

## **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 posts, one each in the Civil Division and the Law Drafting Division of the Department of Justice with effect from the date of approval by the Finance Committee –

2 Principal Government Counsel  
(DL3) (\$199,050 - \$217,300)

### **PROBLEM**

We need to strengthen legal support at the senior directorate level in the Civil Division (CD) and the Law Drafting Division (LDD) of the Department of Justice (DoJ) to better cope with the substantial increase in workload arising from the existing and new initiatives in the two Divisions as a result of the increasing volume, complexity and scope of their work.

### **PROPOSAL**

2. We propose to create two permanent posts of Principal Government Counsel (PGC) (DL3), one each in CD and LDD, with effect from the date of approval by the Finance Committee (FC).

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**JUSTIFICATION****Proposed creation of one PGC post in CD**Existing manpower of CD

3. CD has a major role in providing legal advice to all government bureaux and departments (B/Ds) on a wide range of legal issues in civil matters to enable the Government to act lawfully and discharge its constitutional obligations in the formulation and implementation of its policies. CD also represents the Government in the conduct of all civil disputes involving the Government as well as disputes which may have constitutional importance or involve matters of great public importance.

4. CD comprises four units, namely Civil Advisory Unit (CAU); Commercial Unit (CU); Civil Litigation Unit (CLU) and Planning, Environment, Lands & Housing Unit (PEL&H). CAU, CU and the Advisory Team of PEL&H provide legal advice to all B/Ds, while CLU and the Litigation Team of PEL&H advise and represent the Government in civil litigation cases before courts and statutory boards/tribunals as well as in arbitration and mediation. CD is headed by the Law Officer (Civil Law) (LO(C)) (DL6), who is supported by four PGC as heads of CAU, CU, CLU and PEL&H respectively.<sup>1</sup> The management structure of the Division has not been changed since 1988. As at 1 October 2018, CD has a total establishment of 380, including 183 posts of Government Counsel (GC) Grade<sup>2</sup>.

5. In recent years, CD has been facing a surging workload and tremendous pressure in coping with a wide range of complex and significant legal issues as explained in paragraphs 6 to 10 below. Both the volume and complexity of the legal issues involved have soared. These have rendered the position of CD's directorate officers, particularly at the PGC level, very demanding.

Increase in workload of CD in handling litigation cases

6. Over the past twenty years, CD has experienced a substantial increase in the overall workload in handling litigation cases. The number of ongoing litigation cases has substantially increased by 296% from 9 286 in 1998 to 36 778

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<sup>1</sup> The LO(C) also oversees the work of the Legal Advisory Division (LAD) of the Works Branch of the Development Bureau. LAD is headed by the Legal Advisor (Works) at the rank of PGC.

<sup>2</sup> The 183 posts of GC Grade comprises one Law Officer (LO) (DL6), four PGC, 13 Deputy Principal Government Counsel (DPGC) (DL2), seven Assistant Principal Government Counsel (APGC) (DL1) including one supernumerary post approved by FC up to 28 April 2019, 99 Senior Government Counsel (SGC) and 59 GC.

Encl. 1 in 2017 as set out in Enclosure 1. The workload<sup>3</sup> of CD including litigation cases is demand-led and on an increasing trend.

7. Looking ahead, we anticipate that the workload in respect of the handling of civil litigation cases will continue to be on the rise. In particular, there has been an increasing trend of leave applications for judicial review (JR) filed in the Court since 2012 according to the Judiciary's statistics as set out below –

<b>Year</b>	<b>Number of leave applications for JR filed<sup>4</sup></b>	<b>Percentage increase as compared with the number of applications filed in 2012</b>
2012	161	-
2013	182	13%
2014	168	4%
2015	259	61%
2016	228	42%
2017	1 146	612%

8. Of the 1 146 cases in 2017, a large majority, i.e., 1 006 or 88%, is JR cases relating to “torture claims” for non-refoulement protection against torture made under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment or on all applicable grounds (including torture or cruel, inhuman or degrading treatment or punishment) under the Unified Screening Mechanism. It is anticipated that the workload arising from non-refoulement/torture claims and other immigration related cases which require action on the part of CD will remain high. For the remaining cases insofar as the Government is concerned, they cover a wide range of legal issues of varying complexity and implications. Given the Government's involvement in handling these cases, the number of ongoing JR cases being undertaken by CD has substantially gone up by 62% from 557 cases in 2012 to 903 cases in 2017 with annual statistics provided in the table set out below. As most of the JR cases have

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<sup>3</sup> Apart from civil litigation cases, CD's workload in providing legal advice to other B/Ds has remained at a constantly high level over the past twenty years.

<sup>4</sup> Apart from some applications in which the applicants are challenging decisions of persons or bodies that are not part of the Government or public bodies which are usually represented by DoJ, most of these applications are handled or monitored by CD of DoJ.

significant and far-reaching implications on the Government constitutionally and/or financially, we need close and effective supervision at the senior directorate level in CD to ensure that the cases are conducted in the best interest of the Government.

<b>Year</b>	<b>Number of ongoing JR cases handled by CD</b>
2012	557
2013	619
2014	672
2015	785
2016	825
2017	903

9. With the increasingly high expectations of the public over the formulation and implementation of government policies and decisions, and the fast developing social, environmental, administrative and constitutional issues involved in such policies and decisions, it is expected that the number of civil litigation cases (both JR and other proceedings) involving the Government will remain at a high level and will continue to increase in the coming years.

10. In addition to the rise in the number of ongoing civil litigation cases, there has been a marked increase in their diversity, complexity and urgency. Many cases also carry significant and far-reaching implications. Public law and JR cases involve challenges against government policies and decisions or acts of public bodies over a wide spectrum of areas such as immigration, law enforcement, welfare benefits, telecommunication, and social policies. Many of them involve diverse and complex issues of statutory interpretation, human rights and constitutionality. Where the Court imposes tight time frame for litigation cases involving the Government, the Government has to act promptly in the public interest. For cases involving the Secretary for Justice (SJ) in the constitutional role, as guardian of the public interest, as protector of charities and in other statutory roles specified under various Ordinances, PGC are heavily involved in overseeing and supervising the proper conduct of such cases to ensure that timely and comprehensive legal advice and support is provided to B/Ds concerned. Further, the Civil Justice Reform introduced in 2009 also calls for prompt guidance and close supervision by PGC with a view to furthering the underlying objectives prescribed by the rules, including facilitating settlement of the disputes and procedural economy, and considering effective use of alternative dispute resolution procedure.

Portfolio of PGC in CLU

11. As CLU is responsible for advising and representing the Government before the courts and statutory boards/tribunals as well as in arbitration and mediation, the increase in litigation cases and their diversity, complexity and urgency mentioned in paragraphs 6 to 10 above has acutely added to the workload of CLU which is headed by one PGC.

12. CLU comprises five teams with respective areas of litigation work, namely, the personal injuries and medical disciplinary cases team (Team 1); the public law and statutory tribunals team (Team 2); the revenue, charities and commercial litigation team (Team 3); the immigration team (Team 4) which handles immigration-related matters including issues arising from non-refoulement claims; and the miscellaneous claims and costs team (Team 5). Team 1 to Team 4 are headed by a DPGC respectively, while Team 5 is headed by an APGC. There is also another APGC in CLU responsible for handling complex litigation cases.

13. The establishment of GC Grade at DPGC rank and below in CLU has increased by 93% in the past ten years from 42 in 2008 to 81 in 2018, while the establishment of one PGC has remained unchanged since 1988. Given the substantial increase in the number of GC Grade officers at DPGC rank and below under supervision as well as the volume, diversity, complexity and urgency of the cases handled by them, the PGC in CLU has already been stretched to his limit with the existing heavy workload, not to mention the ad hoc work arising from Commissions of Inquiry (COI) appointed by the Chief Executive in Council (CE-in-Council) pursuant to the Commissions of Inquiry Ordinance (Cap. 86) from time to time. In recent years, CD has provided legal support to B/Ds in proceedings before COIs in relation to the Lamma Island vessels collision incident, excess lead in drinking water matters, and at present, the construction works at Hung Hom Station Extension under the Shatin to Central Link project. The timetables are invariably compressed and the work would require close supervision of directorate officers, usually a DPGC led by the PGC of CLU.

14. The personal attention and close involvement of the PGC in CLU in highly complex legal matters is essential. Apart from handling and supervising those litigation cases, the PGC is required to undertake additional duties in relation to the management of CLU at a macro level, which entails non-delegable management and administrative duties.

Need for the creation of one PGC post in CD

15. Considering the staffing position of CD holistically, it is noted that over the last decade there was an increase in the establishment of the GC Grade in CD by 51% from 121 in 2008 to 183 in 2018. The additional posts are mainly at the

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ranks of SGC and GC created to deal with the rapid growth of immigration-related cases in particular right of abode litigation and more recently non-refoulement claims, to cope with the increase in workload for advisory work on land and town planning matters, to strengthen the legal support to B/Ds in mega projects and to promote the wider use of mediation as a means of dispute resolution in Hong Kong. For directorate posts, only two additional DPGC posts were created to lead Team 4 of CLU and the Mediation Team of PEL&H respectively. The establishment of the PGC rank has remained unchanged since 1988.

16. Taking into account the increasing public expectations over the formulation and implementation of government policies and decisions, it is reasonably anticipated that the upward trend in the workload of CD (in particular that related to litigation) will not subside but will continue to be on the rise. Having regard to the sheer number of litigation cases handled by CD, their diversity, complexity and urgency and in order to cope with the increasing workload, there is an urgent and practical need to create one PGC post in order to provide CD with the necessary capacity at senior directorate level to provide the right level of supervision required and to meet the pressing and high demand for good quality legal services. The proposed PGC post will share the current workload of the PGC in CLU in supervising civil litigation work.

17. The incumbent PGC in CLU is already fully stretched with his own work portfolio. He has genuine difficulties in coping with the further growth in workload arising from the diversity, complexity and urgency of the litigation cases, not to mention the increasing number of cases that require his personal attention and handling at a higher level.

18. In this regard, we propose the creation of one permanent PGC post in CD to head and supervise Team 1, Team 3 and Team 5 of CLU handling cases involving SJ in the role as protector of charities, revenue matters, commercial-related litigation, disciplinary proceedings and inquiries before the Medical Council of Hong Kong and other medico-related boards, as well as recovery and enforcement of all government debts/damages and court costs. The existing and proposed organisation charts and the job description of the proposed PGC post are at Enclosures 2, 3 and 4 respectively.

Encls. 2 - 4

19. With the creation of the new PGC post, the existing PGC of CLU will continue to head Team 2 (public law and JR cases) and Team 4 (immigration cases), and also supervise the APGC who handles complex cases. He will also continue to be responsible for management issues in respect of CD as a whole.

*/Directorate .....*

*Directorate and Non-directorate support*

20. Two DPGC, one APGC, 14 SGC and 18 GC posts will be redeployed within CD to work under the new PGC. A permanent Personal Secretary (PS) I post will also be created to provide secretarial support to the proposed PGC post.

**Proposed Creation of one PGC post in LDD**Existing manpower of LDD

21. LDD is responsible for drafting all legislation (both Ordinances and subsidiary legislation) proposed by the Government. It also vets all non-government Bills and all subsidiary legislation put forward by non-government bodies to ensure the draft legislation complies with current drafting practice regarding format and style. The Division is also responsible for ensuring that the published version of Hong Kong's legislation is readily accessible and up-to-date.

22. LDD is led by the Law Draftsman (LD) (DL6) and two Deputy Law Draftsmen (DLD) (at PGC rank). This management structure has not been changed since 1982. The establishment of counsel posts in LDD has increased from 19 on 1 July 1982 to 48<sup>5</sup> as at 1 October 2018.

Increase in workload*Volume, complexity and timeframes of legislative initiatives*

23. Most major public policies are implemented through legislation, and LDD is responsible for drafting all legislation (both Ordinances and subsidiary legislation) proposed by the Government. The volume and complexity of legislative initiatives are increasing and the timeframes for developing draft legislation have reduced significantly. There is no sign that the situation may improve. During the last decade, the number of pages of legislation gazetted increased by 63% from 5 252 in 2006 to 8 570 in 2017. The decrease in the total number of Bills and items of subsidiary legislation supports anecdotal evidence of an increase in the complexity of the legislation drafted during this period. Relevant statistics are set out below –

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<sup>5</sup> The establishment of 48 counsel posts comprises one LO, two PGC, 13 DPGC including one supernumerary post approved by FC up to 31 May 2019, 26 SGC and six GC.

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	% Change
Bills gazetted	19	28	17	28	24	29	14	25	28	29	13	30	+58%
Subsidiary legislation gazetted	291	241	284	265	176	186	195	206	160	240	196	187	-36 %
Pages of Bills/ subsidiary legislation gazetted	5 252	3 378	4 534	3 940	3 900	9 566	8 762	6 042	7 740	8 428	4 992	8 570	+63%

24. LDD has been under tremendous work pressure, particularly at the DLD level where each DLD undertakes the critical role of assisting the LD to oversee the provision of drafting services within the DLD's Sub-Division. A funnel analogy applies. For example, all of the legal and drafting issues arising in the course of developing draft legislation within a Sub-Division come to just one DLD to provide the necessary advice and support; and all draft legislation developed within the Sub-Division comes to just one DLD for review and further development. For a major legislative exercise, it is necessary for a DLD to undertake a central facilitative role as well as review and further development functions on many occasions. The work undertaken by a DLD in ensuring the quality of draft legislation is of critical significance.

*The need for additional support at DLD level to handle the workload*

25. With only two DLD posts in the current set up, LDD has adopted a pragmatic approach in handling the continuously increasing workload. For example, an item of legislation may be subjected to only one clearance rather than the usual two and the clearance may have a narrower focus<sup>6</sup>. Also, quality assurance may not be able to happen at an early stage in the drafting process and this may result in policy as well as drafting changes to the draft legislation at a very late stage, which may add more stress to the drafting counsel and other staff concerned within LDD and the client B/D. The fact that draft legislation is prepared in two languages and that changes made in one language must be incorporated in the other language magnifies the issue caused by the two DLD being unable to provide early clearances. In 2007, the CE-in-Council authorised the LD or a DLD to make, after a Bill was approved for introduction into the Legislative Council (LegCo) but before it was published in the Gazette, technical revisions (such as the correction of editorial errors and textual improvement) to the Bill that did not affect the substantive content of the Bill or its policy. It is noted that the volume of revisions

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<sup>6</sup> Further information about the scope of clearances allowing for refinements to improve clarity and readability is set out at paragraph 30.



made using this authorisation has increased dramatically<sup>7</sup>. Moreover, less clearances, reduced scope and late clearances are not conducive to maintaining a high standard of draft legislation and providing LDD counsel with an appropriate level of on-the-job training<sup>8</sup>.

26. In order to properly address the growing workload and increasing complexity, and to maintain the quality of legislative drafting, an additional DLD to independently undertake major drafting exercises and to share clearance responsibility with the two existing DLD is essential. Otherwise, LDD would have genuine difficulties in coping with drafting demands from B/Ds in the years ahead. There is a world-wide trend for governments to require more lengthy and complicated legislation to implement increasingly complex policies dealing with increasingly sophisticated subject matters, particularly in the financial and business sectors and this trend applies to the Hong Kong Special Administrative Region (HKSAR). Indeed, there has been a significant and persistent increase in legislative proposals to bring HKSAR legislation in line with international standards and co-operation measures to enhance tax transparency, combat cross-border tax evasion, maintain regular co-operation on banking supervisory matters, combat money laundering and prevent counter-terrorist financing, etc.<sup>9</sup>

27. In 2018, LDD has to handle the legislative work for numerous items and for at least two major issues, namely, the budget and tax-related measures, and the local legislation for the national anthem law. Further ahead, we understand that there are at least two legislative exercises of enormous proportions to be handled over the next few years. One is related to the establishment of a Trade Single Window which seeks to provide a one-stop electronic platform for the trade to lodge business-to-government trade documents to facilitate their compliance with

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<sup>7</sup> For the Private Columbaria Bill 2015, 63 of the 67 pages of Chinese text were revised; for the Travel Industry Bill 2017, 172 of the 189 pages of Chinese text and 121 of the 230 pages of the English text were revised; for the Financial Reporting Council (Amendment) Bill 2017, 104 of the 195 pages of Chinese text and 110 of the 225 pages of the English text were revised; for the Inland Revenue (Amendment)(No.5) Bill 2017, approximately 90 of the 121 pages of Chinese text and approximately 65 of the 154 pages of English text were revised; and for the Inland Revenue (Amendment)(No. 6) Bill 2017, all 63 pages of Chinese text and 55 of the 77 pages of English text were revised. These figures far exceed the volume of revisions previously required.

<sup>8</sup> Legislative drafting is a highly specialised field of legal work where on-the-job training provided by more experienced legislative counsel is the primary means of professional development.

<sup>9</sup> These include international standards or measures required by the Organization of Economic Co-operation and Development or the European Union on reporting requirements, automatic exchange of financial account information, base erosion and profit shifting, capital rules, rules on capital standards, liquidity ratio and the associated disclosure standards required by the Basel Committee on Banking Supervision, the requirements on customer due diligence and record-keeping measures required by the Financial Action Task Force, and resolutions passed by the Security Council of the United Nations adopting sanctions against specified people or entities.

all import and export regulatory requirements<sup>10</sup> and the other is to introduce a new statutory corporate rescue procedure (CRP) for companies in short-term financial difficulty<sup>11</sup>. LDD would need to devote substantial resources to deal with these mega drafting exercises properly.

28. Having reviewed our experience in handling such large scale drafting exercises in past years (the Companies Bill 2011 of almost 3 000 pages, the Insurance Companies (Amendment) Bill 2014 of 1 000 pages and the Financial Institutions (Resolution) Bill of 632 pages, just to name a few), it is our considered view that enhanced support at the working level (DPGC and below) aside, there is a strong need for additional input (and hence reinforcement) at the DLD level on a long-term basis. The table below shows an increasing trend in the number of long items that exceed 100 and 200 pages respectively in the last three decades –

	Period			% Change (comparing period (A) with period (C))
	1988 to 1997 (A)	1998 to 2007 (B)	2008 to 2017 (C)	
<b>Number of items that exceed 100 pages</b>	19 (7 Bills and 12 items of subsidiary legislation)	18 (9 Bills and 9 items of subsidiary legislation)	54 (30 Bills and 24 items of subsidiary legislation)	+184%
<b>Number of items that exceed 200 pages</b>	2 (subsidiary legislation)	4 (2 Bills and 2 items of subsidiary legislation)	22 (10 Bills and 12 items of subsidiary legislation)	+1 000%

29. While LDD has throughout the years attempted to absorb the increasing workload, we consider that this is no longer sustainable and there is a strong and genuine need for an additional DLD for LDD so that it can have

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<sup>10</sup> This is a mega exercise requiring a new Bill ‘to underpin the establishment and use of the Single Window and the introduction of the pre-shipment documentation regime’ and ‘amendments to some 40 pieces of existing legislation’. Careful examination of the existing legislation is necessary to formulate amendments that fit in with the new legislative regime, and considerable efforts will be required to review and customise any local and overseas legislation that may be of referential value. The Trade Single Window will be implemented in phases, with Phase 3 to be rolled out in 2023 the earliest.

<sup>11</sup> The aim of a statutory CRP is to facilitate companies in short-term financial difficulty to turnaround and revive their businesses. The CRP will have an impact on companies, their creditors and employees. The Bill will provide for comprehensive procedural details and deal with issues of complexity (e.g., moratorium on winding-up and other legal proceedings against the company and treatment of employees’ outstanding entitlements). This is an enormous drafting exercise of high complexity.

sufficient capacity at the DLD level to handle the increasing work demand. As illustrated in the table above, the number of items that exceed 100 pages has increased by 184% over the last three decades, while the number of items that exceed 200 pages has increased by 1 000%. Taking the coming major drafting exercises set out in paragraph 27 above as examples, the scale and complexity of such exercises will require a counsel at DLD level, on top of working level counsel at DPGC level and below, to undertake the key drafting, co-ordination and quality assurance role and to provide critical support to the policy bureaux concerned in steering the legislative packages through LegCo. It is simply not feasible for the existing two DLD to take up this work in addition to their existing duties.

30. Clarity of legislation is a key element of the public's access to justice, which in turn has implications for the rule of law. The readership of legislation has expanded exponentially for various reasons, including the availability of free on-line access, and there is an expectation that ordinary readers should be able to read and understand the legislation that affects them. Both the Chinese and English texts should be as clear and readable as the policy implemented by the legislation will allow. While translating policy proposals into accurate and sound legislative provisions is highly demanding, refining the content and presentation of a draft to make it as clear and readable as possible requires drafting skills of an even higher order. The two DLD are currently overwhelmed by the volume of drafts presented to them for refinement and, therefore, must give priority to ensuring the draft provisions prepared by their subordinates effectively reflect the desired policy intent and that the Chinese and English texts have the same meaning (over ensuring the draft is as clear and readable as possible). The sharing of the refinement workload by the proposed additional DLD will allow each DLD to devote more time to reviewing the structure and content of draft legislation at different stages of the drafting process, with a view to refining the text to improve clarity and comprehensibility. This will also directly benefit the professional development of the less experienced drafting counsel.

31. The additional DLD can also share the existing supervisory duties of the two DLD such that the supervision ratios of DLD and other counsel at DPGC level and below could be brought to a more reasonable level. More supervision and guidance could then be provided to drafting counsel to facilitate their daily work and develop their drafting skills. In this regard, the supervisory responsibility of each DLD would be reduced from overseeing the output and development of six drafting teams to four drafting teams.

*/Operational .....*

*Operational initiatives essential for the efficient and effective delivery of legislation in the HKSAR*

32. The main focus of LDD has previously been on traditional drafting work, but there is a practical need for more efforts to be paid to operational improvements in order to enhance the efficient and effective delivery of legislation, and ensure that legislation is readily accessible and comprehensible. In this regard, LDD has taken forward the new legislation database project (i.e., Hong Kong e-Legislation (HKeL))<sup>12</sup> since 2009, while an English-Chinese and Chinese-English Glossary of Legal Terms project<sup>13</sup> is also ongoing. To further enhance the effectiveness and efficiency in respect of the performance of drafting and publishing functions, LDD must continue to deal with its ongoing and new challenges by delivering major operational and strategic initiatives, including the advancement of bilingual Plain Language drafting, the acceleration of professional development of legislative counsel, and also the introduction of “camera-ready” publication processes<sup>14</sup>.

33. Of those major operational and strategic initiatives mentioned in paragraph 32 above, the introduction of “camera-ready” publication processes is the most demanding one in terms of effort and resources. Publication of legislation in Legal Supplements of the Government Gazette is currently a labour intensive, time-consuming and error-prone task in LDD and Government Logistics Department (GLD). The Division currently produces the final texts of legislation in two MS Word files – one for the Chinese text and another for the English text. As the legislation is published in bilingual form, GLD needs to transfer the text data

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<sup>12</sup> The project, which seeks to establish an electronic database of Hong Kong legislation with legal status, is expected to complete in 2021-22 at the earliest.

<sup>13</sup> The bilingual glossary project is to provide a bilingual glossary of legal terms in an electronic format. It is being undertaken to advance bilingual law in the HKSAR, and it involves work all the way through to 2020 at the earliest.

<sup>14</sup> The introduction of “camera ready” publication processes is to allow easy and convenient production of camera-ready pages in the appropriate format (a “camera-ready model”) for publication in the Legal Supplements to the Government Gazette. These would be prepared by LDD and locked before being sent to the Government Logistics Department (GLD) for publication. It is expected to ensure the integrity of the text data (both content and format) and save manual proof-reading efforts within the Division and type-setting and proof-reading efforts within the GLD.

from both files onto its computer system for publishing. Much manual checking work<sup>15</sup> is required to ensure the accuracy as formatting and textual errors may occur during the transfer process.

34. To achieve operational efficiency, the Division is exploring the feasibility of “camera-ready” publications processes. In fact, other jurisdictions in the region (Australia, New Zealand and Singapore) have already successfully transitioned to “camera-ready” publication processes for the same purpose. To carry out “camera-ready” publication processes, there is significant work involved in the transition from the information technology (IT) and manpower perspectives. As with the HKeL and Glossary projects, it is appropriate that a DLD should be appointed to be the project owner of the “camera-ready” project given its significance to the efficiency and effectiveness of LDD and the IT, work processes and the liaison that will be involved in the initiative (with GLD and LDD staff).

35. For the successful delivery of this and other initiatives set out in paragraph 32 above, reinforcement at DLD level is essential. These initiatives are new but highly important to the continuous enhancement of the efficiency and effectiveness of the work of LDD. Currently, such work is shared out by the two existing DLD and it is not feasible for them to take up additional work on top of their existing duties in this regard. The two DLD are being respectively responsible for the HKeL project to be completed in 2021-22 at the earliest and the proposed combined DoJ English-Chinese and Chinese-English Glossaries of Legal Terms for completion no earlier than 2020. As such, a new DLD is essential for handling all aspects of the initiative to introduce “camera ready” publication processes, and will

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<sup>15</sup> To ensure that the text data will be published accurately, GLD sends bilingual printer proofs in hard-copy form to LDD for proof-reading. Any revision identified during the proof-reading process is returned to GLD for preparing another printer proof in hard-copy form to LDD for further proof-reading. Almost all items require two rounds of proof-reading and correction, and a lengthy item normally requires three to four rounds. The proof-reading process involves extensive work. This is time-consuming and can negatively impact on the timely publication of draft legislation at a very critical stage.

also take joint responsibility with the two existing DLD for the other two ongoing initiatives (namely, the advancement of bilingual Plain Language drafting<sup>16</sup> and the acceleration of professional development of legislative counsel<sup>17</sup>).

### Need for the creation of one PGC post in LDD

36. Taking into account the assessment of manpower requirement as detailed in paragraphs 23 to 35 above arising from the significant increase in the workload of LDD that has to be handled at the DLD level, and the need to strengthen the Division's capability to implement initiatives that are essential for the efficient and effective delivery of legislation in the HKSAR, we propose to create an additional permanent PGC post. The proposed PGC post will assist the LD to effectively oversee part of the Division's provision of drafting services, and also draft the major items of the most complex legislation personally. He/She will also assist the LD in ensuring that the Division as a whole operates smoothly and delivers major operational and strategic initiatives efficiently.

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<sup>16</sup> Advancing bilingual legislation is taken very seriously by LDD. The HKSAR has a relatively short history of drafting and maintaining legislation in both Chinese and English. Starting in 1986, LDD undertook translation of all of the existing English laws into Chinese. As part of this, it was necessary to coin Chinese terms to correspond to English legal terms where there was no equivalent. Since then, much progress has been made. LDD has moved beyond word-for-word rendition and the new Chinese terms have gained a level of recognition and acceptance.

Both English and Chinese texts in Hong Kong legislation are of equal status (see Interpretation and General Clauses Ordinance, Cap. 1, section 10B). Neither text is subsidiary to the other. LDD is committed to making Chinese and English legislation more comprehensible and will make continual efforts to ensure that draft legislation is as clear and readable as possible without compromising precision.

The following strategies to further improve readability are being employed –

- (a) Plain language drafting;
- (b) process changes where, for example, there is earlier involvement of counsel responsible for the Chinese text than has previously been the case and there is on-going moderation of the Chinese and English texts throughout the development of the draft legislation;
- (c) recruitment of government counsel with strong bilingual writing skills;
- (d) training (both on-the-job and in-house sessions primarily conducted by the DLD);
- (e) Chinese Drafting Sub-committee; and
- (f) Bilingual Glossary of legal terms project.

<sup>17</sup> Legislative drafting is a highly specialised field with only a small number of experts worldwide. Accelerating the professional development of existing legislative counsel within LDD is fundamental to strengthening and sustaining LDD's drafting capability.

The following strategies to accelerate professional development are being employed –

- (a) Appointment of a directorate level counsel responsible for professional development;
- (b) development of a professional development pipeline for counsel at different levels;
- (c) increased and focused formal professional development, including an intensive two-week training program presented by LD, DLD and other directorate level counsel; and
- (d) shifting the role of the counsel responsible for reviewing draft legislation from mere supervisor and quality assurance checker to being a skilled trainer/mentor/coach.

37. The volume and, perhaps more critically, the complexity of draft legislation required by the Government continue to increase. The legislative exercises for Trade Single Window and CRP initiatives as mentioned in paragraph 27 above are just two of the examples. We expect that the handling of similar mega legislative exercises will be an ongoing task. It is necessary to enhance the permanent establishment of the PGC rank in LDD to meet the operational needs in the long run. The current and proposed organisation charts and the job description of the proposed PGC post are at Enclosures 5, 6 and 7 respectively.

#### *Directorate and Non-directorate support*

38. Four DPGC, four SGC and three GC posts will be redeployed within LDD to work under the new PGC. A permanent PS I post will also be created to provide secretarial support to the proposed PGC post.

### **ALTERNATIVES CONSIDERED**

39. There is no viable alternative. The existing PGC in CD and LDD 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 CD and LDD are already fully stretched. Details of the duties of the other PGC in CD and LDD are set out at Enclosures 8 and 9 respectively. With the support of one additional PGC each in CD and LDD, the two Divisions will be able to continue to deliver their current and new services in a professional manner on a long-term basis.

### **FINANCIAL IMPLICATIONS**

40. The proposed creation of the two PGC posts in DoJ will bring about an additional notional annual salary cost at mid-point of \$5,061,600. The additional full annual average staff cost, including salaries and staff on-cost, is \$7,267,000.

41. The additional notional annual salary cost at mid-point for the two additional non-directorate posts (i.e., two PS I) mentioned in paragraphs 20 and 38 above is \$842,040 and the additional full annual average staff cost, including salaries and staff on-cost, is \$1,348,000.

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

**PUBLIC CONSULTATION**

43. We consulted the LegCo Panel on Administration of Justice and Legal Services on 28 May 2018. Members supported the proposed creation of the two PGC posts.

**ESTABLISHMENT CHANGES**

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

Establishment (Note)	Number of posts			
	Existing (as at 1 October 2018)	As at 1 April 2018	As at 1 April 2017	As at 1 April 2016
A	90 + (2) <sup>#</sup>	89 + (2)	89 + (4)	88 + (3)
B	435	435	413	396
C	879	869	842	822
<b>Total</b>	<b>1 404 + (2)</b>	<b>1 393 + (2)</b>	<b>1 344 + (4)</b>	<b>1 306 + (3)</b>

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 October 2018, there was no unfilled directorate post

**CIVIL SERVICE BUREAU COMMENTS**

45. The Civil Service Bureau supports the proposed creation of the two permanent PGC posts. The grading and ranking of the proposed posts are considered appropriate having regard to the level and scope of responsibilities.

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

46. The Standing Committee on Directorate Salaries and Conditions of Service has advised that the rank proposed for the permanent PGC posts mentioned above is appropriate.

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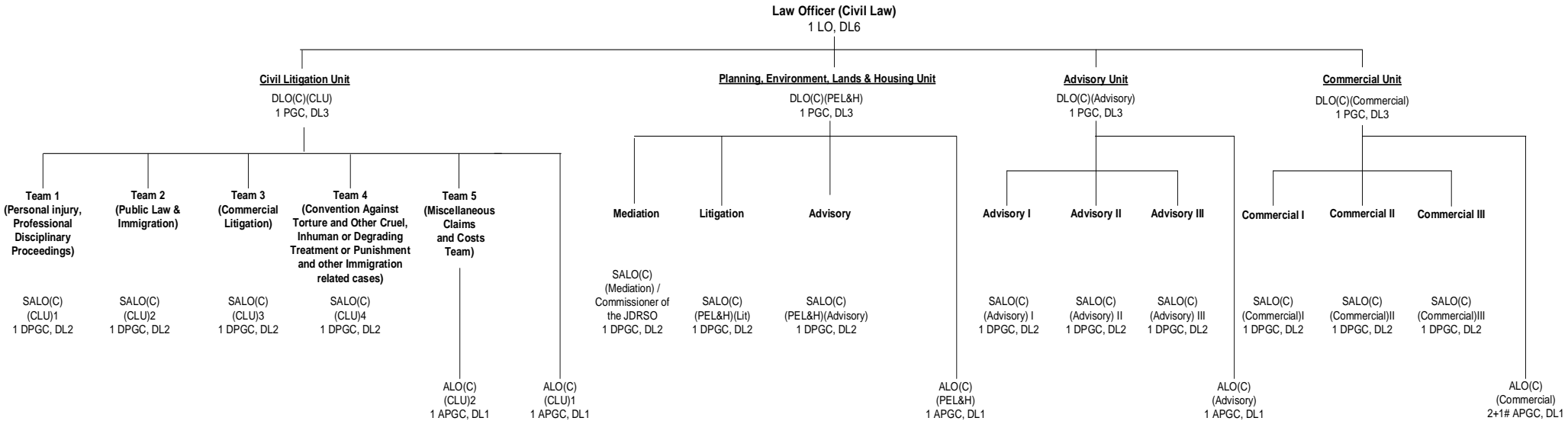


**Workload of Civil Division  
Number of Ongoing Civil Litigation Cases  
from 1998 to 2017**

<b>Year</b>	<b>Ongoing civil litigation cases</b>
1998	9 286
1999	10 426
2000	12 389
2001	15 923
2002	14 572
2003	13 587
2004	14 942
2005	16 188
2006	17 270
2007	18 561
2008	20 602
2009	22 842
2010	25 556
2011	28 128
2012	30 325
2013	32 901
2014	34 593
2015	35 677
2016	35 356
2017	36 778

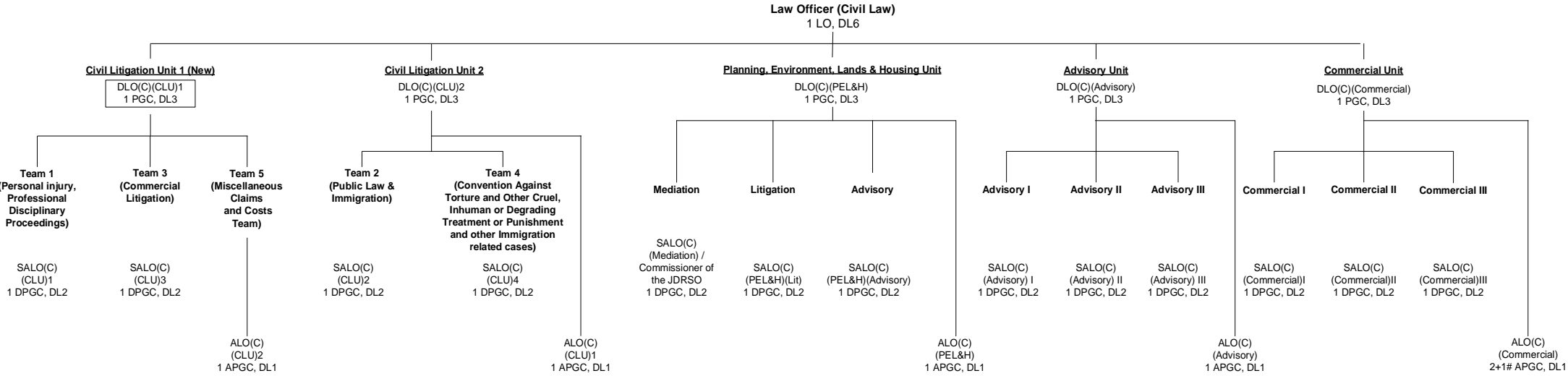
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Existing Organisation Chart of the Civil Division, Department of Justice



- Legend: # - One supernumerary APGC post created to provide legal support for taking forward the outcome of the public consultation on the future development of the electricity market
- ALO - Assistant Law Officer (Civil Law)
  - APGC - Assistant Principal Government Counsel
  - DLO - Deputy Law Officer (Civil Law)
  - DPGC - Deputy Principal Government Counsel
  - PGC - Principal Government Counsel
  - SALO - Senior Assistant Law Officer (Civil Law)

Proposed Organisation Chart of the Civil Division, Department of Justice



- Legend: # - One supernumerary APGC post created to provide legal support for taking forward the outcome of the public consultation on the future development of the electricity market
- ALO - Assistant Law Officer (Civil Law)
  - APGC - Assistant Principal Government Counsel
  - DLO - Deputy Law Officer (Civil Law)
  - DPGC - Deputy Principal Government Counsel
  - PGC - Principal Government Counsel
  - SALO - Senior Assistant Law Officer (Civil Law)
  - Proposed new post

**Job Description of the Proposed  
Deputy Law Officer (Civil Law) (Litigation) 1  
Civil Division**

**Rank** : Principal Government Counsel (DL3)

**Responsible to** : Law Officer (Civil Law) (DL6)

**Major duties and responsibilities –**

1. Administering, supervising and overseeing the work of the Civil Litigation Unit 1;
2. Supervising and having conduct of complicated civil litigation cases for the Government;
3. Directing and supervising the preparation of instructions and briefs for outside professionals in complicated civil litigation cases for the Government;
4. Approving and making recommendations for settlements, payments of court costs, and briefing out, and monitoring the briefing out and court costs expenditure;
5. Appearing before the Executive Council and Legislative Council committees or panels on matters within the province of his/her Unit;
6. Acting as the Secretary for Justice's representative on high level working parties and steering groups;
7. Providing guidance and training to counsel and non-professional support staff of the Civil Litigation Unit 1; and
8. Taking part, as required by the Law Officer (Civil Law), in the overall management of Civil Division of Department of Justice.

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**Existing Organisation Chart of the Law Drafting Division, Department of Justice**

**Law Draftsman**  
1 LO, DL6

**Deputy Law Draftsman I**  
1 PGC, DL3

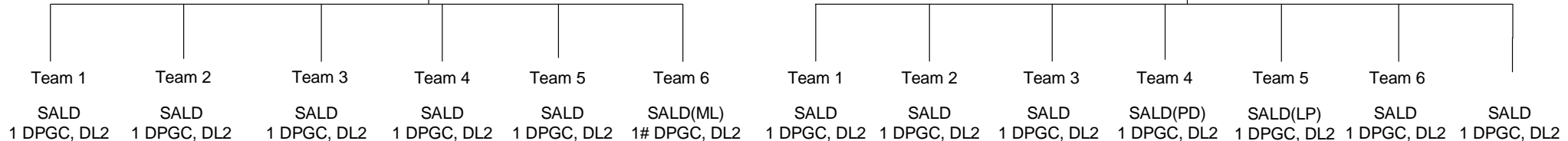
**Deputy Law Draftsman II**  
1 PGC, DL3

**Administration Unit**

**Sub-division I**

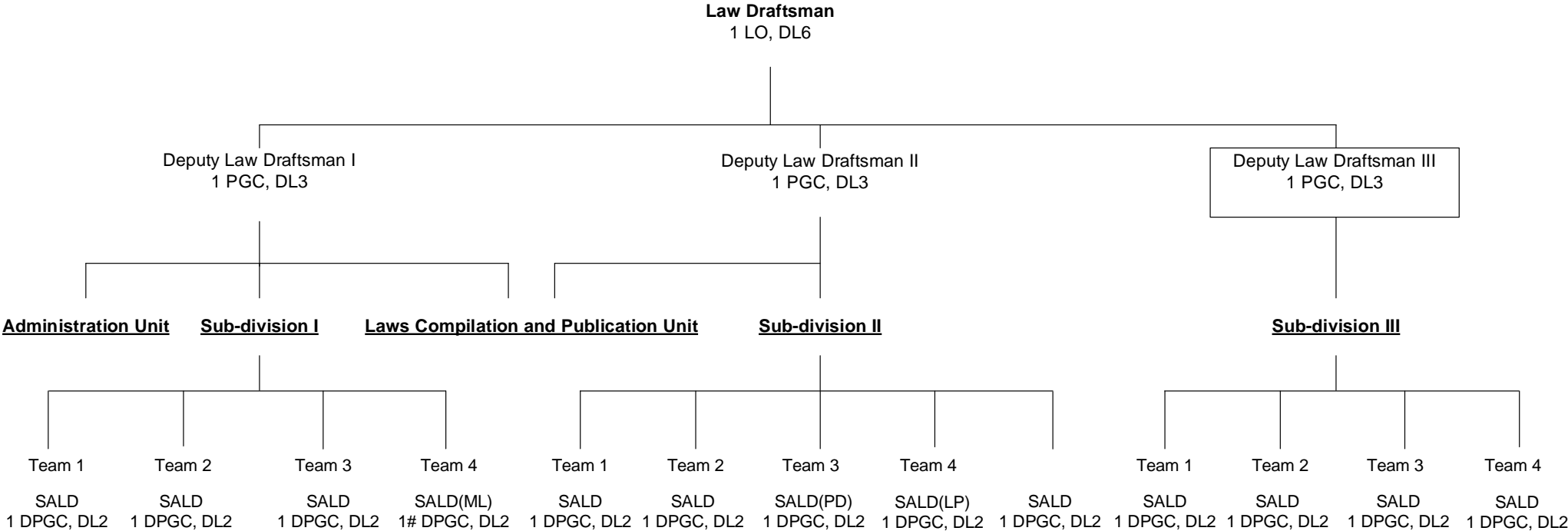
**Laws Compilation and Publication Unit**

**Sub-division II**



- Legend:
- # - One supernumerary DPGC post created to provide legal support on marine-related legislative amendment exercise
  - DPGC - Deputy Principal Government Counsel
  - LO - Law Officer
  - PGC - Principal Government Counsel
  - SALD - Senior Assistant Law Draftsman

**Proposed Organisation Chart of the Law Drafting Division, Department of Justice**



- Legend:
- # - One supernumerary DPGC post created to provide legal support on marine-related legislative amendment exercise
  - DPGC - Deputy Principal Government Counsel
  - LO - Law Officer
  - PGC - Principal Government Counsel
  - SALD - Senior Assistant Law Draftsman
  - Proposed new post

**Job Description of the Proposed  
Deputy Law Draftsman III  
Law Drafting Division**

**Rank** : Principal Government Counsel (DL3)

**Responsible to** : Law Draftsman (DL6)

**Major duties and responsibilities –**

1. Assisting the Law Draftsman to effectively oversee part of the Division's provision of drafting services, by –
  - overseeing the delivery of the Legislative Programme of the relevant Sub-Division, including allocating resources and monitoring progress and ensuring the timely delivery of effective, legally sound and Plain Language legislation by the relevant Sub-Division;
  - assisting, including by way of providing final clearance, in the screening of all draft legislation prepared by directorate and non-directorate counsel;
  - advising on legal and drafting issues identified in the course of developing draft legislation within the relevant Sub-Division;
  - assisting directorate and non-directorate counsel and client bureaux and departments in relation to the legislative process and providing professional services in relation to proposed legislation during the legislative process, including attending meetings of the Policy Committee, the Executive Council and the Legislative Council (including its committees);
  - vetting legal reports for the Standing Committee of the National People's Congress in respect of enacted Ordinances;
2. Drafting the Chinese and/or English text of major items of the most complex and/or sensitive legislation personally; and
3. Contributing, as required by the Law Draftsman, to the overall management of the Law Drafting Division, ensuring the Division as a whole operates smoothly and delivers major operational and strategic initiatives.

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**Major Responsibilities and Current Workload of  
Other Principal Government Counsel (PGC)  
in the Civil Division (CD) of the Department of Justice**

All the directorate officers at PGC level of CD are fully engaged in their respective duties. As shown in the ensuing paragraphs, they each have a heavy workload and assume supervisory duties, and do not have any spare capacity to shoulder the substantial growth in workload arising from the increasing volume, diversity, complexity and urgency of civil litigation cases.

**Civil Litigation Unit (CLU)**

2. CLU is currently headed by one PGC who is supported by four Deputy Principal Government Counsel (DPGC) and two Assistant Principal Government Counsel (APGC). The Unit advises and represents the Government and other related public bodies before courts and statutory boards/tribunals as well as in arbitration and mediation. It comprises five teams, each of which has a different emphasis on the areas of work. They are the personal injuries and medical disciplinary cases team (Team 1), the public law and statutory tribunals team (Team 2), the revenue, charities and commercial litigation team (Team 3), the immigration team which handles immigration-related matters including issues arising from non-refoulement claims (Team 4) and the miscellaneous claims and costs team (Team 5). Each team is headed by a DPGC except Team 5, which is headed by an APGC.

3. The workload of the Unit has increased significantly over the past 20 years in terms of the volume, diversity, complexity and urgency of civil litigation cases. The PGC has been fully stretched in supervising the significantly increasing workload of the Unit and the large number of counsel at the rank of DPGC and below.

**Planning, Environment, Lands & Housing (PEL&H) Unit**

4. The PEL&H Unit is headed by one PGC. It comprises three teams, namely, PEL&H(Advisory), PEL&H(Litigation) and the Mediation Team. The Unit advises and represents Government in civil proceedings on matters relating to town planning, environmental protection, land control, building regulations, heritage, government rent and rates, building management, housing, road schemes, railway projects and reclamation works. The PGC also takes up the supervisory role on the work of the Mediation Team in providing support to the Steering Committee on Mediation (Steering Committee) chaired by the Secretary for Justice

/for .....



for the implementation of the long-term policy to promote and develop mediation in Hong Kong. The Mediation Team provides support to the Steering Committee and its sub-committees, and implements major initiatives on the development and promotion of mediation in Hong Kong.

5. The PGC is supported by three DPGC who headed the three teams respectively and one APGC who handles complex litigation and advisory work. The workload of the Unit has substantially increased in recent years, mainly due to the increase in the volume, diversity and complexity of litigation cases, and the various major initiatives in promoting the wider use of mediation and Hong Kong as an international legal and dispute resolution services centre in the Asia Pacific region. The PGC is already fully stretched with his own work portfolio.

### **Civil Advisory Unit (CAU)**

6. CAU is headed by one PGC. It comprises three teams, namely Advisory I, Advisory II and Advisory III, each of which is headed by one DPGC. The Unit is responsible for advising various government bureaux and departments (B/Ds) on civil law issues of a general nature relating to their functions and duties as well as those arising from their exercise of discretion and powers under the law.

7. The PGC is responsible for handling and advising on a wide range of legal matters involving great concern and complex questions of law. The post-holder has a heavy supervisory role in leading CAU counsel in vetting draft Policy Committee papers and Executive Council memoranda; and in advising B/Ds on matters involving statutory interpretation and civil law issues, statutory powers and duties, legislative proposals and amendments, Government's civil liability, etc. With the increasing demand for legal support from B/Ds and the complexity and urgency of the matters involved, the workload of CAU has remained at a constantly high level. The PGC is also the representative of CD in the Department's Senior Government Counsel/Government Counsel (GC) Postings and Development Board. The post-holder does not have spare capacity to absorb other additional duties.

### **Commercial Unit (CU)**

8. CU is headed by one PGC who is supported by three DPGC and three APGC. The Unit advises B/Ds on all aspects of commercial law involving the Government, including major development projects such as theme parks, cultural districts and heritage sites, telecommunications, securities and futures regulation, competition law, company law, mergers and acquisitions, occupational retirement and provident fund schemes, broadcasting, transportation, information technology,

/privatisation .....

privatisation and sale of Government's shares, public-private partnerships, bond issues and securitisations, insurance, banking, finance, schemes of control for electricity companies, consumer protection and commercial contracts. It also advises on tax and public finance matters.

9. The work of CU is generated both by Government's own commercial activities and by government regulation of utilities and certain business activities. The PGC is heavily involved in leading and supervising the Unit in providing legal advice and support to B/Ds. The PGC also serves as the CD's representative in the Department's Training Committee and Departmental Consultative Committee (GC Grade). Given the high level of workload and the complexity and urgency of the matters involved, the PGC is not able to take up the work of the new PGC post.

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**Major Responsibilities and Current Workload of  
Other Principal Government Counsel (PGC)  
in the Law Drafting Division (LDD) of the Department of Justice (DoJ)**

The other directorate officers at PGC level of LDD 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.

**Deputy Law Draftsman (DLD) I**

2. DLD I, at the rank of PGC, assisted by six Deputy Principal Government Counsel (DPGC), heads Sub-division I (comprising six drafting teams) as well as the Administration Unit, and co-heads the Laws Compilation and Publication Unit (LCPU) with DLD II. The six drafting teams are responsible to draft legislation on receipt of the drafting instructions issued by all government bureaux/departments. The Administration Unit is responsible for all administrative matters within the Division. The PGC is the project owner of the Hong Kong e-Legislation (HKeL) Project. The PGC is also responsible for the marine-related legislation project and supervises a DPGC who is the overall coordinator of the related legislative drafting work. The PGC also oversees the grade management of the Law Translation Officer Grade and is LDD's representative on the Department's Training Committee, Senior Government Counsel/Government Counsel (GC) Postings and Development Board, Law Clerk Grade Management Board and Departmental Consultative Committee (GC Grade). Due to the consistently heavy workload of the Sub-division and the post, the PGC does not have spare capacity to absorb extra workload.

**DLD II**

3. DLD II, at the rank of PGC, assisted by seven DPGC, heads Sub-division II which comprises six drafting teams. The PGC supervises the law-drafting work of the counsel in the Sub-division. From time to time, the PGC also acts as the facilitator and project manager of major drafting projects. The PGC oversees the Chinese drafting of legislation under the marine-related legislation project and the work of a DPGC who organises training initiatives for the professional development of GC Grade officers in the Division. It is also the PGC's responsibility to assist the Law Draftsman (LD) in working out a practicable drafting schedule with government bureaux on their legislative proposals and to

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monitor the progress of the drafting schedule. The PGC also assists LD on administrative matters when required. The PGC co-heads the LCPU with DLD I, and supervises the Unit in respect of work that falls beyond the development of the HKeL system. Also, the Editorial Board of the Combined DoJ's Glossaries of Legal Terms is chaired by the PGC. The workload of the Sub-division and the PGC has been increasing over the past few years and the PGC does not have spare capacity to absorb the extra workload.

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