

ITEM FOR ESTABLISHMENT SUBCOMMITTEE OF FINANCE COMMITTEE

HEAD 92 – DEPARTMENT OF JUSTICE

Subhead 000 Operational expenses

Members are invited to recommend to Finance Committee the creation of the following permanent post in the International Law Division of the Department of Justice with effect from the date of approval by the Finance Committee –

1 Deputy Principal Government Counsel
(DL2) (\$164,500 - \$179,850)

PROBLEM

We need to provide support at the directorate level in the International Law Division (ILD) of the Department of Justice (DoJ) to better cope with the substantial increase in workload of the Treaties & Law (T&L) Unit of ILD as a result of the increasing volume, complexity and scope of its work.

PROPOSAL

2. We propose to create a permanent post of Deputy Principal Government Counsel (DPGC) (DL2) in ILD with effect from the date of approval by the Finance Committee.

/JUSTIFICATION

JUSTIFICATION

Existing manpower of T&L Unit

3. ILD is headed by the Law Officer (International Law) who is supported by two Principal Government Counsel (PGC) (DL3) with each of them supported by two DPGC. One of the PGC, designated as Deputy Law Officer (T&L) (DLO(T&L)), heads the T&L Unit and is assisted by DPGC(T&L)1 and DPGC(T&L)2. The Unit is mainly responsible for dealing with requests for advice on a wide range of subjects in international law, participating in legislative exercise to implement international agreements, attending various international negotiations as legal advisors to different bureaux/departments (B/Ds), collaborating with international organizations and advising on matters involving international legal co-operation.

4. The directorate establishment of ILD has remained unchanged since 1998. However, the volume, complexity and scope of the work of the T&L Unit have increased substantially in the same period and the directorate support is not sufficient to handle the current workload of the Unit.

Workload of T&L Unit

5. The subjects of international law under the purview of the T&L Unit include international trade law, consular privileges and immunities, avoidance of double taxation, civil aviation and maritime matters, international labour conventions, private international law, environment and health, investment protection and visa abolition. The T&L Unit also advises on the drafting and interpretation of international cooperative agreements and arrangements which range from customs and police cooperation to cultural and education cooperation.

(a) Overall increase in caseload

6. There has been a significant increase in the workload of the T&L Unit over the last two decades. The number of advice given by the T&L Unit has risen substantially over the years from 1998 to 2017 (the number in 2017 being about 329% of the number in 1998) as shown in the table below –

Year	1998	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Number of advice given	2 470	2 665	2 335	2 551	2 062	2 617	3 273	3 808	4 100	4 178	5 383	8 135

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It is expected that the workload of the Unit will continue to rise substantially in the years ahead in view of the increased complexity and scope of its work discussed in paragraphs 7 to 26 below.

(b) Bilateral international agreements and multilateral treaties applicable to the Hong Kong Special Administrative Region (HKSAR)

(i) *Increase in the number of agreements*

7. The increase in bilateral international agreements and multilateral treaties applicable to the HKSAR contributes in no small amount to the overall increase in caseload mentioned in paragraph 6 above. Over the years, Hong Kong has entered into bilateral international agreements with many overseas jurisdictions in various fields. ILD is responsible for providing legal advice to relevant B/Ds on the negotiation, interpretation and application of these bilateral international agreements. Both the number and nature of such agreements expanded substantially in the last two decades. In early 1998, the number of such agreements stood only at 50, covering areas of air services, investment promotion and protection, and legal cooperation. The number as at 30 June 2007 reached 157. It rose further to 205 on 30 June 2012, and to 249 in June 2017, representing an increase of 21.5% in five years from 2012, 58.6% in ten years from 2007 and 398% in about two decades from early 1998.

8. It is relevant to note that the increase in the number of bilateral agreements signed was partly due to new types of agreements that emerged over the last two decades, including comprehensive avoidance of double taxation agreements (with the first one being signed in 2003 and the number of such agreements signed reached 37 in September 2017); free trade agreements (FTAs) with the HKSAR's foreign trade partners¹; as well as agreements on labour, environmental cooperation, cooperation in education and information technology. The introduction of a new type of bilateral often requires substantial legal inputs from the T&L Unit since there is a need for making reference to the experience of overseas jurisdictions in concluding similar agreements. For instance, in the case of an FTA, it usually encompasses a wide range of negotiation subjects (for example, trade in goods, trade in services, investment, customs procedures, trade

/facilitation

¹ The Closer Economic Partnership Agreement between the HKSAR and New Zealand signed in 2010 is the first of its kind, which is followed by the FTA between the HKSAR and member states of the European Free Trade Association (namely, Iceland, Liechtenstein, Norway and Switzerland) signed in 2011, and the FTA with Chile signed in 2012, and the FTA with the Association of Southeast Asian Nations signed in November 2017. Apart from these FTAs with foreign trade partners, the HKSAR has also signed with the Mainland (in 2003, with an annual supplement since then except for the year 2016) and the Macao Special Administrative Region (in 2017) respectively a Closer Economic Partnership Arrangement.

facilitation, sanitary and phytosanitary measures, technical barriers to trade, trade remedies, rules of origin, dispute settlement, competition, government procurement, intellectual property rights, trade and environment, and trade and labour). Detailed and careful thought, with reference to overseas experiences, would have to be put into the drafting of its text whose length often runs up to hundreds of pages covering these wide range of subjects. Hence, its negotiation would require guidance and close supervision by a counsel at the directorate level.

9. It is important to highlight that the work of the T&L Unit in regard to these bilaterals is not limited to providing legal advice during their drafting and negotiation. After they are signed, legal advice will continue to be required for the preparation of domestic implementing legislation (if needed), subsequent interpretation, application and implementation of the agreements, as well as any future supplemental agreement and/or amendments. For instance, in the case of FTAs, it is a common practice that certain sticky areas in the FTAs such as investment agreements, model rules of arbitration and disciplines on domestic regulation may be negotiated after the negotiation of the main text of the FTAs is concluded. Hence, the growing number of bilateral agreements does not only end up in additional workload shouldered by the T&L Unit during the drafting or negotiation stage, but is also a clear pointer to an increasingly heavy work portfolio that ILD takes up on a long term basis.

10. The number of multilateral treaties applicable to the HKSAR has also been on the rise in the last two decades. In early 1998, the number of such multilateral treaties stood at around 200, while the number now stands at over 250 (about 25% increase over the last two decades). They cover a broad spectrum of areas including environmental protection, labour protection, international organizations, shipping, civil aviation, telecommunications and private international law. The T&L Unit gives advice on the interpretation, application and domestic implementation (through legislation if needed) of these treaties.

(ii) *New initiatives in trade-related areas including investment, tax and civil aviation*

11. It is anticipated that the T&L Unit's work in trade-related areas will be a key engine for growth in terms of workload for the Unit. As stated by the Chief Executive in the Policy Address 2017, the Government will actively seek to sign FTAs, investment promotion and protection agreements (IPPAs) and comprehensive avoidance of double taxation agreements with other economies, to open up markets and to further strengthen Hong Kong's position as an international

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trade, commercial and financial centre. It is therefore anticipated that significant workload regarding these types of agreements will be generated for the Unit. As the work relating to such agreements often involves sensitive and important legal issues, it needs to be handled by or under the supervision of counsel at the directorate level.

FTAs and Trade in Services Agreements

12. At present, counsel of the T&L Unit are giving legal advice on the Government's initiative to enter into and/or bring into force a number of FTAs with various trade partners including the Association of Southeast Asian Nations (ASEAN), Georgia, Maldives and Australia. Counsel of the T&L Unit have also been participating in the negotiations of the Trade in Services Agreement among 23 World Trade Organization members. All of these have generated, and will continue to generate, huge amount of work for the T&L Unit.

13. Separately, the T&L Unit is providing legal support to the Government for the negotiations of and/or bringing into force IPPAs with various foreign jurisdictions, including Russia, Iran, Mexico, Myanmar, the United Arab Emirates, Chile and ASEAN.

Automatic Exchange of Information on Tax Matters and Implementation of Multilateral Conventions on Tax Matters

14. Since 2016, the international community has been closely monitoring tax jurisdictions regarding the progress on the implementation of automatic exchange of information on tax matters. As a result, there has been a sharp increase in the demand for the T&L Unit's advice on amendments to the Agreements on Avoidance of Double Taxation, the conclusion of Tax Information Exchange Agreements, as well as bilateral Competent Authority Agreements between Hong Kong and other tax jurisdictions in relation to automatic exchange of information on tax matters. In May 2017, the Central People's Government (CPG) agreed in principle to the request of the Government of the Hong Kong Special Administrative Region (HKSARG) to apply the Convention on Mutual Administrative Assistance in Tax Matters to the HKSAR in order to implement automatic exchange of information on tax matters on a multilateral basis. The CPG also signed in June 2017 the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, which upon consultation with the HKSARG is going to be applied to the HKSAR. The T&L Unit counsel are currently advising on legal matters relating to the implementation of these two Conventions. The workload in this area is expected to increase.

/Civil

Civil aviation matters

15. The T&L Unit also provides legal support in relation to air services agreements. Counsel have to participate in bilateral negotiations held in Hong Kong or overseas, provide legal advice before and during the negotiations, and review the relevant legal texts. Besides, the technical requirements contained in the Annexes to the Convention on International Civil Aviation (which is applicable to Hong Kong) are reviewed by the International Civil Aviation Organization from time to time. When these technical requirements are amended or introduced, Hong Kong needs to reflect the latest changes in our relevant local legislation if new legislative provisions are required for domestic implementation. This generates further work on the part of the T&L Unit, which would have to advise on the interpretation, application and implementation of the relevant technical requirements, and provide comments on the related drafting instructions and draft regulations.

(c) International organizations

16. In recent years, in support of the HKSARG's policy objective to enhance Hong Kong's status as a leading centre for international legal and dispute resolution services, ILD has enhanced its participation in the activities of international organizations including the Hague Conference on Private International Law (HCCH), Asia Pacific Economic Cooperation (APEC), the United Nations Commission on International Trade Law (UNCITRAL) and the International Institute for the Unification of Private Law (UNIDROIT) with a view to enhancing Hong Kong's standing in the international legal community, and achieved considerable progress.

HCCH

17. Counsel of the T&L Unit have been actively taking part in the activities of HCCH² since China resumed the exercise of sovereignty over Hong Kong with effect from 1 July 1997, which included the setting up of its Asia Pacific Regional Office in Hong Kong in December 2012. The T&L Unit often collaborates with it to organize various functions, which are highly useful in raising Hong Kong's profile and status in the area of private international law as well as Hong Kong's standing in the international legal community. For example, the T&L

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² HCCH is a leading global inter-governmental organization in the field of private international law. It develops and services multilateral legal instruments on private international law, commonly known as the Hague Conventions, which respond to global needs. There are now over 150 countries that are party to one or more of the Hague Conventions.

Unit has provided inputs and support to HCCH for the organization of its Asia Pacific Week in 2014 and 2015 which were held in Hong Kong, and has also been providing support for the organization of a global event in celebration of HCCH's 125th Anniversary to be held in Hong Kong in April 2018. There is close and regular coordination between a directorate officer in the T&L Unit and the head of the Regional Office or the Secretary General of HCCH, and this puts further strain on the work schedule of the directorate officer concerned.

18. Moreover, counsel of the T&L Unit regularly participate in the meetings of HCCH as members of the CPG's delegation. For example, counsel have been participating in the meetings of the on-going "Judgments Project"³, and a public consultation on a preliminary draft Convention prepared under the project was organized by the Unit in the last quarter of 2016. Another prominent example is that a directorate counsel of the Unit participated in the HCCH Special Commission Meeting on the Practical Operation of the Hague Apostille Convention in November 2016, and was elected as the Chair of the Special Commission – the first ever Chinese delegate to take up that position in an HCCH meeting, as well as the Chair of the Working Group on the Authentication of Documents Generated by Supranational and Intergovernmental Organizations which held its meeting in December 2017. It is expected that counsel of the T&L Unit will continue to participate actively in HCCH's activities with a view to contributing to harmonization of private international law and promoting mutual legal cooperation.

APEC

19. The T&L Unit's involvement in the work of APEC has been on the rise as a result of APEC's recent initiatives in developing the legal and institutional structure of member economies. The Unit is requested by B/Ds to comment on various proposals in relation to initiatives raised by other member economies from time to time, and has been tasked by APEC to organize a capacity building workshop or seminar for APEC member economies annually since 2013. The latest

/seminar

³ The "Judgments Project" refers to the work done by the HCCH since 1992 in the context of transnational disputes in civil and commercial matters, particularly concerning both the international jurisdiction of courts and the recognition and enforcement of their decisions abroad. Initially, the Judgments Project sought to develop a broad convention on international jurisdiction as well as recognition and enforcement rules, which was subsequently scaled down to focus on international cases involving choice of court agreements. This led to the conclusion of the Convention of 30 June 2005 on Choice of Court Agreements. In 2012, the Council on General Affairs and Policy of the HCCH decided to relaunch the work on the Judgments Project. The current goal is to arrive at a future convention on the recognition and enforcement of foreign judgments in civil and commercial matters.

seminar of this kind was held in February 2017. Given that a directorate counsel of the T&L Unit is the Convenor of a working group on strengthening economic and legal infrastructure under APEC⁴, it is expected that the T&L Unit will continue to be heavily involved in this area of work.

UNCITRAL and UNIDROIT

20. UNCITRAL and UNIDROIT are both leading international organizations which work for the modernization and harmonization of rules on international business. Where appropriate, counsel of the T&L Unit participate in their meetings as members of the CPG's delegation. For example, UNCITRAL has recently decided to work on the issue of multilateral reform of investment dispute settlement and counsel of the Unit participate in the relevant working group as members of the Chinese delegation.

(d) International and regional legal cooperation

21. Another key duty of the T&L Unit is to advise on matters involving international legal co-operation. The Unit is heavily involved in providing support and advice for negotiation of bilateral agreements and arrangements in legal cooperation in civil and commercial matters such as those areas set out in paragraphs 22 and 23 below. Given the importance and the complicated nature of such work, it requires guidance and close supervision by a counsel at the directorate level.

Recognition of sealing of grants of probate and letters of administration on a reciprocal basis between the HKSAR and overseas jurisdictions

22. The HKSARG has been authorized under Article 96 of the Basic Law to negotiate with overseas jurisdictions on recognition of sealing of grants of probate and letters of administration, so that the successors and personal representatives of the estate of a deceased person will not need to apply afresh for a grant of probate or letter of administration in the jurisdiction where the property forming part of the estate of the deceased is situated in order to acquire such

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⁴ A directorate counsel from DoJ has assumed the role of the convenor of the sub-group entitled "Friends of the Chair on Strengthening Economic and Legal Infrastructure" (SELI) established in February 2015 under the Economic Committee of APEC. SELI facilitates Hong Kong in sharing our experience and expertise on the use of international legal instruments to strengthen economic and legal infrastructure. Through participation in the work of SELI, the strength of Hong Kong as an international legal services and dispute resolution centre (including our high quality legal profession, independent judiciary, and modern and mature legal infrastructure) could be shown to emerging economies in the Asia-Pacific region.

property or administer such estate. The T&L Unit will assist in related negotiations and the workload in this area is expected to increase for the reason that it is necessary to provide legal advice during the negotiation and drafting of the agreements. After the agreements are signed, legal advice will also be required to prepare legislative changes to give effect to the agreements and legal advice will continue to be required during the implementation of the agreements as well as any subsequent amendments to the agreements.

Mutual legal cooperation with the Mainland on civil and commercial matters

23. The T&L Unit has been providing legal support to the Government in discussions with the Mainland relating to mutual legal cooperation on civil and commercial matters, in particular, on reciprocal recognition and enforcement of matrimonial court decisions, which is spurred by the upward trend of “cross-boundary marriages” between Mainland and Hong Kong residents, and the fact that a substantial number of matrimonial proceedings handled by Hong Kong courts involve Mainland parties. An arrangement with the Mainland on the matter was signed in June 2017. It has been also agreed that another arrangement covering civil and commercial matter in general will be pursued and assistance from the T&L Unit will continue to be required⁵.

(e) Support to Task Force on marine-related legislation

24. Currently, quite a number of principal ordinances and subsidiary regulations are enacted to implement the international conventions adopted by the International Maritime Organization (IMO) and the International Labour Organization (ILO) which are applicable to Hong Kong. Some of these conventions contain technical specifications and requirements that are under constant review by the international organization concerned and the amendments involved are not only frequent but could also be voluminous. When these conventions are amended, Hong Kong is obliged to reflect the latest changes to these conventions in local legislation if new legislative provisions are required for domestic implementation. For each legislative amendment exercise, considerable time and efforts are required for the consideration and preparation of the proposals to ensure compliance with the requirements under the relevant conventions.

25. A special Task Force has been set up by the Transport and Housing Bureau on a time-limited basis since February 2014 to handle the outstanding legislative work in this regard. Among the posts created for the Task Force,

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⁵ It is expected that the conclusion of the arrangement and its full implementation will take a number of years. While Legal Policy Division of DoJ is taking the lead in this matter, the expertise of ILD in cross-boundary cases is required.

one time-limited Senior Government Counsel (SGC) post has been created in the T&L Unit to provide support to the Task Force in relation to issues of public international law. Such support involves advising on the interpretation, application and implementation of the relevant maritime treaties and related matters, and providing comments from the treaty law angle on the drafting instructions as well as draft bills and regulations on the implementation of these maritime treaties.

26. The above notwithstanding, the intensive workload generated from the marine-related legislative exercise cannot be singly shouldered by the holder of the time-limited SGC post, but would have to be shared by other counsel of the T&L Unit (particularly given the exceedingly tight schedule of introducing the legislative amendments). This has further stretched the manpower resources of the T&L Unit, including that at DPGC level. Although the Task Force and the SGC post in the Unit were created on time-limited basis, it is expected that marine-related legislative amendments will continue on a long-term basis, since the IMO will update its instruments regularly and both IMO and ILO adopt new instruments from time to time which may be applicable to the HKSAR.

The need for a permanent DPGC post

27. Against the above background, the workload in the T&L Unit has increased significantly over years in terms of volume, complexity and sensitivity. While additional posts at SGC and Government Counsel (GC) ranks⁶ have been created to handle some of the new assignments and have, to some degree, addressed the manpower need at the non-directorate level, additional work at the supervisory level has been continuously absorbed by the existing directorate counsel. With the workload of the Unit accumulated over the years, the additional supervisory work at the DPGC level has grown to such an extent that it has stretched beyond what the existing manpower resources at the DPGC level can reasonably cope with. To properly manage the rising workload, there is a strong operational need for creating an additional DPGC post to shoulder the responsibility of supervising and providing the Unit's specialized advice on the new initiatives of trade-related agreements mentioned in paragraphs 11 to 15 above, so that the two existing DPGC in the T&L Unit can concentrate on the other areas of work of the Unit.

28. It is not practicable to rely on the existing two DPGC alone to cope with these new initiatives without compromising the quality of work and efficiency of the T&L Unit. The capacity of the existing two DPGC is already fully stretched

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⁶ There has been an increase of three permanent SGC, two permanent GC and one time-limited SGC in ILD's non-directorate GC establishment since 1998. Save for two permanent SGC, these increased posts are in the T&L Unit. Two additional permanent posts, one each at SGC and GC levels, would be created in ILD (both in T&L Unit) in 2018-19 (see paragraph 30).

and part of their work is already being shared by the PGC (for example, taking care of the work in APEC by assuming the role of the Convenor in the working group on strengthening economic and legal infrastructure, as well as taking up the coordination role with international organizations such as HCCH and UNCITRAL). The current situation is clearly not sustainable in the long run.

29. The proposed DPGC post will head a new team to be set up under the T&L Unit. The existing and proposed organization chart of ILD, and the proposed job descriptions of the new DPGC and the other two existing DPGC posts are at

Encls. 1 & 2 Enclosures 1 and 2 respectively.

Non-directorate support

30. Two SGC and one GC will be redeployed within ILD to support the new DPGC. A permanent Personal Secretary (PS) I post will also be created along with the creation of the new DPGC post. Moreover, two additional posts, namely, one SGC and one GC posts, will be created in the T&L Unit in 2018-19 to strengthen support at non-directorate level.

ALTERNATIVES CONSIDERED

31. There is no viable alternative. The existing heads of other Units in ILD at DPGC level are already fully occupied by duties under their own purview. The possibility of redeploying existing staffing resources to undertake the above tasks and the increased workload has been explored but is considered not feasible as resources in ILD are already fully stretched. Details of the duties of the other DPGC in ILD are set out at Enclosure 3. With the support of one additional DPGC, the T&L Unit will be able to deliver its current and new services in a professional manner on a long-term basis without delay or other adverse consequences.

Encl. 3

FINANCIAL IMPLICATIONS

32. The proposed creation of the DPGC post in DoJ will bring about an additional notional annual salary cost at mid-point of \$2,094,600. The additional full annual average staff cost, including salaries and staff on-cost, is \$2,938,000.

33. The additional notional annual salary cost at mid-point for the three additional non-directorate posts (i.e., one SGC, one GC and one PS I) mentioned in paragraph 30 above is \$2,799,660 and the full annual average staff cost, including salaries and staff on-cost, is \$3,793,000.

/34.

34. We have included sufficient provision in the draft Estimates of 2018-19 to meet the cost of this proposal.

PUBLIC CONSULTATION

35. We consulted the Legislative Council Panel on Administration of Justice and Legal Services on 22 January 2018. Members generally supported the proposed creation of the DPGC post.

ESTABLISHMENT CHANGES

36. The establishment changes of Head 92 DoJ for the last two years are as follows –

Establishment (Note)	Number of posts			
	Existing (as at 1 March 2018)	As at 1 April 2017	As at 1 April 2016	As at 1 April 2015
A	89 + (2) [#]	89 + (4)	88 + (3)	88 + (4)
B	411	413	396	384
C	858	842	822	812
Total	1 358 + (2)	1 344 + (4)	1 306 + (3)	1 284 + (4)

Note :

A - ranks in the directorate pay scale or equivalent

B - non-directorate ranks, the maximum pay point of which is above MPS Point 33 or equivalent

C - non-directorate ranks, the maximum pay point of which is at or below MPS Point 33 or equivalent

() - number of supernumerary directorate post

[#] - as at 1 March 2018, there was no unfilled directorate post

CIVIL SERVICE BUREAU COMMENTS

37. The Civil Service Bureau supports the proposed creation of the permanent DPGC post. The grading and ranking of the proposed post are considered appropriate having regard to the level and scope of responsibilities.

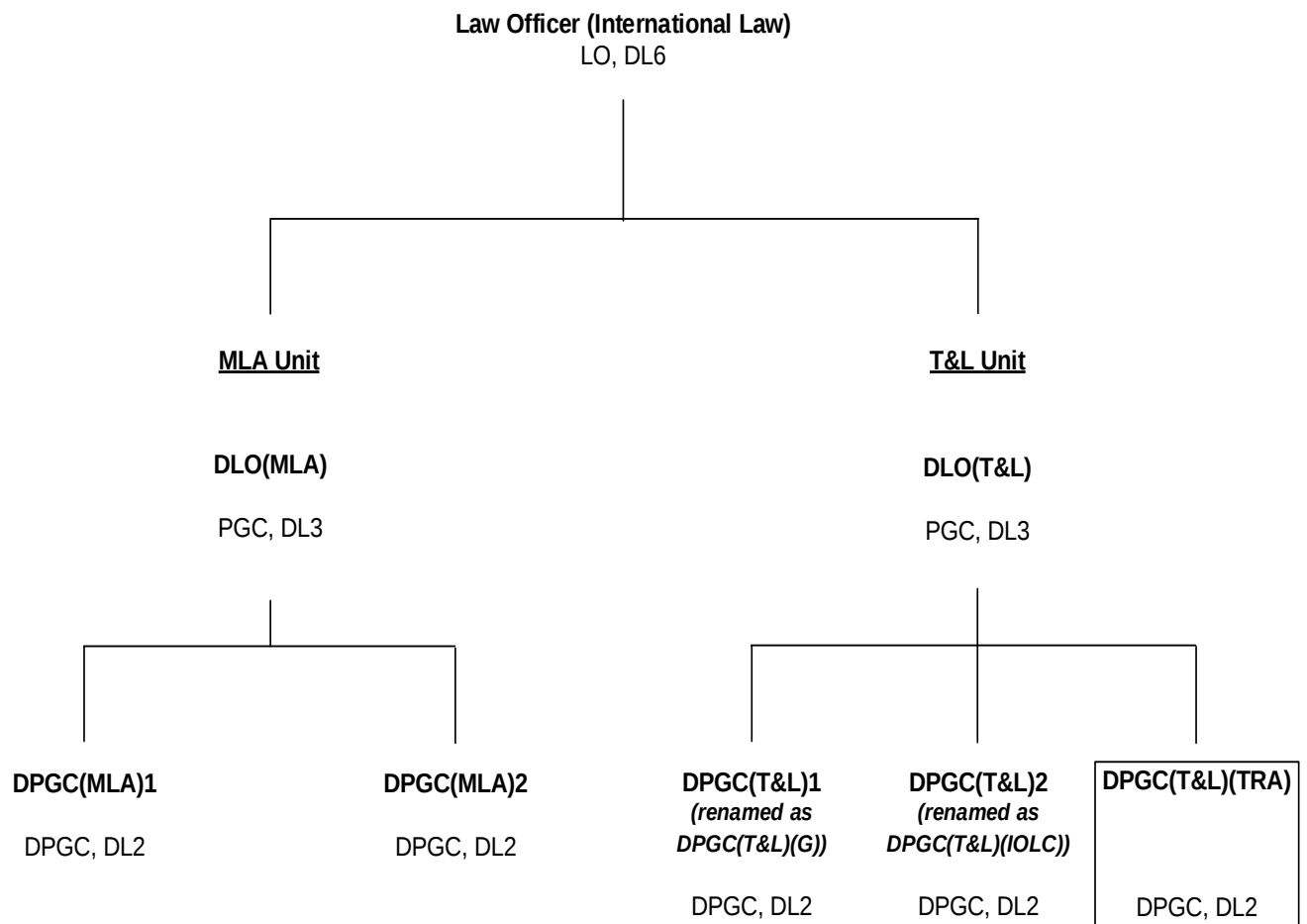
/ADVICE

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

38. The Standing Committee on Directorate Salaries and Conditions of Service has advised that the rank proposed for the permanent DPGC post mentioned above is appropriate.

Department of Justice
March 2018

Existing and Proposed Organization Chart of International Law Division



Legend :

DL	– Directorate Legal Pay Scale
DLO	– Deputy Law Officer
DPGC	– Deputy Principal Government Counsel
DPGC(T&L)(G)	– Deputy Principal Government Counsel(Treaties & Law)(General)
DPGC(T&L)(IOLC)	– Deputy Principal Government Counsel(Treaties & Law) (International Organizations and Legal Co-operation)
DPGC(T&L)(TRA)	– Deputy Principal Government Counsel(Treaties & Law) (Trade-Related Affairs)
LO	– Law Officer
MLA Unit	– Mutual Legal Assistance Unit
PGC	– Principal Government Counsel
T&L Unit	– Treaties & Law Unit

– Proposed Creation of new DPGC post

**Job Description of the Proposed
Deputy Principal Government Counsel (Treaties & Law) (Trade-Related Affairs)
Treaties & Law Unit, International Law Division**

Rank : Deputy Principal Government Counsel (DL2)

Responsible to : Deputy Law Officer (Treaties & Law)

Major duties and responsibilities –

1. To advise on the interpretation and implementation of multilateral and bilateral agreements and arrangements in trade-related areas (including investment, tax and civil aviation) which apply to the Hong Kong Special Administrative Region;
2. To participate in the negotiation of multilateral and bilateral agreements and arrangements in trade-related areas (including investment, tax and civil aviation);
3. To advise on international law issues relating to trade and economic cooperation;
4. To advise on any other international law issues assigned by the Deputy Law Officer (Treaties & Law) or the Law Officer (International Law);
5. To advise on the drafting of Executive Council or Legislative Council papers and attend Executive Council or Legislative Council meetings as required on the various matters set out above;
6. To assist the Deputy Law Officer (Treaties & Law) in the overall management of the Treaties & Law Unit; and
7. To perform such other duties as may be assigned from time to time by the Deputy Law Officer (Treaties & Law) or the Law Officer (International Law).

/Job

Part 2

**Job Description of the Existing
Deputy Principal Government Counsel (Treaties & Law)¹
(to be renamed as Deputy Principal Government Counsel (Treaties & Law) (General))
Treaties & Law Unit, International Law Division**

Rank : Deputy Principal Government Counsel (DL2)

Responsible to : Deputy Law Officer (Treaties & Law)

Major duties and responsibilities –

1. To advise on the interpretation and implementation of multilateral and bilateral international agreements and arrangements in areas other than those falling within the purview of Deputy Principal Government Counsel (Treaties & Law) (Trade-Related Affairs) or Deputy Principal Government Counsel (Treaties & Law) (International Organizations and Legal Co-operation), which apply to the Hong Kong Special Administrative Region;
2. To participate in the negotiation of multilateral and bilateral agreements and arrangements in areas mentioned in 1 above;
3. To advise on customary international law, international labour law, environment law, nuclear law and refugee law;
4. To advise on any other international law issues assigned by the Deputy Law Officer (Treaties & Law) or the Law Officer (International Law);
5. To advise on the drafting of Executive Council or Legislative Council papers and attend Executive Council or Legislative Council meetings as required on the various matters set out above;
6. To assist the Deputy Law Officer (Treaties & Law) in the overall management of the Treaties & Law Unit; and
7. To perform such other duties as may be assigned from time to time by the Deputy Law Officer (Treaties & Law) or the Law Officer (International Law).

/Job

**Job Description of the Existing
Deputy Principal Government Counsel (Treaties & Law)²
(to be renamed as Deputy Principal Government Counsel
(Treaties & Law) (International Organizations and Legal Co-operation))
Treaties & Law Unit, International Law Division**

Rank : Deputy Principal Government Counsel (DL2)

Responsible to : Deputy Law Officer (Treaties & Law)

Major duties and responsibilities –

1. To advise on the interpretation and implementation of international agreements and arrangements developed by international organizations that work for the harmonization of private international law or international trade law, which apply or may apply to the Hong Kong Special Administrative Region (HKSAR);
2. To participate in the negotiation and review of international agreements and arrangements under the auspices of the international organizations mentioned in 1 above, as well as in the negotiation of other agreements and arrangements on international or regional cooperation;
3. To promote the HKSAR as a regional or international legal services centre;
4. To advise on privileges and immunities, the United Nations sanctions, and any other international law issues assigned by the Deputy Law Officer (Treaties & Law) or the Law Officer (International Law);
5. To advise on the drafting of Executive Council or Legislative Council papers and attend Executive Council or Legislative Council meetings as required on the various matters set out above;
6. To assist the Deputy Law Officer (Treaties & Law) in the overall management of the Treaties & Law Unit; and
7. To perform such other duties as may be assigned from time to time by the Deputy Law Officer (Treaties & Law) or the Law Officer (International Law).

**Major Responsibilities and Current Workload of
the Other Deputy Principal Government Counsel (DPGC)
in the International Law Division (ILD) of the Department of Justice**

The other directorate officers at DPGC level of ILD are fully engaged in their respective duties. As shown in the ensuing paragraphs, they each have a heavy portfolio of work, and do not have the capacity or time to shoulder the extra workload mentioned in the paper.

Mutual Legal Assistance (MLA) Unit

2. The MLA Unit of ILD is headed by one Principal Government Counsel (PGC) (DL3), designated as Deputy Law Officer (MLA) (DLO(MLA)). At present, there are two teams, Team 1 and Team 2, under the supervision of DLO(MLA). The two teams are each headed by one DPGC. Both teams share the work relating to mutual legal assistance in criminal matters and other letters of requests. In addition, Team 1 is mainly responsible for matters relating to surrender of fugitive offenders whereas Team 2 is mainly responsible for matters relating to transfer of sentenced persons and child abduction. The workload of the two DPGCs of the MLA Unit has increased significantly in recent years due to the sharp increase in the number of cases and requests. For instance, the total number of requests made to and from the Hong Kong Special Administrative Region (HKSAR) has increased by 138% from 206 in 2007 to 490 in 2017. There is also a significant rise in workload arising from a number of recent initiatives, such as the peer review processes of the Financial Action Task Force Against Money Laundering, the review mechanism under the United Nations Convention Against Corruption, casework relating to the Mainland in the enforcement of confiscation orders in drug cases and letters of request for taking evidence following the entry into force of the Arrangement on Mutual Taking of Evidence in Civil and Commercial Matters between the Courts of the Mainland and the HKSAR on 1 March 2017, and the portfolio of child abduction cases. The two DPGC in the MLA Unit do not have any spare capacity to take up other additional duties.

Treaties and Law (T&L) Unit

3. The T&L Unit of ILD is headed by one PGC, designated as Deputy Law Officer (T&L) (DLO(T&L)). At present, there are two teams, Team 1 and Team 2, under the supervision of DLO(T&L). The two teams are each headed by one DPGC. Team 1 is mainly responsible for advising on taxation matters including the negotiations on Agreements on Comprehensive Double Taxation Avoidance, Tax Information Exchange Agreements and the application of

international tax treaties to Hong Kong. It also advises on matters relating to customary international law, international labour law, environment law, nuclear law and refugee law. For Team 2, apart from advising on privileges and immunities, the United Nations sanctions and matters relating to air services, it also advises on international agreements developed by various international organizations that work for the harmonisation of private international law and international trade law (e.g., The Hague Conference on Private International Law, the United Nations Commission on International Trade Law and the International Institute for the Unification of Private Law). It also participates in the negotiation and review of the above international agreements and promotes the HKSAR as a regional or international legal services centre. In addition, the DPGC of both teams have to share out the workload in advising on interpretation and implementation of bilateral and multilateral agreements applicable to the HKSAR as well as trade-related matters (including investment agreements, free trade agreements and related initiatives). The workload of the two DPGC of the T&L Unit has increased significantly in recent years due to the increasing volume, complexity and scope of the work of the Unit as discussed in paragraphs 6 to 26 of this paper.

4. With the continuing rise in the workload of the T&L Unit over the years, the additional supervisory work at the DPGC level has grown to such an extent that it has stretched beyond what the existing manpower resources of ILD at the DPGC level can reasonably cope with. To properly manage the rising workload, there is a strong operational need for creating an additional DPGC post in the T&L Unit to shoulder the responsibility of supervising and providing the Unit's specialized advice on the new initiatives of trade-related agreements mentioned in paragraphs 11 to 15 of this paper, so that the two existing DPGC in the T&L Unit can concentrate on those areas of work mentioned in Parts 2 and 3 of Enclosure 2 to this paper.
