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Replies to supplementary questions raised by Finance Committee Members in examining the Estimates of Expenditure 2019-20

Director of Bureau : Secretary for Justice

Session No. : 2

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CONTROLLING OFFICER'S REPLY

S-SJ01

(Question Serial No. S005)

Head: (92) Department of Justice

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

Programme: (3) Legal Policy

Controlling Officer: Director of Administration and Development (Gracie Foo)

Director of Bureau: Secretary for Justice

Question:

With reference to Reply Serial Number SJ001, would the Administration elaborate on the following:

1. Regarding the work on “assisting the Hong Kong legal sector to enter the Mainland legal services market”, what are the details of the work and the estimated manpower and expenditure for 2019-20?
2. The Administration stated that the Department of Justice and the Hong Kong and Macao Affairs Office of the Ministry of Justice had already designated contact persons under the exchange mechanism. What is the rank of the officer involved?

Asked by: Hon AU Nok-hin (LegCo internal reference no.:)

Reply:

1. The Department of Justice (DoJ) has been actively assisting the Hong Kong legal sector to enter the Mainland legal services market. The work in 2019-20 includes:
 - (a) continue to make proposals to the Mainland authorities through the mechanism established between the Government of the Hong Kong Special Administrative Region and the Ministry of Commerce under the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA) seeking further enhancement of the liberalisation measures for legal services under CEPA. For instance, pursuant to the Agreement on Trade in Services under CEPA, the geographical area in which partnership associations between Hong Kong and Mainland law firms may be established has been extended from Guangzhou, Shenzhen and Zhuhai to the entire Mainland with effect from 1 March this year.
 - (b) continue to maintain close liaison with the Hong Kong legal sector through, inter alia, regular meetings between the Secretary for Justice and professional bodies of the sector so as to understand their needs and views and to convey their suggestions to the Ministry of Justice (MoJ) and other Mainland authorities, with a view to seeking

greater access to the Mainland legal services market by the Hong Kong sector. For instance, on 7 January 2019, the DoJ signed a record of meeting with the MoJ in which the latter agreed in principle to further relax the restrictions relating to partnership associations set up between Hong Kong and Mainland law firms and the retention of Hong Kong solicitors and barristers as legal consultants by Mainland law firms.

The staff costs and other related expenses incurred in assisting the Hong Kong legal sector to enter the Mainland legal services market have been, and will continue to be, absorbed by existing resources of the DoJ. The expenditure for this item cannot be separately identified.

2. At present, a DoJ legal officer at directorate rank acts as the designated contact person under the exchange mechanism between the DoJ and the Hong Kong and Macao Affairs Office of the MoJ.

- End -

CONTROLLING OFFICER'S REPLY

S-SJ02

(Question Serial No. S006)

Head: (92) Department of Justice

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

Programme: (5) International Law

Controlling Officer: Director of Administration and Development (Gracie Foo)

Director of Bureau: Secretary for Justice

Question:

With reference to Reply Serial Number SJ002 in respect of matters relating to surrender of fugitive offenders (SFO) and mutual legal assistance:

1. In the past 5 years, the Hong Kong Government has received a total of 32 SFO requests, of which 4 were from jurisdictions in the absence of a bilateral SFO agreement. Please advise on (a) the requesting jurisdictions, (b) types of offences involved and (c) progress of handling these requests;
2. Please give an account of the procedures for handling the above requests;
3. Please provide details of the establishment and expenditure involved in handling the above requests in the International Law Division in 2018-19;
4. Please provide details of the establishment and expenditure involved in handling the above requests in the International Law Division in 2019-20.

Asked by: Hon AU Nok-hin (LegCo internal reference no.:)

Reply:

1. In the past 5 years, Hong Kong has received a total of 4 SFO requests from jurisdictions in the absence of a bilateral SFO agreement. With no applicable surrender arrangements in place, all of them were refused. It is inappropriate for the Hong Kong Special Administrative Region (HKSAR) to disclose the relevant details as the fugitives in question are still wanted by the jurisdictions concerned.
2. Upon receipt of SFO requests, the HKSAR will study whether applicable surrender arrangements are in place and whether the requests can be handled in accordance with the laws of the SAR. The above requests were all refused in the absence of applicable arrangements and the requesting parties were informed of the decisions accordingly.

3. The establishment and expenditure involved in handling the above requests in the International Law Division (ILD) in 2018-19 were as follows [*Note (1)*]:

Establishment for 2018-19: The Mutual Legal Assistance (MLA) Unit of the ILD had a designated team responsible for handling work relating to, inter alia, SFO and MLA in criminal matters. The team was overseen by 1 Principal Government Counsel, with 1 Deputy Principal Government Counsel leading 5 Senior Government Counsel, 2 Personal Secretaries I and 2 Law Clerks. All SFO cases, including those where assistance could not be provided in the absence of applicable arrangements, were handled by the team.

Staff cost for 2018-19: \$13,118,340

4. Regarding the establishment and expenditure involved in handling the above requests in the ILD in 2019-20, staff deployment is the same as mentioned in Part 3 above, except for the addition of 1 Senior Government Counsel.

Staff cost for 2019-20: \$15,104,520

[Note (1): Apart from handling SFO requests, the designated team in the MLA Unit of the ILD is also responsible for handling requests for MLA in criminal matters, negotiating agreements, and providing legal advice on various aspects of work such as MLA. For this reason, the establishment and expenditure involved in handling SFO requests cannot be separately identified.]

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CONTROLLING OFFICER'S REPLY

S-SJ03

(Question Serial No. S007)

Head: (92) Department of Justice

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

Programme: (5) International Law

Controlling Officer: Director of Administration and Development (Gracie Foo)

Director of Bureau: Secretary for Justice

Question:

As noted in Reply Serial No. SJ002, the Department of Justice has made a provision of \$5 million for briefing-out expenses under this programme for 2019-20. Please inform this Committee of the following:

1. What are the Administration's criteria for briefing out cases under the programme of International Law?
2. The Administration explained that the estimated increase in briefing-out expenses was due to the need to "make provisions likely to be required for new cases that may arise". In this connection, what are the types of cases that may arise according to the Administration's internal assessment? Do they include judicial review cases?

Asked by: Hon AU Nok-hin (LegCo internal reference no.:)

Reply:

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

- (e) there is a need for continuity and saving costs, e.g. where a former member of the DoJ who is uniquely familiar with the case is in private practice at the time when legal services are required; and
 - (f) there is a need for independent advice or services in relation to the matter or proceedings involving members of the DoJ.
2. To ensure that sufficient provision is available to cover the briefing-out expenses required for new cases not yet arisen at the time of preparing the estimates for the coming year, it is our usual practice to earmark in the estimates for the coming year additional provision for new cases that may arise on top of the provision that need to be made for cases being handled. Since the new cases in 2019-20 may be very diversified in nature, it is practically difficult for us to provide the types of cases that may arise at this stage.

- End -

CONTROLLING OFFICER'S REPLY

S-SJ04

(Question Serial No. S008)

Head: (92) Department of Justice

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

Programme: (5) International Law

Controlling Officer: Director of Administration and Development (Gracie Foo)

Director of Bureau: Secretary for Justice

Question:

With reference to Reply Serial Number SJ039, please inform this Committee of the following:

1. the name of the government department(s) of the Hong Kong Special Administrative Region responsible for negotiation;
2. apart from the Criminal Investigation Bureau of Taiwan, the name of other government department(s) of Taiwan responsible for negotiation.

Asked by: Hon AU Nok-hin (LegCo internal reference no.:)

Reply:

Hong Kong contacted the Taiwan authority in March and April this year through the platform of the "Hong Kong-Taiwan Economic and Cultural Cooperation and Promotion Council and Taiwan-Hong Kong Economic and Cultural Co-operation Council" to express our wish to discuss relevant matters regarding the case as soon as possible. At the moment, Hong Kong and Taiwan conduct communication regarding the case through this platform.

- End -

CONTROLLING OFFICER'S REPLY

S-SJ05

(Question Serial No. S010)

Head: (92) Department of Justice

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

Programme: (5) International Law

Controlling Officer: Director of Administration and Development (Gracie Foo)

Director of Bureau: Secretary for Justice

Question:

Regarding the requests for surrender of fugitive offenders (SFO) received by the Department of Justice in the past 5 years, would the Administration inform this Committee of:

the numbers of SFO cases heard at Magistrates' Courts (or other courts) and the respective numbers of cases in which the requests were approved and rejected by the court; and

the case numbers of such cases together with the full text of the judgments (if the proceedings have been completed).

Asked by: Hon CHU Hoi-dick (LegCo internal reference no.:)

Reply:

Regarding the requests for surrender received in the past 5 years, a total of 13 requests were heard by courts involving 14 fugitive offenders, among which the committal of 11 was approved by courts, 2 are undergoing committal proceedings and 1 was discharged due to termination of committal hearing. Of the 11 fugitive offenders whose committal was approved, 1 applied for judicial review and a second habeas corpus (the proceedings are still ongoing), and 1 passed away before surrender. As such, only 9 of the 11 fugitive offenders have been surrendered. These requests were made pursuant to the applicable bilateral or multilateral conventions.

The case numbers of the above cases are set out in Table 1. The judgments of HCAL 223/2015 and HCAL 855/2019 can be downloaded from the Legal Reference System of the Judiciary. Written judgment is not available for the rest of the cases.

Table 1

	Case Number
1.	ESMP 1551/2014, ESMP 1802/2014

2.	ESMP 264/2015
3.	ESMP 572/2015
4.	ESMP 503/2015, HCAL 223/2015, HCAL 855/2019
5.	ESMP 1877/2015
6.	ESMP 2253/2015
7.	ESMP 120/2016
8.	ESMP 180/2016
9.	ESMP 2401/2016
10.	ESMP 742/2018
11.	ESMP 1415/2018
12.	ESMP 289/2019
13.	ESMP 290/2018
14.	KCMP 139/2018

- End -

CONTROLLING OFFICER'S REPLY

S-SJ06

(Question Serial No. S012)

Head: (92) Department of Justice

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

Programme: (-) Not Specified

Controlling Officer: Director of Administration and Development (Gracie Foo)

Director of Bureau: Secretary for Justice

Question:

With reference to the reply to SJ012, I would like to further enquire:

- (1) Of the 23 persons whose surrender is “not made or has not yet been made” between 2014 and 2018, how many have been detained by the authorities? What are their respective days of detention? Is anyone still being detained?
- (2) Of the 23 cases mentioned above, how many surrender requests were refused as early as the vetting stage by the Department of Justice? How many at the initiation stage by the Chief Executive? How many at the stage of proceedings at a magistrates’ court?

Asked by: Hon CHU Hoi-dick (LegCo internal reference no.:)

Reply:

1. Among the requests for surrender of fugitive offenders received between 2014 and 2018, surrender is not made or has not yet been made in 23 cases (involving 27¹ fugitive offenders), of which 4 (involving 5 fugitive offenders) have already been processed or are being processed. Of these 4 cases (involving 4 offenders whose surrender was contested after arrest), 2 cases are currently at the stage of committal hearing at a magistrates’ court; 1 case involves a fugitive offender applying for judicial review and a second habeas corpus after committal (the legal proceedings are still ongoing); 1 person was released as the surrender request was refused by Hong Kong under the relevant surrender arrangement; and 1 person, whose surrender was consented to after arrest, passed away during detention. The detention period of these fugitive offenders ranged from some 3 months to some 4 years.

¹ Some requests seek the surrender of 2 persons.

2. Apart from the above 4 cases which have already been processed or are being processed, the remaining 19 are cases that cannot be processed or are outstanding for various reasons including the request failed to meet the double criminality requirement, absence of applicable surrender arrangement, withdrawal of request by the requesting party, pending provision of supplementary information by the requesting party, pending vetting of the request and failure to locate the fugitive offenders, etc.

- End -

CONTROLLING OFFICER'S REPLY

SV-SJ01

(Question Serial No. SV001)

Head: (92) Department of Justice

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

Programme: (1) Prosecutions

Controlling Officer: Director of Administration and Development (Gracie Foo)

Director of Bureau: Secretary for Justice

Question:

To follow up on Question Serial Number SJ041:

Please provide a list of barristers and solicitors instructed to handle civil cases, construction cases and judicial review cases under the briefing out system of the Department of Justice.

Asked by: Hon KWOK Wing-hang, Dennis (LegCo internal reference no.:)

Reply:

As requested, the information on the sets of chambers to which the briefed out counsel belonged with details of the numbers of counsel and their respective numbers of civil cases briefed in the financial year 2017-18 is provided at **Annex** for reference.

2 Among the briefed out civil cases in the financial year 2017-18, the Civil Division briefed out a total number of 54 cases to solicitors firms, but did not brief out any cases to solicitor advocates.

3. In the financial year 2017-18, the briefing out of civil cases involved a total of 30 sets of chambers and 88 briefed out counsel. The counsel concerned were briefed in the cases set out in the Annex in new matters in the financial year 2017-18 or ongoing cases from previous financial years. The chambers to which a counsel belongs is not one of the considerations for selection of counsel for briefing out civil cases, except in special circumstances such as engagement of a junior counsel for a selected senior counsel in the same chambers for better work efficiency where the circumstances so require.

4. While the relevant figures for the financial year of 2018-19 are still being finalized, the preliminary information indicates that the sets of barristers chambers and briefed out counsel engaged in respect of civil cases in that year were nearly 40 and more than 110 respectively, and among them, around 30 counsel were engaged for the first time. There were about 70 cases briefed out to solicitors firms, but we did not brief out any cases to solicitor advocates.

2017-18

No.	Chambers (Remark 1)	No. of briefing out (Remark 2)
Local Chambers		
1	10/F, Printing House, 6 Duddell St, Central, H.K.	2 counsel were briefed on 1 and 4 ¹ cases respectively.
2	7/F, Effectual Bldg, 16 Hennessy Road, Wanchai, H.K.	2 counsel were briefed on 1 case each.
3	704B Tower 1 Admiralty Centre 18 Harcourt Rd Admiralty, H.K.	1 counsel was briefed on 33 ² cases.
4	Alan Leong, S.C.'s Chambers	2 counsel were briefed on 1 and 18 ³ cases respectively.
5	Bernacchi Chambers	1 counsel was briefed on 9 ⁴ cases.
6	Chambers of Ronny Wong S.C.	1 counsel was briefed on 6 ⁵ cases.
7	Denis Chang's Chambers	1 counsel was briefed on 2 cases.
8	Des Voeux Chambers	14 counsel were briefed on 1 (for 2 counsel), 2, 3 (for 2 counsel), 4 (for 3 counsel), 6, 9 ⁶ , 10 ⁷ , 13 ⁸ , 25 ⁹ and 38 ¹⁰ cases respectively.

¹ The 4 cases are related and involved 1 set of proceedings.

² Of the 33 cases, there are 24 related cases which involved a total of 6 sets of proceedings.

³ Of the 18 cases, there are 17 related cases which involved a total of 3 sets of proceedings.

⁴ The 9 cases are related and involved 1 set of proceedings.

⁵ Of the 6 cases, there are 4 related cases which involved 1 set of proceedings.

⁶ Of the 9 cases, there are 2 related cases which involved 1 set of proceedings.

⁷ Of the 10 cases, there are 8 related cases which involved 1 set of proceedings.

⁸ Of the 13 cases, there are 2 related cases which involved 1 set of proceedings.

⁹ Of the 25 cases, there are 14 related cases which involved a total of 3 set of proceedings.

No.	Chambers (Remark 1)	No. of briefing out (Remark 2)
9	Erik Shum's Chambers	2 counsel were briefed on 2 ¹¹ and 15 ¹² cases respectively.
10	Fraternity Chambers	1 counsel was briefed on 4 cases.
11	Gary Plowman S.C.'s Chambers	4 counsel were briefed on 1 (for 2 counsel), 2 and 35 ¹³ cases respectively.
12	Gilt Chambers	2 counsel were briefed on 1 and 3 ¹⁴ cases respectively.
13	Liberty Chambers	2 counsel were briefed on 13 ¹⁵ and 39 ¹⁶ cases respectively.
14	Pacific Chambers	2 counsel were briefed on 1 case each.
15	Parkside Chambers	4 counsel were briefed on 1, 2, 3 and 28 ¹⁷ cases respectively.
16	Patrick Yu's Chambers	1 counsel was briefed on 17 ¹⁸ cases.
17	Rm 1205, New World Tower 1, 18 Queen's Rd Central, H.K.	1 counsel was briefed on 1 case.

¹⁰ Of the 38 cases, there are 18 related cases which involved a total of 3 set of proceedings.

¹¹ The 2 cases are related and involved 1 set of proceedings.

¹² Of the 15 cases, there are 14 related cases which involved a total of 4 sets of proceedings.

¹³ All the 35 cases are related cases and involved a total of 2 sets of proceedings.

¹⁴ All the 3 cases are related and involved 1 set of proceedings.

¹⁵ Of the 13 cases, there are 12 related cases which involved a total of 2 sets of proceedings.

¹⁶ Of the 39 cases, there are 28 related cases which involved a total of 4 sets of proceedings.

¹⁷ Of the 28 cases, there are 23 related cases which involved a total of 5 sets of proceedings.

¹⁸ Of the 17 cases, there are 6 related cases which involved 1 set of proceedings.

No.	Chambers (Remark 1)	No. of briefing out (Remark 2)
18	Rm 1603, Ruttonjee House, 11 Duddell St, Central, H.K.	1 counsel was briefed on 3 ¹⁹ cases.
19	Rm 3308, Tower Two, Lippo Centre, 89 Queensway, Admiralty, H.K.	1 counsel was briefed on 2 cases.
20	Rm 705, 7/F, Wilson House, 19-27 Wyndham St, Central, H.K.	1 counsel was briefed on 1 case.
21	Rm 87, New Henry House, 10 Ice House St, Central, H.K.	1 counsel was briefed on 3 cases.
22	Sir Oswald Cheung's Chambers	5 counsel were briefed on 1, 3 ²⁰ (for 2 counsel) and 7 ²¹ (for 2 counsel) cases respectively.
23	Temple Chambers	27 counsel were briefed on 1 (for 6 counsel), 2 (for 3 counsel), 3 ²² (for 2 counsel), 4 ²³ (for 2 counsel), 5 ²⁴ (for 4 counsel), 11 ²⁵ , 12 ²⁶ , 14, 15, 16, 22 ²⁷ , 35 ²⁸ , 36 ²⁹ , 48 ³⁰ and 90 ³¹ cases respectively.
24	Wellington Chambers	1 counsel was briefed on 1 case.

¹⁹ Of the 3 cases, there are 2 related cases which involved 1 set of proceedings.

²⁰ For one of the counsel, of the 3 cases, there are 2 related cases which involved 1 set of proceedings.

²¹ For one of the counsel, of the 7 cases, there are 2 related cases which involved 1 set of proceedings.

²² For one of the counsel, of the 3 cases, there are 2 related cases which involved 1 set of proceedings.

²³ For one of the counsel, of the 4 cases, there are 2 related cases which involved 1 set of proceedings.

²⁴ For two of the counsel, of the 5 cases, there are 3 related cases which involved 1 set of proceedings.

²⁵ Of the 11 cases, there are 5 related cases which involved 1 set of proceedings.

²⁶ Of the 12 cases, there are 3 related cases which involved 1 set of proceedings.

²⁷ Of the 22 cases, there are 6 related cases which involved a total of 2 sets of proceedings.

²⁸ Of the 35 cases, there are 13 related cases which involved a total of 5 sets of proceedings.

²⁹ Of the 36 cases, there are 35 related cases which involved a total of 2 sets of proceedings.

³⁰ Of the 48 cases, there are 37 related cases which involved a total of 3 sets of proceedings.

³¹ Of the 90 cases, there are 76 related cases which involved a total of 4 sets of proceedings.

No.	Chambers (Remark 1)	No. of briefing out (Remark 2)
Overseas Chambers		
25	39 Essex Chambers	1 counsel was briefed on 2 cases.
26	4 Pump Court Chambers	1 counsel was briefed on 1 case.
27	Atkin Chambers	2 counsel were briefed on 1 and 2 cases respectively.
28	Blackstone Chambers	2 counsel were briefed on 2 and 4 cases respectively.
29	Keating Chambers	1 counsel was briefed on 1 case.
30	Wilberforce Chambers	1 counsel was briefed on 11 ³² cases.
	Total number of counsel briefed out:	88

Remark 1: We do not maintain information on the sets of chambers to which a briefed out counsel belonged when a case was briefed. The sets of chambers set out in this document denote the chambers to which the briefed out counsel belonged as at the time when this document was prepared.

Remark 2: The same case dealt with at different court levels is counted as one case.

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³² Of the 11 cases, there are 9 related cases which involved 1 set of proceedings.