFFICER'S REPLY**SJ053****(Question Serial No. 5288)**Head: (92) Department of JusticeSubhead (No. & title): (-) Not SpecifiedProgramme: (-) Not SpecifiedControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

- (1) Please provide, in table form, the number of requests for information under the Code on Access to Information received by policy bureaux/departments and their subvented organisations in 2016-17 as well as the relevant details:

Bureau/ Department/ Organisation	Number of requests received	Information involved (items)	Number of requests being handled	Number of requests in which all information was provided	Number of requests in which some information was provided	Average number of days taken to handle the requests (working days)

- (2) the 3 pieces of information most frequently requested by the public and the number of such requests;
- (3) the 5 requests for information which took the longest time to handle, the number of days taken to handle such requests and the reasons;
- (4) the content of the requests refused, the reasons for the refusal and the number of requests for reviews lodged by the public.

Asked by: Hon MOK Charles Peter (Member Question No. 167)Reply:

During the period from January to September 2016, the Department of Justice (DoJ) received 8 requests for information made under the Code on Access to Information (the Code). The information requested varied from case to case with no duplication. As at 30 September 2016, 2 out of the 8 cases were still being processed.

For the 6 cases concluded in the period, 2 were met in full, 2 involved information not in the DoJ's possession and 2 were refused. Reasons for refusal involved law enforcement, legal proceedings and public safety (paragraph 2.6 of the Code) (1 case) and management and operation of the public service (paragraph 2.9 of the Code) (1 case). For the 5 cases which took the longest processing time, processing was completed within 51 days^{Note} from the date of receipt of the request for one case while the remaining cases were processed within 21 days or less. Reasons for the longer processing time included the need to collect/compile a large amount of information and the need to obtain legal advice.

During the above period, the DoJ had not received any request for internal review of the processing of the above cases.

Note: In accordance with the requirements of the Code, if it is not possible for a department to respond to a request within 21 days, an explanation should be given, and any deferral should not normally exceed 51 days from date of receipt of the request.

- End -

CONTROLLING OFFICER'S REPLY**SJ054****(Question Serial No. 5290)**Head: (92) Department of JusticeSubhead (No. & title): (-) Not SpecifiedProgramme: (-) Not SpecifiedControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

Regarding the records management work of your department and your divisions in the past year

(1) Please provide information on the number and rank of officers designated by all divisions to perform such work. If there is no officer designated for such work, please provide information on the number of officers and the hours of work involved in records management duties, and the other duties they have to undertake in addition to records management;

(2) Please list in the table below information on programme and administrative records which have been closed pending transfer to the Government Records Service (GRS) for appraisal;

Category of records	Years covered by the records	Number and linear meters of records	Retention period approved by GRS	Are they confidential documents	Reasons for pending transfer

(3) Please list in the table below information on programme and administrative records which have been transferred to GRS for retention;

Category of records	Years covered by the records	Number and linear meters of records	Retention period approved by GRS	Are they confidential documents	Reasons for pending transfer

(4) Please list in the table below information on records which have been approved for destruction by GRS;

Category of records	Years covered by the records	Number and linear meters of records	Retention period approved by GRS	Are they confidential documents	Reasons for pending transfer

Asked by: Hon MOK Charles Peter (Member Question No. 170)

Reply:

1. In view of the considerable volume of work involved in managing departmental records, staff of individual divisions would handle the work in respect of their respective records. These include staff of some departmental grades and also general grades such as Executive Officer and clerical grades staff and personal secretaries. Since this forms part of their overall work and no statistics have been kept on the amount of time they spent specifically on records management work, it is difficult to quantify the hours of work performed by these officers in such duties and provide a detailed breakdown.
2. The information on programme and administrative records which have been closed pending transfer to the Government Records Service (GRS) for appraisal in the past year is set out below-

Category of records	Years covered by the records	Number and linear metres (lm) of records	Retention period approved by GRS	Are they confidential documents	Reasons for pending transfer
Administrative records	1988-2016	175 nos. (9.2 lm)	2-7 years	1 of them is confidential	Not yet time-expired in accordance with the relevant disposal schedules or pending file review
Programme records	1990-2016	1923 nos. (200.25 lm)	4-20 years	663 of them are confidential	Not yet time-expired in accordance with the relevant disposal schedules or pending file review

3. As regards the information on programme and administrative records which have been transferred to the GRS for retention in the past year (2016), we sent 114 administrative records and 8 programme records to the GRS for appraisal last year. Subject to GRS' appraisal, we will transfer these records to the GRS for retention. In the circumstance, we are not able to provide information as per the suggested table format.
4. The information on records which have been approved for destruction by the GRS in the past year is set out as below-

Category of records	Years covered by the records	Number and linear meters of records	Retention period approved by GRS	Are they confidential documents	Reasons for pending transfer
Administrative records	1946-2012	552 nos. (22.63 lm)	2-4 years	No	Not applicable
Programme records	1972-2008	3 688 nos. (134.01 lm)	7-15 years	No	Not applicable

- End -

CONTROLLING OFFICER'S REPLY**SJ055****(Question Serial No. 2968)**Head: (92) Department of JusticeSubhead (No. & title): (-) Not SpecifiedProgramme: (1) ProsecutionsControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

- (1) What were the statistics for domestic violence cases between 2012 and 2016? Please provide the following information:

Prosecution not instituted					
Bound over					
Prosecution instituted					

- (2) Please list the 5 main reasons for “prosecution not instituted”.
- (3) How many domestic violence cases were there in which the bound-over offenders reoffended and what were the means of disposal?

No action taken					
Bound over duration extended					
Prosecution instituted					

- (4) Please list the 5 main reasons for “no action taken”.

Asked by: Hon SHIU Ka-chun (Member Question No. 16)Reply:

The information available is provided as follows -

Number of domestic violence cases between 2012 and 2016 are listed in the table below.

	Year of Arrest				
	2012	2013	2014	2015	2016
Bound over / conditional discharge	5	1	0	0	1
Prosecution instituted	571	557	524	467	446

The Government does not maintain information on domestic violence cases where prosecution was not instituted or domestic violence cases in which the bound over offenders reoffended.

In handling these cases, prosecutors are required at all time to apply The Prosecution Code which contains a section on “Domestic Violence Cases” (para.17.1 to 17.5), and more specifically to the published guidelines regarding the policy for prosecuting cases involving domestic violence. Prosecutors will consider, among others –

- whether there is sufficient evidence to justify the institution of criminal proceedings on the basis that it affords a reasonable prospect of conviction; and
- whether the public interest requires a prosecution to be pursued. Generally speaking, the public interest will require that a prosecution be brought in a case of domestic violence if the victim is willing to give evidence.

Possible reasons (none of them necessarily overriding and the exact weight to be attached will depend on the facts of each case) for not instituting or continuing with a prosecution in cases involving domestic violence include, among others –

- the victim is the only witness who can testify to the commission of the offence but he/she is not willing to give evidence in court, and there is otherwise insufficient admissible evidence to prove the case in court to the required standard;
- the nature of the case is relatively minor, taking into account matters including the degree of violence used, the extent of the injury, if any, caused, etc.;
- the accused has no history of spousal or other forms of violence such that the risk to the victim’s safety can credibly be assessed as ‘low’;
- the victim freely withdraws support for prosecution and the overall circumstances do not justify compelling the victim to testify, or warrant not proceeding with the case; and
- the accused is motivated to change (as evidenced, for example, by participation in counselling sessions).

- End -

CONTROLLING OFFICER'S REPLY**SJ056****(Question Serial No. 4493)**Head: (92) Department of JusticeSubhead (No. & title): (-) Not SpecifiedProgramme: (3) Legal PolicyControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

The Secretary for Justice's Office and the Legal Policy Division will provide legal advice on the Basic Law in 2017-18. Will the Government inform this Committee of the following:

a) Pursuant to Article 18 of the Basic Law, the laws listed in Annex III to the Basic Law shall be applied locally by way of promulgation or legislation by the Hong Kong Special Administrative Region (HKSAR). In this regard, there are altogether 12 national laws which are applied in the HKSAR. Please set out which of them are applied locally by way of promulgation and which by legislation using the table below. If they are applied by legislation in Hong Kong, what are the domestic laws involved?

	National laws applied in the HKSAR	Applied locally by way of promulgation or legislation?
1.	Resolution on the Capital, Calendar, National Anthem and National Flag of the People's Republic of China	
2.	Resolution on the National Day of the People's Republic of China	
3.	Declaration of the Government of the People's Republic of China on the Territorial Sea	
4.	Nationality Law of the People's Republic of China	
5.	Regulations of the People's Republic of China Concerning Diplomatic Privileges and Immunities	
6.	Law of the People's Republic of China on the National Flag	
7.	Regulations of the People's Republic of China concerning Consular Privileges and Immunities	

8.	Law of the People's Republic of China on the National Emblem	
9.	Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone	
10.	Law of the People's Republic of China on the Garrisoning of the Hong Kong Special Administrative Region	
11.	Law of the People's Republic of China on the Exclusive Economic Zone and the Continental Shelf	
12.	Law of the People's Republic of China on Judicial Immunity from Compulsory Measures Concerning the Property of Foreign Central Banks	

b) The Department of Justice and other departments, including the Transport and Housing Bureau, are discussing closely with the relevant ministries of the Central Government on the issue of co-location to draw up a feasible option in strict compliance with the provisions of the Basic Law and the “One country, Two systems” principle. What are all the options under consideration?

Asked by: Hon TIEN Puk-sun, Michael (Member Question No. 62)

Reply:

Part (a)

Items 1 to 5, 7 and 9 to 11 of the national laws applicable to Hong Kong as listed in the question are applied by way of promulgation, while items 6 and 8 are applied by way of local legislation (i.e. the National Flag and National Emblem Ordinance).

Part (b)

The Department of Justice advises Government bureaux and departments on legal issues as required from time to time, including those arising from projects under their purview. The co-location arrangement of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (XRL) project (primarily under the purview of the Transport and Housing Bureau) is one such example. Relevant Government bureaux and departments (including the Transport and Housing Bureau, Security Bureau, Constitutional and Mainland Affairs Bureau and the Department of Justice) have been studying issues concerning implementation of co-location, and have held discussions with relevant Mainland authorities, with a view to implementing a co-location arrangement consistent with the Basic Law and the “One Country, Two Systems” policy at the commissioning of the XRL.

- End -

CONTROLLING OFFICER'S REPLY**SJ057****(Question Serial No. 3820)**Head: (92) Department of JusticeSubhead (No. & title): (001) SalariesProgramme: (2) CivilControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

Please provide details on the ranks, functions and emoluments of the 7 posts to be created under this programme in 2017-18.

Asked by: Hon YEUNG Alvin (Member Question No. 2)Reply:

The net creation of seven posts in the Civil Division in 2017-18 involves the creation of 16 new posts offset by the deletion of nine posts. Details are as follows –

Post	Duties	NAMS*
Creation of <u>16</u> posts:		
One Senior Government Counsel (SGC) (time-limited for 5 years)	Providing legal support for the formulation of the brownfield policy framework	\$1,363,920
One SGC (time-limited for 27 months)	Providing legal support for the review of the Telecommunications Ordinance and the Broadcasting Ordinance	\$1,363,920
One SGC One Government Counsel (GC) (time-limited for 2 years)	Providing legal support for the review of Town Planning Board's handling of representations and comments arising from rezoning exercises and related amendments to the Town Planning Ordinance	\$1,363,920 \$970,860
One GC	Providing legal support for the promotion and development of mediation in Hong Kong	\$970,860
One Senior Law Clerk II	Strengthening paralegal support for the Civil Registry	\$681,060
Four Law Clerks	Strengthening paralegal support for the handling of cases in Civil Litigation Unit	\$389,640 x 4 = \$1,558,560

Post	Duties	NAMS*
One Personal Secretary II (time-limited for 16 months)	Providing secretarial support for the dedicated team assisting in the Company and Insolvency Law Reform	\$255,060
Two Assistant Clerical Officers	Strengthening clerical support for the Civil Division	\$255,060 x 2 = \$510,120
One Clerical Assistant	Strengthening clerical support in the handling of miscellaneous and small claims cases	\$199,080
One Analyst Programmer I	Replacing a contract post by permanent post	\$713,100
One Workman II	Strengthening support for receipt and despatch services	\$158,280
Offset by deletion of <u>nine</u> posts including eight time-limited posts which will lapse on 1.4.2017		

* NAMS means notional annual mid-point salary

- End -

CONTROLLING OFFICER'S REPLY

SJ058

(Question Serial No. 3839)

Head: (92) Department of Justice

Subhead (No. & title): (000) Operational expenses

Programme: (3) Legal Policy

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Will the Department provide funding for a study on the enactment of class action legislation?

Asked by: Hon YEUNG Alvin (Member Question No. 126)

Reply:

The Law Reform Commission (LRC) published its report on Class Actions, recommending the introduction of a class action regime in Hong Kong in May 2012. Following the publication of the report, a cross-sector working group ("Working Group") was established in December 2012 to study the LRC proposal and to make recommendations to the Administration on how to take the matter forward. The Working Group is chaired by the Solicitor General with members from the private sector, relevant government bureaux and departments, the two legal professional bodies and the Consumer Council. Also on the Working Group is a representative from the Judiciary to provide, where necessary, input to the deliberations from the perspective of interface with court operations.

In April 2014, a sub-committee of the Working Group ("Sub-Committee") was also formed to assist the Working Group on technical issues that might arise during its deliberations of the subject matter. As at 30 March 2017, the Working Group and the Sub-Committee have held [17] and [24] meetings respectively to study the LRC proposal. Further meetings of the Working Group and the Subcommittee will be held to consider the issues involved. The Working Group will make recommendations on the subject to the Government.

The legal work related to the Working Group mentioned above is primarily undertaken by existing staff of the Legal Policy Division of the DoJ among their other duties. The other expenditure in handling matters relating to this area of work is part of the Department's general departmental expenses, and necessary expenditure will continue to be absorbed within the existing resources of the Department.

- End -

CONTROLLING OFFICER'S REPLY

SJ059

(Question Serial No. 3981)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (3) Legal Policy

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Would the Government inform this Committee of:

- (a) how to assist Hong Kong legal professionals to provide services in the Mainland; and
- (b) the role, the details of work and the expenditure of the Law Reform Commission in the comprehensive review required for the laws of Hong Kong given many of them having become obsolete?

Asked by: Hon YICK Chi-ming, Frankie (Member Question No. 56)

Reply:

Question (a)

- (i) The Department of Justice (DoJ) has been working closely with Hong Kong's legal and dispute resolution professionals and relevant Mainland authorities to actively promote Hong Kong's legal and dispute resolution services in the Mainland.
- (ii) Various liberalisation measures have been put in place under the framework of the Closer Economic Partnership Arrangement between the Mainland and Hong Kong ("CEPA") and its ten supplements, as well as the Agreement between the Mainland and Hong Kong on Achieving Basic Liberalisation of Trade in Services in Guangdong.
- (iii) With the Agreement on Trade in Services coming into effect on 1 June 2016, the geographical application of the measure on mutual secondment of lawyers and that on the setting up of association in the form of partnership between Hong Kong and Mainland law firms has been extended. For the measure on secondment, it is now applicable in the whole of the Mainland. For the measure on association in the form of partnership, it is now applicable in the three cities of Shenzhen, Guangzhou and

Zhuhai. As at February 2017, ten associations between Hong Kong and Mainland law firms in the form of partnership have been approved, among which, seven were set up in Qianhai (Shenzhen), two in Hengqin (Zhuhai) and one in Nansha (Guangzhou).

- (iv) Hong Kong barristers have also made use of the relevant liberalisation measures under the CEPA. Pursuant to the measure which allows Mainland law firms to engage Hong Kong barristers and solicitors as consultants on Hong Kong or international law, as at February 2017, 33 Hong Kong barristers have been engaged by Mainland law firms as legal consultants. Such co-operation enables our Mainland counterparts to better utilise the expertise of Hong Kong barristers on Hong Kong and international law and to better serve clients requiring cross-border legal services.
- (v) DoJ will continue to work closely with the relevant stakeholders and Mainland authorities to ensure smooth implementation of the current liberalisation measures. We will also maintain close communication with the legal profession to seek their views on further liberalisation of the Mainland market for legal and dispute resolution services.
- (vi) Apart from the CEPA framework, DoJ has also been taking an active role in promoting Hong Kong's attributes in legal and dispute resolution services in the Mainland.
- (vii) DoJ will continue to promote Hong Kong's international legal and dispute resolution services in the Mainland and also in the context of the Belt and Road Initiative. We have been working and will continue to work in collaboration with the relevant Economic and Trade Offices of the Hong Kong Special Administrative Region Government in the Mainland as well as the legal and dispute resolution services sectors of Hong Kong in organising and participating in promotional events in the Mainland.
- (viii) In 2015 and 2016, seminars were held in various Mainland cities to promote the professional services of Hong Kong's legal and dispute resolution sectors under the Belt and Road Initiative. These cities included Chengdu (in March 2015), Chongqing (in March 2015), Beijing (in August 2015), Shanghai (in August 2015), Guiyang (in February 2016), Xian (in February 2016) and Wuhan (in April 2016). Each of the seminars attracted 120 to 150 attendees from the legal and dispute resolution, as well as the business sectors of the Mainland.
- (ix) In November 2016, DoJ co-organised with Hong Kong's legal and arbitration institutions the 4th (biennial) Legal Services Forum in Nanjing. The Forum was very well received with over 860 participants attending it.

Question (b)

- (i) Law reform plays an important role in any society which aspires to maintain the rule of law. As our society evolves, our laws have to change to meet the needs of the

society. The remit of the Law Reform Commission (LRC) is to consider for reform such aspects of the law as are referred to it by the Secretary for Justice (who chairs the LRC) or the Chief Justice (who is a member of the LRC). The aim of any LRC reference is to consider the law in a specified area and, where appropriate, present well-considered proposals for improving the law.

- (ii) However, the LRC is not the only source of proposals for reform of the law in Hong Kong. For instance, proposals for reform may be generated by the relevant Government bureaux or departments, or there may be initiatives from the legislature or the public. The LRC's role is, however, particularly valuable: (a) where the subject does not fall readily under the responsibility of one particular bureau of Government; (b) where the subject raises issues which are outside the Government's day to day activities; and (c) where the subject requires the dedication of full-time legal input to conduct a review.
- (iii) Members of the LRC and its sub-committees volunteer their services on a part-time and unpaid basis. DoJ provides secretariat and research support to the LRC and its sub-committees. The staff costs and other related expenses for the work of the LRC (including related research that is carried out in-house) are absorbed by the DoJ. The staff costs of the LRC Secretariat is \$16,148,040 for the financial year 2017-18. The other expenditure involved is part of the DoJ's general departmental expenses and a separate breakdown is not available.

- End -

CONTROLLING OFFICER'S REPLY

SJ060

(Question Serial No. 3982)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (5) International Law

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Would the Government inform this Committee of the following:

- (a) the number of occasions and the estimated expenditure regarding the surrender of fugitive offenders between Hong Kong and the Mainland for 2012-16;
- (b) the number of occasions requiring the taking of evidence for criminal cases in the Mainland, the manpower and the estimated expenditure involved for 2012-16; and
- (c) given Hong Kong and the Mainland have not signed any extradition agreements, how will the judicial and law enforcement agencies of the 2 sides cooperate in criminal offences involving the 2 sides and what is the estimated expenditure for it?

Asked by: Hon YICK Chi-ming, Frankie (Member Question No. 57)

Reply:

The various types of cooperation with Mainland authorities regarding the handling of criminal cases as covered in the three parts of the question are set out below in seriatim-

- (a) Currently there is no surrender of fugitive offenders (SFO) arrangement between the Hong Kong Special Administrative Region (HKSAR) and the Mainland. In the absence of an SFO arrangement between the HKSAR and the Mainland or relevant legislation conferring the necessary power, the HKSAR Government has never surrendered fugitives to the Mainland.

Regarding the return of Hong Kong residents suspected of having committed crimes to the HKSAR by the Mainland authorities, there were occasions in the past where the Mainland law enforcement authorities exercised discretion to return to the HKSAR certain Hong Kong residents suspected of having committed crimes in the HKSAR for investigation or trial, depending on the circumstances of individual

cases. Between 2012 and 2016, there were 4 cases of removals involving 5 offenders.

- (b) Section 77E of the Evidence Ordinance (Cap. 8) empowers the Court of First Instance of the High Court to order the issue of a letter of request to the court of a place outside Hong Kong to seek assistance in the taking of evidence for the purposes of criminal proceedings instituted or likely to be instituted in Hong Kong. There was one case in 2012 involving the taking of evidence in a Mainland court. In 2016, the HKSAR made 4 requests to the Mainland. One of them was not processed because the evidence to be sought was subsequently agreed to by the Defence. The remaining 3 requests are being processed.
- (c) The HKSAR and the Mainland police authorities have been cooperating in the investigation of cross border crimes using the mode of cooperation similar to that practised by the Interpol.

As set out in (b), the Court of First Instance may seek assistance in the taking of evidence in criminal proceedings from the court of a place outside Hong Kong pursuant to section 77E of the Evidence Ordinance. In similar terms, sections 74 to 77B of the Evidence Ordinance empower the Court of First Instance to order the taking of evidence in aid of criminal proceedings instituted or likely to be instituted in the court of a place outside Hong Kong. The HKSAR judicial authority may thus work with the Mainland judicial authority pursuant to the provisions in the Evidence Ordinance.

As far as the Department of Justice is concerned, cases involved (if any) are handled by existing staff among their other duties and the manpower/expenditure cannot be separately identified. Expenditure other than manpower forms part of the Department's general departmental expenses and a separate breakdown is not available.

- End -

CONTROLLING OFFICER'S REPLY**SJ061****(Question Serial No. 6379)**Head: (92) Department of JusticeSubhead (No. & title): (-) Not Specified

Programme:

- (1) Prosecutions
- (2) Civil
- (3) Legal Policy
- (4) Law Drafting
- (5) International Law

Controlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

Regarding the records management work of the Department of Justice (DoJ) and its divisions in the past year:

Please provide information on the number and rank of officers designated by DoJ and its divisions to perform such work. If there is no officer designated for such work, please provide information on the number of officers and the hours of work involved in records management duties, and the other duties they have to undertake in addition to records management;

Please provide information on programme and administrative records which have been closed pending transfer to the Government Records Service (GRS) for appraisal, including the category of records, years covered by the records, the number and linear meters of records, the retention period approved by GRS, whether they are confidential documents and reasons why they are pending transfer;

Please list in the table below information on programme and administrative records which have been transferred to GRS for retention, including the category of records, years covered by the records, the number and linear meters of records, years that the records were transferred to GRS, the retention period approved by GRS and whether they are confidential documents;

Please list in the table below information on records which have been approved for destruction by GRS, including the category of records, records titles, years covered by the records, the number and linear meters of records, years that the records were transferred to GRS, the retention period approved by GRS, whether they are confidential documents, reasons why they are pending transfer and reasons for approving their destruction.

Reply:

1. In view of the considerable volume of work involved in managing departmental records, staff of individual divisions would handle the work in respect of their respective records. These include staff of some departmental grades and also general grades such as Executive Officer and clerical grades staff and personal secretaries. Since this forms part of their overall work and no statistics have been kept on the amount of time they spent specifically on records management work, it is difficult to quantify the hours of work performed by these officers in such duties and provide a detailed breakdown.
2. The information on programme and administrative records which have been closed pending transfer to the Government Records Service (GRS) for appraisal in the past year is set out in the table below -

Category of records	Years covered by the records	No. & linear metres (lm) of records	Retention period approved by GRS	Are there confidential documents	Reasons for pending transfer
Administrative records	1988-2016	175 nos. (9.2 lm)	2-7 years	1 of them is confidential	Not yet time-expired in accordance with the relevant disposal schedules or pending file review.
Programme records	1990-2016	1923 nos. (200.25 lm)	4-20 years	663 of them are confidential	Not yet time-expired in accordance with the relevant disposal schedules or pending file review.

3. As regards the information on programme and administrative records which have been transferred to the GRS for retention in the past year (2016), we sent 114 administrative records and 8 programme records to the GRS for appraisal last year. Subject to GRS' appraisal, we will transfer these records to the GRS for retention. In the circumstance, we are not able to provide information as per the suggested table format.
4. The information on records which have been approved for destruction by the GRS in the past year is set out in the table below -

Category of records	Records title	Years covered by the records	No. & linear metres (lm) of records	Years that the records were transferred to GRS	Retention period approved by GRS	Are there confidential documents	Reasons for pending transfer	Reasons for approving their destruction
Administrative records	<p>ADMINISTRATION on various topics including Circulars & Directives, Complaints, Conferences and Seminars, Office Services, Reports and Statistics etc.</p> <p>ACCOMMODATION AND FACILITIES on various topics including Accommodation, Accommodation – Building Management, Accommodation – Security, etc.</p> <p>PROCUREMENT AND SUPPLIES on various topics including Clothing, Computer Equipment and Supplies, Furniture and Furnishings, Printing, Stationery, etc.</p> <p>FINANCE AND ACCOUNTING on various topics including Expenditure, Claims, Returns and Statement, Salaries, etc.</p> <p>HUMAN RESOURCES on various topics including Appointments and Posting, Establishment, Performance and Appraisal, etc.</p> <p>MANAGEMENT OF INFORMATION, INFORMATION SERVICES AND INFORMATION TECHNOLOGY on various topics including Information Technology and Computer Systems, Information Services – Books and Publications, Library Services etc.</p>	1946 - 2012	552 nos. (22.63 lm)	Not applicable	2-4 years	No	Not applicable	See Note below

Programme records	Case files relating to Civil Litigation	1982 – 2006	2,119 files (120.06 LM)	Not applicable	7 - 15 years	No	Not applicable	See Note below
	Files relating to Admission of Solicitors and Barristers	1972 - 2008	1569 nos. (13.95 1m)	Not applicable	7 - 15 years	No	Not applicable	See Note below

Note: These records no longer possess any administrative, operational, fiscal or legal values and were appraised by the GRS as having no archival value as well. As they became time-expired according to the retention periods as set out in the corresponding records retention and disposal schedules, they were destroyed after the prior agreement of the GRS Director was obtained.

- End -

CONTROLLING OFFICER'S REPLY

SJ062

(Question Serial No. 6412)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme:

- (1) Prosecutions
- (2) Civil
- (3) Legal Policy
- (4) Law Drafting
- (5) International Law

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Regarding the expenses on entertainment and gifts of the Department of Justice and its divisions, please provide details of the past two years, including the relevant secretary's office/bureau/branch/department and year, estimated expenses on entertainment and gifts, actual expenses on entertainment and gifts, cap on entertainment expenses (including beverages) per head, cap on gift expenses per guest, number of receptions held and total number of guests entertained.

Regarding the expenses on entertainment and gifts of the Department of Justice and its divisions, please provide details of each occasion for the past year, including the relevant secretary's office/bureau/branch/department, date of reception, departments/organisations and titles of guests entertained (grouped by department/organisation and indicating the number of guests), food expenses, beverage expenses, gift expenses, venue (department office/restaurant in government facilities/private restaurant/others (please specify)).

Please provide the estimated expenses on entertainment and gifts for this year, including the estimated provision for expenses on entertainment and gifts of the relevant secretary's office/bureau/branch/department, cap on entertainment expenses per guest.

Asked by: Hon YIU Chung-yim (Member Question No. 312)

Reply:

As a general rule, all politically appointed officials and civil servants should observe the same principles when providing official entertainment in the form of meals. They are

required to exercise prudent judgment and economy in order to avoid any public perception of extravagance, and should act in accordance with the relevant regulations and administrative guidelines. According to the existing guidelines, expenditure on official meals should not exceed \$450 per person for lunch or \$600 per person for dinner, inclusive of all expenses incurred on food and beverages consumed on the occasion, service charges and tips. The Department of Justice (DoJ) follows the same principles and guidelines on official entertainment. In 2015-16 and 2016-17 (up to 28 February 2017), the actual expenditure on official entertainment of DoJ was \$94,896 and \$117,644 respectively. The estimated expenditure for DoJ in 2017-18 is \$204,000.

The number of receptions held in 2015-16 and 2016-17 are both 42 and the total number of guests entertained in 2015-16 and 2016-17 are 333 and 332 respectively.

In addition, the Secretary for Justice receives a non-accountable entertainment allowance for meeting expenses for official entertainment. The amount for the allowance was \$217,700 in 2015-16 and \$224,200 in 2016-17. For 2017-18, the estimated expenditure on the allowance is \$229,600.

In line with the Government's green policy, public officers should as far as possible refrain from bestowing gifts/souvenirs to others during the conduct of official activities. According to the existing guidelines, where bestowal of gifts/souvenirs is necessary or unavoidable due to operational, protocol or other reasons, the gift/souvenir items should not be lavish or extravagant and the number should be kept to a minimum. Also, the exchange of gifts/souvenirs should only be made from organisation to organisation. We do not specifically maintain separate accounts for gift and souvenir expenses.

- End -

CONTROLLING OFFICER'S REPLY

SJ063

(Question Serial No. 6439)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (1) Prosecutions
(2) Civil
(3) Legal Policy
(4) Law Drafting
(5) International Law

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Please provide information regarding consultancy studies (if any) commissioned by the Department of Justice and its divisions for the purpose of formulating and assessing policies.

Please provide information on the studies on public policy and strategic public policy for which funds were allocated over the past 2 financial years in terms of the following:

Name of Consultant; mode of award (public bidding/tender/others (please specify)); title, content and objectives of project; consultancy fee (\$); start date; progress of study (under planning/in progress/completed); follow-ups taken by the Administration on the study reports and their progress (if any); if completed, have they been made public? If yes, through what channel(s)? If not, what were the reasons?

Are there any projects for which funds have been reserved for conducting internal studies in this year? If yes, please provide the following information: title, content and objectives of project; start date; progress of study (under planning/in progress/completed); follow-ups taken by the Administration on the study reports and their progress (if any); for the projects that are expected to be completed this year, is there any plan to make them public? If yes, through what channel(s)? If not, what are the reasons?

Are there any projects for which funds have been reserved for conducting consultancy studies in this year? If yes, please provide the following information: name of consultant; mode of award (public bidding/tender/others (please specify)); title, content and objectives

of project; consultancy fee (\$); start date; progress of study (under planning/in progress/completed); follow-ups taken by the Administration on the study reports and their progress (if any); for the projects that are expected to be completed this year, is there any plan to make them public? If yes, through what channel(s)? If not, what are the reasons? What are the criteria for considering the award of consultancy projects to the research institutions concerned?

Asked by: Hon YIU Chung-yim (Member Question No. 313)

Reply:

The Department of Justice and its divisions have not commissioned any consultancy studies for the purpose of formulating and assessing policies or allocated funds on the studies on public policy or strategic public policy over the past 2 financial years.

- End -

CONTROLLING OFFICER'S REPLY

SJ064

(Question Serial No. 6459)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme:

- (1) Prosecutions
- (2) Civil
- (3) Legal Policy
- (4) Law Drafting
- (5) International Law

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Please give details of the duty visits of the Secretary for Justice and the Law Officers of all Divisions for the past 2 years by setting out certain information of the trips, including the number of visits, purposes and places of visits, number of officers in entourage, air ticket expenses, local transportation expenses, hotel expenses, subsistence allowance and other expenses, banquet and entertainment expenses, gift expenses as well as the total expenses.

If the above information covers trips to Mainland China, please give details of the meetings, visits or exchanges by the Department of Justice and its Divisions to the relevant Mainland authorities for the past year (including the total number of such trips) by setting out in chronological order certain information of each trip, including 1) the purpose and place of the trip, the number of Hong Kong officials in entourage and their post titles, as well as the titles of Mainland officials met; 2) whether announcement was made prior to the trip and, if not, the reasons for keeping confidence; 3) whether files of the minutes of the meetings have been kept and, if not, the reasons for that; and 4) whether agreements were reached and, if yes, the details and progress of their implementation.

Asked by: Hon YIU Chung-yim (Member Question No. 319)

Reply:

Relevant information on the duty visits of the Secretary for Justice and the Law Officers in the past 2 years (2015-16 and 2016-17) is as follows -

Date of visit	Place of visit	Size of entourage^	Purpose of visit	Hotel accommodation expenses	Air ticket expenses	Other expenses	Total expenditure#
Secretary for Justice							
(12 times)	USA (New York, Washington DC), Indonesia (Jakarta), Beijing, Shanghai, Shenzhen, Macau	0-3	To lead delegation to promote Hong Kong as a centre for international legal and dispute resolution services in the Asia Pacific region, strengthen mutual relationship, attend meetings and events (e.g. Hague Conventions Conference, Launching ceremony of the Shanghai Office of the Hong Kong International Arbitration Centre, Seminars on legal and dispute resolution services, Opening and graduation ceremony of a Mainland summer internship programme for Hong Kong law students).	About \$168,000	About \$432,000	About \$184,000	About \$784,000
Law Officers							
(14 times)	Austria (Vienna), Mauritius, Russia (St Petersburg), Switzerland (Zurich), UK (London), Beijing, Guangxi, Guiyang, Nanning, Nanjing, Qingdao, Xian, Macau,	0-4	To attend meetings, conferences and seminars, as speakers at conferences, official visits to relevant authorities, and conduct other professional exchanges and promotional activities.	About \$68,000	About \$390,000	About \$67,000	About \$525,000

2016-17 (Up to the available records as at 20 Mar 2017)

Date of visit	Place of visit	Size of entourage	Purpose of visit	Hotel accommodation expenses	Air ticket expenses	Other expenses	Total expenditure#
Secretary for Justice							
2016-17 (13 times)	Australia (Sydney, Brisbane, Melbourne and Gold Coast) Thailand (Bangkok), Korea (Seoul), United Arab Emirates (Dubai), Beijing, Shanghai, Shenzhen, Qianhai, Zhengzhou, Chongqing, Nanjing	1-2	To lead delegation to promote Hong Kong as a centre for international legal and dispute resolution services in the Asia Pacific region, strengthen mutual relationship, attend meetings and events with relevant officials and representatives from legal / dispute resolution / business sectors (e.g. 4th Hong Kong Legal Services Forum, 5th Asia Pacific ADR* Conference, Chartered Institute of Arbitrators International Conference 2017, 2016 Annual Meeting of the Chinese Judicial Studies Association, Signing Ceremony of the Agreement on Mutual Taking of Evidence in Civil and Commercial Matters between the Courts of the Mainland and the Hong Kong Special Administrative Region with the Supreme People's Court, Opening Ceremony of the new office of the Shenzhen Court of International Arbitration).	About \$80,000	About \$360,000	About \$116,000	About \$556,000
Law Officers							
(18 times)	Australia (Brisbane, Melbourne), Ireland (Dublin), Laos (Vientiane), Beijing, Changsha, Guangzhou, Sanya, Shenzhen, Wuhan, Macau	0-6	To attend meetings, conferences and seminars, as speakers at conferences, official visits to relevant authorities, and conduct other professional exchanges and promotional activities.	About \$65,000	About \$313,000	About \$136,000	About \$514,000

Remarks:

- # Total expenditure includes charges for accommodation and passage, subsistence allowance for duty outside Hong Kong and sundry expenses (if applicable).
- ^ The entourage led by SJ usually comprised Administrative Assistant and/or Press Secretary to the Secretary for the Justice while the entourage led by Law Officers usually comprised their deputies and/or other directorate officers and senior officers.
- * “ADR” is the acronym for “Alternative Dispute Resolution”.

No expenses for overseas official entertainment were incurred in both 2015-16 and 2016-17.

In line with the Government’s green policy, public officers should as far as possible refrain from bestowing gifts/souvenirs to others during the conduct of official activities. According to the existing guidelines, where bestowal of gifts/souvenirs is necessary or unavoidable due to operational, protocol or other reasons, the gift/souvenir items should not be lavish or extravagant and the number should be kept to a minimum. Also, the exchange of gifts/souvenirs should only be made from organisation to organisation. We do not specifically maintain separate accounts for gift and souvenir expenses.

We are in touch with the relevant Mainland authorities on issues of mutual concern from time to time as and when necessary. Generally speaking, the meetings are recorded as appropriate, having regard to the different circumstances and factors such as nature of the meeting and subject matter, consensus (if any) reached by both sides, development of the subject matter, etc. We will consider whether and how the trips and the achievement should be made public in the light of the circumstances and needs.

- End -

CONTROLLING OFFICER'S REPLY

SJ065

(Question Serial No. 6556)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (1) Prosecutions
(2) Civil
(3) Legal Policy
(4) Law Drafting
(5) International Law

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

In regard to the growing cross-boundary co-operation between Hong Kong and the Mainland in recent years, please provide relevant information on Hong Kong/Mainland cross-boundary projects or programmes in which the Department of Justice (DoJ) and its divisions have been involved.

Please provide information on the Hong Kong/Mainland cross-boundary projects or programmes for the past 2 years,, including: (1) the title, details and objective of the project/programme, and whether it is related to the Framework Agreement on Hong Kong/Guangdong Co-operation or the Belt and Road Initiative; the expenditure, Mainland official(s) and department(s)/organisation(s) involved; (2) Has any agreement been signed and made public? If not, what are the reasons? Have any minutes of the meetings been taken? If so, have they been made public? What is the progress (percentage completed, commencement date, target completion date)? Have the details, objectives, amount involved or impact on the public, society, culture and ecology been released to the public? If yes, through what channel(s) and what were the manpower and expenditure involved? If not, what were the reasons? Has any public consultation on the cross-boundary project been conducted in Hong Kong? What are the details of the legislative amendments or policy changes involved in the programme?

Apart from the projects or programmes mentioned above, were there any other modes of Hong Kong/Mainland cross-boundary cooperation involving the DoJ and its divisions in the past 2 years? If yes, in what modes were they taken forward? What were the manpower and expenditure involved?

Asked by: Hon YIU Chung-yim (Member Question No. 320)

Reply:

In the past two years, the Department of Justice (DoJ) has taken the following initiatives on enhancing co-operation with the Mainland. The staff costs and other related expenses for such initiatives have been and will continue to be absorbed from within the available resources of the DoJ and the expenditure for these programmes cannot be separately identified.

Legal Co-operation with the Mainland

- (a) DoJ has been actively promoting legal co-operation in civil and commercial matters between the Hong Kong Special Administrative Region (HKSAR) and the Mainland, so as to facilitate the resolution of civil and commercial disputes in a more cost-effective manner.
- (b) The *Arrangement on Mutual Taking of Evidence in Civil and Commercial Matters between the Courts of the Mainland and the HKSAR* was signed between DoJ and the Supreme People's Court of the PRC on 29 December 2016. This *Arrangement* took effect on 1 March 2017 and aims at assisting litigants of the two jurisdictions to obtain evidence in civil and commercial matters under the current legal framework but with enhanced efficiency and greater certainty.
- (c) DoJ has also been discussing with the Supreme People's Court a proposed arrangement on mutual recognition and enforcement of judgments in relevant matrimonial matters. This initiative is generally supported by the legal and dispute resolution communities and relevant stakeholders. DoJ will continue to discuss with the Mainland side on the proposed arrangement and the LegCo Panel on Administration of Justice and Legal Services which has all along been kept informed, will be provided with updates on the relevant development in the second quarter of 2017.
- (d) All the existing arrangements signed with the Mainland on legal co-operation in civil and commercial matters have been made available on the DoJ's webpages. In respect of the arrangements to which DoJ is a party, DoJ issued press release upon the signing of the same. DoJ will continue to monitor the implementation of the existing legal arrangements with the Mainland.

Liberalisation of the Mainland market for Hong Kong's legal and dispute resolution services

- (e) DoJ has been working closely with Hong Kong's legal and dispute resolution communities to promote their services in the Mainland under the framework of Closer Economic Partnership Arrangement between the Mainland and Hong Kong ("CEPA").
- (f) The *Agreement on Trade in Services*, which was signed under the CEPA framework in November 2015 and took effect on 1 June 2016, has extended the geographical application of the following measures:

- Hong Kong law firms may second Hong Kong lawyers to work in Mainland firms as consultants on Hong Kong law or cross-border laws and Mainland law firms may second Mainland lawyers to work as consultants on Mainland law in representative offices set up by Hong Kong law firms in the Mainland;
 - A Hong Kong law firm and a Mainland law firm may operate in association in the form of partnership in the cities of Guangzhou, Shenzhen and Zhuhai.
- (g) These two measures are welcomed by the stakeholders, especially the initiative on the setting-up of associations in the form of partnership. As at February 2017, 10 such associations have been approved to be set up and among them, seven in Qianhai (Shenzhen), two in Hengqing (Zhuhai) and one in Nansha (Guangzhou).
- (h) As for dispute resolution services, DoJ has been advocating for the appointment of more Hong Kong legal and dispute resolution professionals by the Mainland's dispute resolution and relevant institutions. We have also taken active steps in promoting Hong Kong as a seat of arbitration and the use of Hong Kong law as the governing law. In this connection, we are pleased to note that the Shenzhen Court of International Arbitration, in its Guidelines for the Administration of Arbitration under the United Nations Commission on International Trade Law Arbitration Rules (effective as from 1 December 2016), has chosen Hong Kong as its default seat of arbitration where the parties have not agreed on the seat of arbitration, unless otherwise determined by the arbitral tribunal.
- (i) DoJ will continue to work closely together with the relevant stakeholders and the justice administration authorities of the Mainland in ensuring a smooth implementation of the existing liberalisation measures under the CEPA framework, as well as exploring opportunities for further liberalisation of the Mainland market for Hong Kong's legal and dispute resolution sectors.

Enhancing co-operation under the Framework Agreement on Hong Kong/Guangdong Co-operation and Co-operation between Shenzhen and Hong Kong

- (j) DoJ continues to work closely with our counterparts under the Framework Agreement on Hong Kong/Guangdong Co-operation signed in 2010 and the Co-operation Arrangement between Hong Kong and Shenzhen signed in 2011 (i.e. the Legislative Affairs Office and the Justice Department of the Guangdong Province (depending on the subject matter concerned) for the prior, and Shenzhen Municipal Government for the latter).
- (k) Through these two co-operation arrangements, we have reinforced the communication channel in legal matters with our counterparts in Guangdong and Shenzhen. We have facilitated the exchange of legal information between both sides and also the exchange of legal personnel by way of visits and briefings.

Promotion of Hong Kong's legal and dispute resolution services under the context of the Belt and Road Initiative

- (l) DoJ has been actively promoting Hong Kong's legal and dispute resolution services in the Mainland, particularly in the context of the Belt and Road Initiative. In 2015 and 2016, we worked in collaboration with the relevant Economic and Trade Offices of the Hong Kong Special Administrative Region Government in the Mainland as well as the legal and dispute resolution services sectors of Hong Kong in organising and participating in promotional events held in various Mainland cities, including Chengdu (in March 2015), Chongqing (in March 2015), Beijing (in August 2015), Shanghai (in August 2015), Guiyang (in February 2016), Xian (in February 2016) and Wuhan (in April 2016).
- (m) Each of the half-day seminars held in these cities attracted 120 to 150 attendees from the legal and dispute resolution, as well as the business sectors of the Mainland.
- (n) In November 2016, DoJ also co-organised with Hong Kong's legal and arbitration institutions the 4th (biennial) Legal Services Forum in Nanjing. The Forum was very well received with over 860 participants attending it.

Apart from the projects and programmes mentioned above, other modes of Hong Kong / Mainland cross-boundary cooperation involving the DoJ and its divisions in the past two years mainly included co-operation related to the handling of criminal proceedings on a case by case basis. Such cases were handled by existing staff among their other duties. The expenditure cannot be separately identified.

- End -

CONTROLLING OFFICER'S REPLY

SJ066

(Question Serial No. 6602)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme:

- (1) Prosecutions
- (2) Civil
- (3) Legal Policy
- (4) Law Drafting
- (5) International Law

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

In regard to the growing cross-boundary co-operation between Hong Kong and the Mainland in recent years, please provide relevant information on Hong Kong/Mainland cross-boundary projects or programmes in which the Department of Justice (DoJ) and its divisions have been involved.

Has provision been earmarked for Hong Kong/Mainland cross-boundary projects or programmes this year? If yes, please provide information on such projects or programmes this year, including: (1) the title, details and objective of the project/programme, and whether it is related to the Framework Agreement on Hong Kong/Guangdong Co-operation or the Belt and Road Initiative; the expenditure and Mainland official(s) involved; (2) The name of any relevant department(s) / organisations(s), and whether any agreement been signed? Has such document made public? If not, what are the reasons? Have any minutes of the meetings been taken? If so, have they been made public? What is the progress (percentage completed, commencement date, target completion date)? Have the details, objectives, amount involved or impact on the public, society, culture and ecology been released to the public? If yes, through what channel(s) and what are the manpower and expenditure involved? If not, what are the reasons? Has any public consultation on the cross-boundary project been conducted in Hong Kong in respect of the details of the legislative amendments or policy changes involved?

Apart from the projects or programmes mentioned above, are there any other modes of Hong Kong/Mainland cross-boundary cooperation involving the DoJ and its divisions this year? If yes, in what modes are they taken forward? What are the financial and manpower resources earmarked in this year's Estimates?

Asked by: Hon YIU Chung-yim (Member Question No. 321)

Reply:

In the coming year, the Department of Justice (DoJ) will continue to implement the following initiatives on enhancing co-operation with the Mainland. The staff costs and other related expenses for such initiatives would be absorbed from within the available resources of the DoJ and the expenditure for these programmes cannot be separately identified.

Legal Co-operation with the Mainland

- (a) DoJ has been actively promoting legal co-operation in civil and commercial matters between the Hong Kong Special Administrative Region (HKSAR) and the Mainland, so as to facilitate the resolution of civil and commercial disputes in a more cost-effective manner.
- (b) DoJ will continue to monitor the implementation of the existing legal arrangements with the Mainland. DoJ has also been discussing with the Supreme People's Court a proposed arrangement on mutual recognition and enforcement of judgments in relevant matrimonial matters. This initiative is generally supported by the legal and dispute resolution communities and the relevant stakeholders. DoJ will continue to discuss with the Mainland side on the proposed arrangement and the Legislative Council Panel on Administration of Justice and Legal Services, which has all along been kept informed, will be provided with updates on the relevant development in the second quarter of 2017.

Liberalisation of the Mainland market for Hong Kong's legal and dispute resolution services

- (c) DoJ has been working closely with Hong Kong's legal and dispute resolution communities to promote their services in the Mainland under the framework of Closer Economic Partnership Arrangement between the Mainland and Hong Kong ("CEPA").
- (d) The *Agreement on Trade in Services*, which was signed under the CEPA framework in November 2015 and took effect on 1 June 2016, has extended the geographical application of the relevant measures, including the measure on the setting up of association by law firms of both sides in the form of partnership in the cities of Guangzhou, Shenzhen and Zhuhai.
- (e) DoJ will continue to work closely together with the relevant stakeholders and the justice administration authorities of the Mainland in ensuring a smooth implementation of the existing liberalisation measures under the CEPA framework, as well as exploring opportunities for further liberalisation of the Mainland market for Hong Kong's legal and dispute resolution sectors.
- (f) As for dispute resolution services, DoJ will continue to advocate for the appointment of more Hong Kong legal and dispute resolution professionals by the Mainland's dispute resolution and relevant institutions. We will also take active steps in promoting

Hong Kong as a seat of arbitration and the use of Hong Kong law as the governing law.

Enhancing co-operation under the Framework Agreement on Hong Kong/Guangdong Co-operation and Co-operation between Shenzhen and Hong Kong

- (g) DoJ will continue to work closely with our counterparts under the Framework Agreement on Hong Kong/Guangdong Co-operation signed in 2010 and the Co-operation Arrangement between Hong Kong and Shenzhen signed in 2011 (i.e. the Legislative Affairs Office and the Justice Department of the Guangdong Province (depending on the subject matter concerned) for the prior, and the Shenzhen Municipal Government for the latter).
- (h) Through these two co-operation arrangements, we will continue to reinforce the communication channel in legal matters with our counterparts in Guangdong and Shenzhen and facilitate the exchange of legal information and that of legal personnel by way of visits and briefings.

Promotion of Hong Kong's legal and dispute resolution services under the context of the Belt and Road Initiative

DoJ will continue to promote Hong Kong's international legal and dispute resolution services in the Mainland in the context of the Belt and Road Initiative. We have been working and will continue to work in collaboration with the relevant Economic and Trade Offices of the HKSAR Government in the Mainland as well as the legal and dispute resolution services sectors of Hong Kong in organising and participating in promotional events in various Mainland cities. For example, in November 2016, DoJ co-organised with Hong Kong's legal and arbitration institutions the latest (4th) biennial Legal Services Forum in Nanjing and DoJ issued a press release on this event.

Apart from the projects and programmes mentioned above, other modes of Hong Kong / Mainland cross-boundary cooperation involving the DoJ and its divisions mainly include co-operation related to the handling of criminal proceedings on a case by case basis. Such cases are handled by existing staff among their other duties. The expenditure cannot be separately identified.

- End -

CONTROLLING OFFICER'S REPLY

SJ067

(Question Serial No. 2885)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (3) Legal Policy

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Regarding the promotion of Hong Kong as a centre for international legal and dispute resolution services in the region, please advise:

1. What activities were organised by the Department of Justice (DoJ) in 2016-17 for promoting Hong Kong's international legal and dispute resolution services? Please set out the place, date, required manpower, number of participants and expenditure of each activity.

2. Did the Government evaluate the effectiveness of the promotional activities? In 2017-18, how much resources will DoJ allocate to promote Hong Kong's mediation and arbitration services, and what are the initiatives and activities involved? What are the required manpower, expenditure and implementation timetable of each activity?

Asked by: Hon YUNG Hoi-yan (Member Question No. 14)

Reply:

Promotion of Hong Kong's international legal and dispute resolution services

The work of the Department of Justice (DoJ) to promote Hong Kong as a regional hub of international legal and dispute resolution services is primarily undertaken by the Mediation Team of the Civil Division and the dedicated Arbitration Unit of the Legal Policy Division, supplemented by resources deployed from time to time as necessary from other parts of DoJ. Such activities are coordinated by the Joint Dispute Resolution Strategy Office, which is an internal set-up within DoJ to enhance the overall co-ordination of mediation and arbitration work.

DoJ has been working closely with the legal professional bodies and the dispute resolution sector to ***promote the use of arbitration in Hong Kong as well as Hong Kong's status as a regional hub of international legal and dispute resolution services*** to the local and international business communities in Hong Kong as well as in the Mainland and the rest of

the world, particularly in emerging economies in the Asia-Pacific region. In this connection, the promotional events set out below were held in 2016-17.

(a) Promotion of Hong Kong's international legal and dispute resolution services to the local and international business communities in Hong Kong

- With increasing worldwide intellectual property (“IP”) transactions, there is growing demand for dispute resolution services. The Government is committed to further developing and promoting Hong Kong as an international IP arbitration and mediation centre and a leading IP trading hub in the Asia-Pacific region. In December 2016, DoJ co-organised a breakout session with the Hong Kong Trade Development Council (HKTDC) at the Business of IP Asia Forum held at the Hong Kong Convention and Exhibition Centre (HKCEC). Eminent speakers from the IP and dispute resolution industry spoke at the breakout session entitled “Resolution of IP Disputes - Recent Developments”, which was attended by over 300 participants.

(b) Promotion of Hong Kong's legal and dispute resolution services in the Mainland

- DoJ has also been actively promoting Hong Kong's legal and dispute resolution services in the Mainland, particularly in the context of the Belt and Road Initiative. In 2016, we worked in collaboration with the relevant Economic and Trade Offices of the Hong Kong Special Administrative Region Government in the Mainland as well as the legal and dispute resolution services sectors of Hong Kong in organising and participating in promotional events held in various Mainland cities, including Guiyang (in February 2016), Xian (in February 2016) and Wuhan (in April 2016). Each of the half-day seminars held in these cities attracted 120 to 150 attendees from the legal and dispute resolution, as well as the business sectors, of the Mainland. In November 2016, DoJ co-organised with Hong Kong's legal and arbitration institutions the 4th (biennial) Legal Services Forum in Nanjing. The Forum was very well received with over 860 participants attending it.

(c) Promotion of Hong Kong's legal and dispute resolution services among emerging economies in the Asia Pacific region

- In October 2016, DoJ led a delegation of representatives from various legal and arbitration professional bodies in Hong Kong on a promotional trip to Bangkok, Thailand. During the visit, the Secretary for Justice officiated the “In Style • Hong Kong” Symposium organised by the HKTDC featuring a range of Hong Kong's business and professional services. A thematic seminar on Hong Kong's legal and dispute resolution services, which was attended by over 200 participants, was held during the Symposium.

Apart from the various programmes and activities organised / co-organised by DoJ, our counsel also participate in one form or another in various local, regional and international conferences and working groups organised other than by DoJ at which the opportunity is taken to promote and enhance Hong Kong's status as an international legal and dispute resolution centre.

In respect of the further promotion and development of wider use of mediation to resolve disputes in Hong Kong, in 2016-17, the Mediation Week 2016 with the theme “Mediate First – Advance with the times” was held from 7 to 13 May 2016. The Mediation Week included : (a) a series of seminars on mediation-related topics held between 7 and 12 May at the Conference Hall of DoJ’s office at the Justice Place (with about 90 to 110 participants for each of them); (b) a mediation carnival held at Lok Fu Place on 8 May 2016 (with approximately 2 000 participants); and (c) a Mediation Conference co-organized by DoJ and the HKTDC, with the support of various key players in the mediation field, held on 13 May 2016 at the HKCEC with about 400 participants.

Evaluation of effectiveness of the promotional activities

The promotional events related to the use of arbitration in Hong Kong as well as Hong Kong’s status as a regional hub of international legal and dispute resolution services have been well received. We have been maintaining effective dialogues with the stakeholders to keep in view the effectiveness of the relevant activities and to take forward new measures to further promote the attributes of Hong Kong’s legal and dispute resolution services.

For the events of the Mediation Week 2016 including the Mediation Conference 2016, they were well attended by over 3 000 speakers and participants. The activities sought to arouse public awareness of mediation and were attended by members of the community, different sectors of business and trade, in addition to professionals and practitioners of mediation. The Mediation Conference provided a valuable opportunity for mediation experts (local and overseas) to exchange views and share experience at a global level. The feedback received was positive.

Initiatives and activities to promote Hong Kong’s mediation and arbitration services in 2017-18

On the promotion and development of Hong Kong’s arbitration and mediation services in 2017-18, DoJ will keep track of the latest development on third party funding of arbitration. The Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Bill 2016 introduced into the Legislative Council (LegCo) in January 2017 seeks to ensure that third party funding of arbitration and mediation is permitted under Hong Kong law. If and when the Bill is enacted, follow-up actions would include the establishment of an advisory body and an authorized body responsible for the drafting and issue of a code of practice for third party funders.

Promotion work to drive Hong Kong’s arbitration services will concentrate on the following areas -

- (i) We are currently making plans for and will organise promotional events to be held in Hong Kong, the Mainland or other emerging economies in the Asia-Pacific (such as Malaysia) in 2017 and beyond, so as to further encourage enterprises in the Mainland and in jurisdictions along the Belt and Road to make better use of Hong Kong’s professional services (in particular, its legal and dispute resolution services) in their business development pursuant to the Belt and Road Initiative.

- (ii) Following the LegCo's approval in June 2016 of the proposed creation of a DL2 (Deputy Principal Government Counsel) post in the Legal Policy Division, the dedicated Arbitration Unit was established in September 2016 to, among other arbitration-related work, plan and organise regular promotional activities in the form of roadshows, conferences, seminars and forums to promote Hong Kong's legal and arbitration services in places to be identified among the some 60 overseas countries along the Belt and Road. Consideration will also be given to reinforcing Hong Kong's role in the provision of legal and dispute resolution-related training/capacity building opportunities for professionals and government officials from the Belt and Road countries.

As for the promotion and development of mediation for Hong Kong, major initiatives in 2017-18 include the following -

- (i) enacting apology legislation to promote and encourage the making of apologies with a view to preventing the escalation of disputes and facilitating their resolution - the Apology Bill was introduced into the LegCo in February 2017;
- (ii) providing mediation facilities in the vicinity of the West Kowloon Law Courts Building to encourage the use of mediation by litigants of suitable Small Claims Tribunal cases and other appropriate types of disputes through a pilot mediation scheme devised for the purpose;
- (iii) promoting the use of evaluative mediation (in addition to facilitative mediation) for resolving intellectual property disputes;
- (iv) holding the Mediate First Pledge 2017 in June 2017 to reinforce pledges given by over 360 existing pledgees to first explore the use of mediation to resolve disputes and to encourage greater use of mediation and to recruit new pledgees for the pledge;
- (v) organising other events (including seminars) to further promote the use of mediation to resolve cross-border disputes, intellectual property disputes, education-related disputes, medical disputes and disputes involving ethnic minorities; and
- (vi) collaborating with other organisations in promoting peer mediation and community mediation.

Resources involved in promoting Hong Kong's mediation and arbitration services

The staff costs of the Arbitration Unit and the Mediation Team for 2017-18 are set out in the table below -

		2017-18
Arbitration Unit	1 Deputy Principal Government Counsel, 2 Senior Government Counsel, 1 Law Clerk and 1 Personal Secretary I	\$5,582,700
Mediation Team	1 Deputy Principal Government Counsel ^{Note} , 1 Senior Government Counsel, 1 Government Counsel, 1 Law Clerk and 1 Personal Secretary I	\$5,189,640

The overall expenditure involved in this specific area of activity cannot be separately identified. All related expenses will continue to be absorbed within the existing resources of DoJ.

Note Deputy Principal Government Counsel of the Mediation Team also takes up the function as Commissioner of the Joint Dispute Resolution Strategy Office, on top of her other duties, to act as the single point of contact on all matters related to the promotion of dispute resolution. The Office is set up using existing resources.

- End -