

**Legislative Council Panel
on Administration of Justice and Legal Services**

**Proposed Creation of one Permanent Post
of Principal Government Counsel, one Permanent Post of Deputy Principal
Government Counsel, one Supernumerary Post of Deputy Principal
Government Counsel and Upgrading of one Assistant Principal Government
Counsel Post to Deputy Principal Government Counsel
in the Department of Justice**

PURPOSE

This paper invites Members' views on the following proposals:

- a) creation of one permanent post of Principal Government Counsel (PGC) (DL3) in the Secretary for Justice's Office (SJO) to strengthen support in enhancing Hong Kong's role as an ideal hub for deal making¹ and a leading centre for international legal and dispute resolution² services in the Asia-Pacific Region;
- b) creation of one permanent post of Deputy Principal Government Counsel (DPGC) (DL2) in the Law Reform Commission (LRC) Secretariat of the Legal Policy Division (LPD) to strengthen the legal support provided to LRC to expedite its work in making and implementing recommendations on reform of the law;
- c) upgrading of one Assistant Principal Government Counsel (APGC) (DL1) post to DPGC (DL2) in the Policy Affairs (PA) Sub-division of the LPD to cope with the increased level of variety, breadth, depth, and complexity of the existing and additional workload; and
- d) creation of one supernumerary post of DPGC (DL2) for a period of five years in the PA Sub-division of the LPD to cope with the upsurge in workload arising from new and existing projects.

¹ In terms of provision of transactional legal services.

² Covering, inter alia, mediation and arbitration.

JUSTIFICATION

(A) Proposed Creation of one Permanent PGC Post in SJO

Existing manpower for the promotion of dispute resolution services in the Department of Justice (DoJ)

2. It has been a firm policy of the Government of the Hong Kong Special Administrative Region (HKSAR) to position Hong Kong as the leading centre for international legal and dispute resolution services in the Asia-Pacific Region. The development and promotion of Hong Kong's international legal and dispute resolution services complements our role as one of the major international financial and business centres of the world, enables us to make the best use of the abundance of legal talents in Hong Kong, builds on the good international reputation enjoyed by Hong Kong's distinctive common law system, the rule of law and judicial independence, and in turn reinforces public and international confidence in our legal system which is a cornerstone of "one country, two systems".

3. As far as the promotion and development of mediation in Hong Kong is concerned, a Mediation Team was set up under the Planning, Environment, Lands and Housing Unit of the Civil Division (CD) of DoJ in 2008. Currently, the Mediation Team is headed by a DPGC, i.e., Senior Assistant Law Officer (Civil) (Mediation) (SALO(C)(Mediation)), who is mainly responsible for providing secretariat and research support to the Steering Committee on Mediation, advising on and assisting in the promotion of mediation in Hong Kong (including organising seminars, conferences and other events to encourage the use of mediation in Hong Kong), working with stakeholders in implementing various initiatives of DoJ in further developing and enhancing the use of mediation in Hong Kong, and providing support on the use of mediation in civil disputes involving the Government. The Mediation Team is overseen by a PGC of CD, i.e. Deputy Law Officer (Planning, Environment, Lands and Housing) (DLO(PEL&H)).

4. On the other hand, to properly take forward DoJ's activities for promoting and developing Hong Kong's arbitration services, LPD set up the Arbitration Unit (ArbU) under the Policy Affairs (PA) Sub-division in September 2016. The Unit is a dedicated team to promote and develop Hong Kong's arbitration policies, update and monitor the operation of the Arbitration Ordinance (Cap. 609), develop specialised areas of arbitration (such as investment, maritime and intellectual property), etc. Currently, the ArbU is headed by a DPGC, i.e. Senior Assistant Solicitor General (Arbitration) (SASG(Arbitration)), who is mainly responsible for keeping abreast of the latest developments in arbitration internationally and locally, providing secretariat and research support to the Advisory Committee on Promotion of Arbitration, and working closely with the stakeholders in formulating

and implementing various initiatives to promote arbitration. ArbU is overseen by a PGC of LPD, i.e. Deputy Solicitor General (Policy Affairs) (DSG(P)).

5. To enhance the overall coordination of mediation and arbitration work in DoJ, a Joint Dispute Resolution Strategy Office (JDRSO) was established in September 2016. JDRSO has been under the general supervision of the Solicitor General (SG) and comprises the Mediation Team of the CD and the ArbU of the LPD. SALO(C)(Mediation) who heads the Mediation Team was appointed as the Commissioner of JDRSO to act as the single point of contact on all matters related to the promotion of dispute resolution. As coordination/promotion of mediation and arbitration work is crucial and the work is often spearheaded by the Secretary for Justice (SJ) personally, the Commissioner of JDRSO has been working very closely with the SJ to provide the needed support.

6. Recently, given the growing importance of and the demand for heightened intensity on the promotion of legal and dispute resolution services in the Mainland, especially under the Belt and Road (B&R) Initiative (BRI) (see paragraphs 10 to 12 below) as well as the major policy initiatives in respect of the Guangdong-Hong Kong-Macao Greater Bay Area development plan (Greater Bay Area Plan), the China Law Unit (ChLU) of the LPD, headed by a DPGC, i.e. Senior Assistant Solicitor General (China Law) (SASG(ChL)) (which is mainly responsible for advising government bureaux and departments (B/Ds) on matters of national laws which apply to the HKSAR as well as Mainland law, as well as legal cooperation between Hong Kong and other parts of China) has been increasingly involved in providing legal, policy and event organisation support for the promotion of legal and dispute resolution services in the Mainland.

Latest developments

7. In the past year, we observed keen competition from other international legal and dispute resolution services centres in the region for the fast growing opportunities arising from the BRI. They have been promoting their international legal and dispute resolution services aggressively, whether in Mainland China, other parts of Asia or in the traditional markets of the West. Although Hong Kong has also significantly stepped up its promotion efforts in the past few years, it has dropped out of the top three most preferred seats of arbitration in the 2018 International Arbitration Survey conducted by the Queen Mary University of London³.

8. In view of the pressing situation, it is considered that speedy and positive steps are required to recover lost ground. Our focus in the past few years was mainly on the promotion of Hong Kong's legal and dispute resolution services in

³ Hong Kong was ranked the third in the 2015 International Arbitration Survey conducted by Queen Mary University of London and the fourth in the 2018 Survey.

the Mainland and among emerging economies through various promotion events. While these activities have been useful in achieving the promotional objective of introducing to the participants our strengths in providing legal and dispute resolution services and encouraging and promoting the use of such services, the overall impact which can be achieved may not be pervasive enough to have a sustained effect in the absence of a more comprehensive and long-term strategy to promote our legal and dispute resolution services, including establishing formal arrangements to give Hong Kong's legal and dispute resolution service providers a regular platform to nurture a long-term relationship with their local counterparts and business organisations. In face of the stern competition from other international legal and dispute resolution centres in the region, there is a strong need for us to bring our efforts to a new level by systematically establishing and enhancing our presence, reputation and influence in the Mainland and other parts of Asia, as well as other jurisdictions (in particular those in the B&R region) on top of the promotional activities that we organise on a regular basis.

9. Looking further ahead, we need to formulate a comprehensive and sustainable strategy so as to make the best of the new opportunities for legal and dispute resolution services that have arisen or will arise for Hong Kong in light of various national policy initiatives, including the BRI and the Greater Bay Area Plan. In particular, in face of strong competition from other fast growing dispute resolution centres, Hong Kong has to race against time to seize these opportunities before they are taken up by competitors. Hence, there is an immediate need for us to take forward new initiatives and projects that go beyond the normal “promotional events” with a view to enhancing our presence, reputation and influence in the field of deal making as well as legal and dispute resolution services so that we could enhance our traditional role as an international legal and dispute resolution services provider as well as develop into an ideal hub for deal making.

Key new initiatives

(i) Building Hong Kong as a dispute resolution centre for the BRI

10. With the launch of the BRI as well as the national development plan for a world-class city cluster in the Greater Bay Area, there are increasing activities in trading, investment financing as well as infrastructure and construction projects etc. amongst enterprises in the Mainland and some 70 B&R countries. Disputes in these activities and transactions will arise inevitably. Pursuant to the *Opinion on the Establishment of a Mechanism and Body for Resolving International Commercial Disputes*⁴, the Central People's Government (CPG) has given clear policy endorsement for the establishment of a credible, neutral, fair and effective

⁴ Published on 27 June 2018.

dispute resolution body for resolving international disputes arising from B&R projects.

11. A Task Force on Belt and Road Dispute Resolution (with participation of those from the industry) has been established by DoJ to consider and advise on the establishment of dispute resolution rules and/or body in Hong Kong for the resolution of international disputes concerning B&R projects, and any matters incidental thereto, with a view to capitalising on the opportunities arising from the BRI and consolidating Hong Kong's status as a leading international legal and dispute resolution services centre.

12. Detailed consideration will need to be given to a wide spectrum of issues, including the dispute resolution mechanism, procedures and rules, conventional as well as online dispute resolution, etc. In addition, amidst competition from other dispute resolution centres in the region, DoJ will need to continue to step up its promotional efforts to potential users, whether private businesses or governments, for resolving their commercial and investment disputes.

(ii) Establishment of a regular platform to enable the Hong Kong legal profession to enhance their presence, reputation and influence in the Mainland and among the states of Association of Southeast Asian Nations (ASEAN)

13. It is necessary to establish formal arrangements with Mainland authorities on different fronts in order to give the legal and dispute resolution services sector of Hong Kong a regular platform to promote its services in the Mainland to both government (state and local levels) and enterprises (whether state-owned enterprises or otherwise), and to enable it to establish a long-term presence, reputation and influence in the Mainland. To this end, DoJ will be approaching various Mainland authorities to discuss and establish the following cooperation arrangements, and to initiate cooperation activities thereunder –

- (a) an arrangement for the purpose of establishing a regular platform between DoJ and legal and dispute service providers from Hong Kong on the one hand, and Mainland enterprises on the other. It is anticipated that the regular platform will initially take the form, among others, of organising seminars in major Mainland cities on a regular basis to showcase the strengths of Hong Kong as a “deal maker” (i.e. in terms of transactional legal services) and “dispute resolver” (i.e. in respect of dispute resolution services); and
- (b) arrangements with a view to facilitating government legal officers and Hong Kong legal and dispute resolution professionals in participating as trainers in capacity building programmes between the Mainland and other jurisdictions, including ASEAN countries (with side-visits to Hong Kong for some of those training programmes), and to explore the possibility of joint programmes with Hong Kong, so that the course participants can

obtain first-hand knowledge of the legal system and the legal and dispute resolution profession in Hong Kong. This initiative is also consistent with DoJ's policy to push for building Hong Kong as a regional capacity building centre (see paragraphs 27 to 30 below).

14. The above initiatives would entail active exchanges and maintenance of a continuous dialogue with relevant Mainland authorities, and meticulous implementation of the relevant seminars and training programmes. Given that Hong Kong has been losing out under aggressive competition from other jurisdictions in the region, it needs to substantially strengthen its efforts in reclaiming lost ground. These initiatives require the policy oversight of a DoJ officer at senior directorate level in order to lead the Hong Kong delegations and to nurture a long-term relationship with the Mainland counterparts, persuading them how Hong Kong legal and dispute resolution service providers can contribute to proper risk management in the process of deal-making, and provide best value for money in dispute resolution.

(iii) Organising investment law and investment mediation training courses in Hong Kong

15. Investment mediation is gaining attention in recent years due to discontent with investor-state arbitration for being non-transparent, costly, unpredictable and non-conducive to implementing mutually beneficial initiatives. Mediation generally saves time and costs, allows flexibility in creating extralegal creative solutions and enables parties to maintain business relationships.

16. Multilateral agencies and institutions around the globe are developing investor-state mediation as a viable alternative to investor-state arbitration. The United Nations Commission on International Trade Law (UNCITRAL)⁵ Working Group III has been entrusted with a mandate to work on possible reform of investor-state dispute settlement. The UNCITRAL Working Group II has also recently completed its work on the preparation of a draft Convention on the enforcement of international mediated settlement agreements and a draft Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation.

17. The HKSAR Government and the Ministry of Commerce concluded an Investment Agreement in June 2017 under the framework of the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA) providing for promotion and protection of investments between the two places. The CEPA Investment Agreement provides a mechanism for settlement of an investment

⁵ UNCITRAL is the core legal body of the United Nations system in the field of international trade law. Since its establishment in 1966, it has committed to the modernisation and harmonisation of rules on international business.

dispute arising from an alleged breach of the substantive obligations of the Agreement. Mediation is one of the available means to resolve such dispute. Under the CEPA Mediation Mechanism, Hong Kong and the Mainland will respectively designate their own mediation institutions and mediators, and publish the list of mediation institutions and mediators mutually agreed by both sides together with the applicable mediation rules.

18. In light of the international trend and with the CEPA Mediation Mechanism in place, we are working towards providing dedicated training for investment mediators in Hong Kong with a view to building up a team of investment mediators in Asia. We have worked together with the Asian Academy of International Law (AAIL)⁶ and the International Centre for Settlement of Investment Disputes of the World Bank Group to provide investment mediator training courses which focus on training in investment law and investment mediation skills. The first training course held in Hong Kong, which was the first in Asia, was launched in mid-October 2018 with a number of world-renowned speakers to share and speak on topics about international investment law and mediation of investor-state disputes plus coaching and role-playing sessions that involve active participation. Participants came from 18 countries, including local and overseas mediators, as well as government officials from Asia and Africa.

19. Given the positive outcome gained from the first training course, further rounds of such training will be conducted and this is intended to become a continuing series and long-term exercise. The success of these training courses will put Hong Kong in a very favourable position to become the leading training centre in Asia for investment law and investment mediation. Taking into account that the training programme is new to Hong Kong, the high-level liaison with international organisations as well as personal contact with world-renowned trainers in this field will continue to be required. Hence substantial inputs and guidance at the senior directorate level is necessary to take forward this new and important initiative.

(iv) Development of online dispute resolution and smart contract platform

20. DoJ encourages the development of online dispute resolution services and gives policy support to the development of an e-arbitration and e-mediation platform. The Government will provide funding for the cost of development of the project. The online dispute resolution (ODR) platform will provide an efficient, cost-effective and secure platform for resolving disputes between parties in any part of the world, including commercial and investment disputes involving B&R

⁶ The AAIL is an independent and non-profit making body set up in Hong Kong to further the studies and development of international law in Asia by, among others, conducting training courses, seminars on topical issues and joint studies on major international law issues.

economies. The dispute resolution methods will cover negotiation, mediation and arbitration.

21. DoJ has assisted with the formulation of the framework of the eMediation Rules for mediation conducted through the e-platform, which will make reference to the UNCITRAL Technical Notes of Online Dispute Resolution.

22. A representative of DoJ is also chairing the Asia-Pacific Economic Cooperation (APEC)⁷ Economic Committee's Friends of the Chair on Strengthening Economic and Legal Infrastructure working group to promote the use of ODR platform by micro, small and medium sized enterprises. DoJ is looking into how the e-arbitration and e-mediation platform may contribute to this APEC initiative.

23. DoJ also supports the development of a smart contract platform to facilitate international transactions (in particular those between B&R enterprises), as well as the development of standard sets of dispute resolution rules for the smart contract platform in order to encourage the resolution of transactional disputes on the e-platform. To ensure that these activities are well co-ordinated so that they could be taken forward in an efficient and effective manner to achieve the optimal outcome, the policy coordination and steer by a senior directorate officer would be essential.

(v) Greater Bay Area Plan

24. In order to encourage Greater Bay Area enterprises to fully utilise Hong Kong's international dispute resolution services, DoJ will promote the use of Hong Kong law as the governing law in commercial contracts as well as the use of Hong Kong dispute resolution services.

25. DoJ also aims to expand the scope of Hong Kong's dispute resolution services. To this end, DoJ is working towards securing the right for Hong Kong dispute resolution experts and organisations to provide their services or establish offices in the Greater Bay Area.

26. In parallel, DoJ will make arrangements for Hong Kong's dispute resolution representatives to visit Greater Bay Area cities to promote their services in fields such as intellectual property and investment disputes, as well as the resolution of such disputes in Hong Kong. The visits will, in particular, include fostering collaboration between Hong Kong and Mainland mediation institutions, providing training for mediators in intellectual property and investment mediation

⁷ The APEC is a regional economic forum established in 1989 for high level government-to-government dialogue on trade and economic issues.

and the development of relevant mediation procedures, codes of conduct for mediators and name lists of mediators and recognised mediation institutions.

(vi) Establishing Hong Kong as a regional capacity building centre

27. One of the policy objectives of the HKSAR Government is to promote Hong Kong as a regional capacity building centre for international law and dispute resolution through organising and co-organising international conferences and training programmes with international and local bodies for practitioners in both Hong Kong and other places. Hong Kong can provide a platform for practitioners from various places to receive training on specific areas of international law and dispute resolution for capacity building, thus enhancing their quality of service. Establishing Hong Kong as a regional capacity building centre in international law, judicial skills and dispute resolution for judges, legal practitioners and government officials from other jurisdictions (in particular B&R and Asian jurisdictions) is an important means to showcase Hong Kong's legal expertise and enhance the overall reputation and image of Hong Kong's legal system and its legal professionals.

28. DoJ has in the past supported or co-organised events relating to international law and dispute resolution held by international organisations and relevant research institutions, including the capacity building projects conducted by APEC, AAIL, the Hague Conference on Private International Law (HCCH)⁸, and the UNCITRAL.⁹ Nevertheless, Hong Kong must continue to step up its efforts in capacity building. On top of the proposed training initiatives with focus on Mainland institutions / Asian jurisdictions (as set out in paragraph 13 above), it is also necessary to enhance cooperation with international law-related organisations of a high standing, targeting more generally at B&R economies and

⁸ The Hague Conference is a leading global intergovernmental organisation 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.

⁹ Regular events include the UNCITRAL Asia Pacific Judicial Summit (a biennial event held in Hong Kong since 2015, co-organised or supported by DoJ, UNCITRAL and other organisations to enhance the capability of judges from the Asia-Pacific region in interpreting and applying related conventions of the UNCITRAL, with the next Summit to be held in Hong Kong in 2019); the biennial Mediation Week (co-organised by DoJ and other organisations since 2012); the biennial "Mediate First" Pledge event; the Criminal Law Conference (organised by DoJ jointly with the two legal professional bodies since 2012 with the next conference coming up in 2019); the legal and dispute resolution services seminar held during the annual Belt and Road Summit (co-organised by DoJ and the Hong Kong Trade Development Council); and the legal and dispute resolution services seminar held during the annual Business of IP Asia Forum (co-organised by DoJ and the Hong Kong Trade Development Council). Moreover, the AAIL holds its annual Colloquium in Hong Kong, while the Hong Kong International Arbitration Centre also organises the Hong Kong Arbitration Week every year.

Regular events aside, DoJ has also actively organised, participated in, and supported Hong Kong and international organisations in the organisation of, international topical conferences and training programmes. For example, DoJ co-organised with the UNCITRAL and the AAIL the "Hong Kong Forum: 60th Anniversary of New York Convention"; supported the HCCH in hosting the global conference on "The HCCH 125 – Ways Forward: Challenges and Opportunities in an Increasingly Connected World" in celebration of the 125th anniversary of HCCH in April 2018 in Hong Kong; and supported AAIL in participating in the Hong Kong week held in September 2017 and September 2018 under the China-AALCO (Asian-African Legal Consultative Organization) Exchange and Research Program on International Law.

jurisdictions in the Asia-Pacific region. In this regard, DoJ is working with UNCITRAL to regularise the UNCITRAL Asia Pacific Judicial Summit into a biennial event permanently based in Hong Kong. The UNCITRAL Judicial Summit is a major law conference attended by chief justices and other judges in the Asia-Pacific region with the objective of enhancing international trade and development by way of capacity building for the judiciaries in the region. The 2015 and 2017 Judicial Summits were held in Hong Kong. By securing the Judicial Summit as a regular Hong Kong event, this will give Hong Kong a foothold in acquiring a more permanent role in international capacity building and enhancing its international reputation and recognition in this area.

29. In addition, in order to raise the profile of Hong Kong's legal and dispute resolution services among B&R economies, DoJ will be taking the lead in designing and organising capacity building and training programmes for judges, officials and lawyers from these places. The investment law and investment mediation training courses set out in paragraphs 15 to 19 above are the first of such initiatives and further possibilities will continue to be explored. Furthermore, DoJ will also co-organise for the first time the International Colloquium on Public-Private Partnership with UNCITRAL in Hong Kong, and an expert seminar on Investor-State Dispute Settlement Reform with AAIL, etc.

30. With the expanding scale and number of events to be organised, Hong Kong must handle this area of work efficiently and effectively. As such, it is necessary for DoJ to map out an overall capacity building strategy, identifying the key areas of law and practice as well as tailoring the capacity building programmes to cater for specific needs of different target participants. Given the importance of the capacity building programmes to DoJ's overall capacity building strategy, it is necessary for such programmes to be designed and executed under the supervision of a directorate officer at PGC level in order to ensure that it receives the necessary senior directorate level input and steer.

(vii) International Council for Commercial Arbitration (ICCA)¹⁰ Congress 2022

31. The ICCA Congress, held biennially, is the largest regular conference dedicated to international arbitration and is renowned for its significant contribution to international dispute resolution. After two unsuccessful bids in the past, Hong Kong (through the Hong Kong International Arbitration Centre (HKIAC) with the sponsorship and support of DoJ) has won the bid for organising the ICCA Congress in 2022. Hosting the ICCA Congress 2022 in Hong Kong

¹⁰ ICCA is a worldwide non-governmental organisation devoted to promoting the use and improving the processes of arbitration, conciliation and other forms of resolving international commercial disputes. Its activities include convening international arbitration congresses and conferences, sponsoring authoritative dispute resolution publications, and promoting the harmonization of arbitration and conciliation rules, laws, procedures and standards.

will enhance the status of Hong Kong as a leading centre for international legal and dispute resolution services.

32. The Congress covers a number of conferences and seminars which will be participated by prominent members of the global arbitration community to discuss important issues and developments in international arbitration. Such a large scale and important international event will require careful advanced planning and extensive coordination and liaison work with the organiser and other stakeholders. Counsel in the ArbU will be responsible for liaising with the HKIAC and the stakeholders both in Hong Kong and overseas on the organisation of the event. An Organising Committee (OC) will be set up for the purpose. In order for ICCA Congress 2022 to be successful, the OC would need to be inclusive so that ICCA Congress 2022 is not merely a HKIAC event but an event in which the Hong Kong arbitration community will be actively engaged. DoJ, as one of the major sponsors of the event and having policy purview over the promotion of dispute resolution services in Hong Kong, is expected to be closely engaged in the OC in the preparation of such a large scale international event, and the support of a directorate officer at PGC level is essential to provide senior directorate level input and steer for the organisation work.

(viii) Other new initiatives

33. The ArbU, the Mediation Team and ChLU are (or will be) working on other projects relating to the promotion of Hong Kong's legal and dispute resolution services including stepping up efforts in the promotion of Hong Kong's legal and dispute resolution (especially arbitration) services in Hong Kong as well as externally, including emerging economies in the Asia-Pacific region, ASEAN countries and other B&R economies to catch the rising opportunities under the BRI and the Greater Bay Area Plan; overseas visits which include meetings with local government officials and representatives of the legal, dispute resolution and business sectors to exchange views on matters of mutual interest and explore cooperation opportunities; providing input to government B/Ds from the arbitration law and policy perspective in connection with various government schemes and initiatives, including input on relevant applications under the Professional Services Advancement Support Scheme or the Talent List. These new initiatives would require substantive input from the relevant units/team within a tight time frame. The projects need to be led or coordinated by a PGC given their important and complex nature.

Need for the creation of one PGC post in the SJO

34. Taking into account the prevailing local and international situation in which the providers of Hong Kong legal and dispute resolution services operate and the need for Hong Kong to capitalise on the opportunities offered under the BRI and the Greater Bay Area Plan, there is a strong and imminent need for us to

enhance the staffing support of JDRSO and adjust the working relations between the Mediation Team and the ArbU in order to strengthen the overall coordination of mediation and arbitration work in DoJ and carry out such work more effectively and efficiently.

35. The new initiatives/special projects set out in paragraphs 10 to 33 above are very different from the existing mediation and arbitration portfolios in terms of nature, urgency, complexity as well as intensity. Given the novice nature of these initiatives/projects as well as their importance to the enhancement of Hong Kong's role at this critical moment as an ideal hub for deal making and a leading centre for international legal and dispute resolution services in the Asia-Pacific region, the SJ has to give her personal attention to the work in taking the matters forward and often liaise with the most senior officials in the cooperating organisations direct.

36. In the normal circumstances, the leadership role in various projects and initiatives is taken by the subject DPGC (mainly SALO(C)(Mediation) for mediation-related events and SASG(Arbitration) for arbitration-related events) with the support of non-directorate counsel and their supporting staff and supplemented by support of ChLU when necessary. However, placing supervision and coordination of work, manpower and resources of the Mediation Team and the ArbU under separate legal divisions, without a dedicated PGC to lead and oversee the arbitration and mediation work has not been most conducive to ensuring the achievement of the intended synergy to be derived from the two types of work.

37. Against this background, to meet the need to formulate a comprehensive and sustainable strategy to promote our legal and dispute resolution services, in particular, to take forward the key dispute resolution initiatives/special projects, it is considered that dedicated and concerted leadership and steer from a senior directorate counsel at PGC rank on a long-term basis is critical and essential to ensure smooth and effective implementation, given (a) the novice and large-scale nature of the projects/initiatives as well as the expedited timeframe involved; (b) the need to work directly to the SJ to provide her with the necessary timely and high-level support; (c) the need to represent DoJ in negotiating and concluding the necessary arrangements with senior officials of the partner organisations; (d) the need to ensure a coordinated approach from a strategic level in the promotion of Hong Kong's dispute resolution services (i.e. mediation as well as arbitration); and (e) the need to liaise with international organisations to organize joint events and to strengthen their presence in Hong Kong in order to promote Hong Kong as an international legal and dispute resolution services centre. The dedicated PGC is also required to undertake overseas duty visits and represent Hong Kong to promote our dispute resolution services internationally.

38. With the proposed PGC post to steer the key dispute resolution initiatives/projects¹¹, the two PGC currently overseeing the Mediation Team of the CD and the ArbU of the LPD (as part of their existing portfolios covering other duties¹² that have increased in volume and intensity – see further discussion under (C) below) can concentrate on the supervision of the operation of the respective dispute resolution regimes (especially at the domestic level) and the implementation of recurrent projects. And with the high level steer (which will involve strategic / policy considerations) from the SJ through (and with the support of) the senior directorate officer filling the proposed PGC post in respect of the key initiatives / projects concerned, SALO(C)(Mediation), SASG(Arbitration) and SASG(ChL) can focus on the operational and day-to-day tasks of these projects in addition to their other regular mediation and arbitration portfolios. The above delineation of responsibilities is essential to enhancing the overall coordination of key dispute resolution initiatives/special projects as well as ensuring that the regular mediation and arbitration portfolios can be taken forward in a more efficient, effective and timely manner. The job description of the proposed PGC post is at **Annex 1**.

39. Moreover, to better reflect the enhanced role of JDRSO in the overall coordination of mediation and arbitration work in DoJ, having regard to the new / expanded initiatives set out in paragraphs 10 to 33 above, the office will also be renamed as “Inclusive Dispute Avoidance and Resolution Office” (普惠避免和解決爭議辦公室) (IDAR Office). The use of the term “inclusive” in the name can better stress the importance of “inclusive growth and development” (e.g. an underlying rationale for the APEC ODR project mentioned in paragraph 22 above is to promote inclusiveness of micro, small and medium enterprises (MSMEs) in international trade), as well as the concept of “inclusive economy” or “inclusive society”. The new name of IDAR Office can better emphasise our aim to

¹¹ Having regard to the nature, urgency, complexity as well as sensitivity of the key initiatives set out in paragraphs 10 to 33 above, the need to create an additional PGC post to properly handle work concerned is strong and clear. Subject to the approval of this new post, the new PGC will take up the strategic coordination; international, regional, mainland and local liaison; as well as the overall policy development (including the overall servicing of the relevant steering committees) in respect of the arbitration and mediation matters, as well as dispute resolution and deal making services. As for the existing two PGC responsible for the mediation and arbitration work (as part of their existing portfolios) respectively, they would continue to handle legislative work (when necessary) regarding, as well as other matters relating to, these areas (see footnote 12). This mode of operation would enable specific projects (new or existing) under their respective responsibility to be handled with the most appropriate balance in terms of synergy and effectiveness.

¹² On top of their work relating to mediation and arbitration policies, DLO(PEL&H) overseeing the Mediation Team is also responsible for overseeing the legal support on litigation and advisory matters involving planning, environment, lands and housing related issues rendered to various B/Ds, while DSG(P) overseeing ArbU is also responsible for the provision of (a) policy support primarily on matters concerning the development of the legal system, administration of justice, legal profession and practice, legal education and the implementation of law reform initiatives insofar as they fall under SJ’s portfolio as well as upholding the rule of law; (b) dedicated advice to the Chief Executive (CE), CE-in-Council on different types of appeals, objections and petitions and to bureaux on Legislative Council procedures; and (c) specialist advice on Mainland law and advancement as well as the development and promotion of various aspects of legal cooperation between the HKSAR and other parts of China.

facilitate access to justice and provide equitable opportunities for all walks of life and all sectors of the economy without boundary.

Directorate and non-directorate support

Line of command

40. Since the SJ is taking the lead in many of the new initiatives/special projects and is giving her personal attention to the planning and implementation work as well as liaison work with the relevant organisations, the proposed PGC has to work directly to the SJ under the SJO, so as to provide her with the necessary high-level and timely support. Given the PGC's role to represent DoJ and assist the SJ in making necessary arrangements with senior officials of the partner organisations on dispute resolution matters, IDAR Office has to be strategically placed under the SJO, with the dedicated PGC designated as its Commissioner to meet operational need. The proposed organisation chart of the SJO is at **Annex 2**.

Positioning of the Mediation Team and the ArbU vis-a-vis IDAR Office

41. With the proposed creation of the PGC post in the SJO for leading IDAR Office, it is operationally necessary for the Mediation Team and the ArbU to provide continued support to the PGC to ensure the smooth and effective coordination of the mediation and arbitration work of DoJ.¹³

Other Support

42. A permanent Personal Secretary (PS) I post will be created to provide secretarial support to the proposed PGC post.

(B) Proposed Creation of one Permanent DPGC Post in LRC Secretariat

Existing Manpower of LRC Secretariat

43. LRC Secretariat is headed by the Secretary of LRC (S/LRC) (at PGC rank) who is supported by a Deputy Secretary (DS/LRC) (at DPGC rank), four Senior Government Counsel (SGC), two Government Counsel (GC) and nine other supporting staff. The primary role of LRC Secretariat is to provide secretariat support to LRC and its sub-committees. In broad terms, the role of counsel in the Secretariat is to carry out the extensive local and international legal research and writing required to support the members of LRC and its expert sub-committees, conduct public consultations on LRC proposals, and thereafter to assist relevant

¹³ The team for International Organisation and Legal Cooperation (IOLC team) in the Treaties & Law Unit of the International Law Division will also provide necessary support to the new post in relation to the relevant work.

government B/Ds, as need be, in the process of their consideration and implementation of LRC reports. Further details on the specific functions of LRC Secretariat are set out in **Annex 3**.

44. The professional manpower of LRC Secretariat has been very stringent for many years, although the scope and complexity of its work have increased. In particular, the directorate manpower of the Secretariat has been the same for over 20 years. The S/LRC post was created when LRC Secretariat was established in 1980, and the DS/LRC post was created in 1996. No directorate post has been created in the Secretariat since then.

Workload of LRC Secretariat

45. The existing work of LRC includes: the five formal references; follow-up work arising from the earlier study on reforming the law reform process; work related to the implementation of the recommendations in 15 LRC reports; ongoing background work on two LRC topics which are soon to commence; and various LRC promotional activities. Details are set out in **Annex 4**.

46. In addition to the five formal LRC references which are currently underway, two further topics have been agreed in principle to be taken forward by LRC, and on which substantial preliminary research has already been carried out. As with all formal LRC references, LRC counsel will be responsible for carrying out extensive local and international legal research work, legal writing and general secretariat services for these two topics, including providing support to the members of the expert sub-committee(s) appointed. Details of these two new topics are set out in the note at **Annex 5**.

47. Furthermore, there are calls from time to time from government bureaux, law-related organisations and members of the public for other law reform topics to be studied by LRC. However, such requests cannot be accommodated until existing projects are completed.

Need for the creation of one permanent DPGC post

48. As explained in paragraph 44 above, there has been no increase in directorate posts in LRC Secretariat since 1996 to deal with the significant expansions in the scope of the LRC's work, which includes —

- (a) increasing workload (in terms of research work, legal writing and general secretariat services) for various law reform topics undertaken by LRC, with a heightened expectation of a speedy study in respect of certain topics;

- (b) increasing workload involved in follow-up work related to the growing number of LRC reports in implementation (including advising B/Ds on the LRC's recommendations, monitoring progress towards implementation, and (since 2013) preparing for and assisting the SJ as the Chairman of LRC in presenting the annual report to the Legislative Council (LegCo) Panel on Administration of Justice and Legal Services (AJLS Panel) on the implementation of LRC reports); and
- (c) increasing workload related to new promotional efforts undertaken by LRC.

49. As reported to the AJLS Panel in 2017, since the process of law reform had already been in operation for quite some time, LRC had been undertaking a review of the process so as to explore possible options to enhance the efficiency and operation model of LRC. In December 2017, the SJ briefed the AJLS Panel on the preliminary outcome of the study conducted by LRC and consulted members on the options and preliminary conclusions from the study to assist DoJ in considering the way forward. The preferred option of LRC, which was also supported by the AJLS Panel, was to maintain the current Commission and sub-committee structure but enhance the LRC Secretariat support, for the reason that *“it would harness all the advantages of the current LRC structure and composition, while significantly improving the support to the LRC and its sub-committees and the timeliness of completing LRC consultation papers and reports.”*

50. In this connection, LRC observed that one possible innovation could be taken forward if there were more counsel support in the Secretariat so that dual secretaries could be allocated to each sub-committee instead of just a single secretary as had long been the case. Having two co-secretaries for an LRC sub-committee would enable division of labour between them, and would help significantly to expedite the sub-committee's consideration of the topic.

51. Another work-management innovation which would be possible with more resources provided would be having a larger Secretariat *“project research teams”* of professional staff working together on more than one LRC project but within a broad subject area. This is based on an idea borrowed from the English Law Commission, where four different teams, each under the leadership of a full-time commissioner, deal with individual topics within four broad subject areas¹⁴. This team-based approach facilitates detailed project planning and division of work.

¹⁴ The four broad subject areas are (1) property, family and trust (where the team currently comprises 11 lawyers and eight research assistants); (2) commercial and common law (where the team currently comprises four lawyers and three research assistants); (3) criminal law (where the team currently comprises five lawyers and

52. In 2016 and 2017, in order to speed up the completion of the relevant LRC/sub-committee papers on the subjects of Third Party Funding for Arbitration and the Review of Sexual Offences, LRC Secretariat trialled the two approaches set out in paragraphs 50 and 51 above by temporarily redeploying staff resources from other work. Both approaches were found to have significantly speeded up the work of these two sub-committees. In particular, the team approach was used for the production of the final report on *Third Party Funding for Arbitration* (published in October 2016, only 12 months after the release of the Sub-committee’s consultation paper in October 2015) and the co-secretary approach was used for the consultation papers on *Sexual Offences Involving Children and Persons with Mental Impairment* (published in November 2016) and *Miscellaneous Sexual Offences* (published in May 2018).

53. To enhance efficiency of the work of LRC, and the law reform process in Hong Kong, it is essential to create an additional DPGC post as well as other non-directorate posts (as set out in paragraph 57 below). With the proposed additional manpower support, LRC Secretariat should be able to adopt a research teams approach for all LRC projects and a modified *co-secretaries approach* as needed.¹⁵ This would involve the following steps/features —

- (a) the LRC’s formal reference projects would be divided into two broad subject areas, namely “*criminal and public law*” and “*civil and public law*”;
- (b) two corresponding teams of LRC counsel would be established, each headed by a DPGC, to handle both the current LRC projects and the usual work of LRC Secretariat on LRC reports in implementation which fall within either of those two broad areas;
- (c) the DPGC leading each team would (in consultation with S/LRC as necessary) co-ordinate and supervise the work of the counsel within the team so as to expedite the work of each of the sub-committees serviced by that team, as well as the LRC’s work on answering B/Ds’ enquiries during implementation of LRC reports;
- (d) each LRC sub-committee would have one full-time secretary from within the relevant LRC research team, but other counsel within the research

four research assistants); and (4) public law (where the team currently comprises five lawyers and five research assistants).

¹⁵ It is noted that although having co-secretaries on individual LRC projects has proved highly successful in speeding up the work of the sub-committees concerned, in order to adopt this approach across all LRC projects, it would need a substantial increase in counsel resources, or a substantial reduction in the number of LRC projects to be taken on at any one time.

team would also assist the sub-committee on certain aspects of the work as appropriate (e.g. by attending particular sub-committee meetings and/or meetings of the working groups set up under the sub-committee to assist the secretary, by conducting research on specific sub-topics, by writing up particular discussion papers/chapters of consultation papers/reports); and

- (e) in addition to speeding up the work on LRC projects, this approach would also have the advantage of a wider knowledge and expertise sharing on LRC topics across the counsel in LRC Secretariat, to better ensure continuity of coverage when subject secretaries are away from the office or on transfer, etc. and to provide better on-going expert support to the B/Ds during the (sometimes years-long) LRC report implementation stage.

54. Combining the existing counsel resources of LRC Secretariat with the proposed new DPGC post and other additional non-directorate posts mentioned in paragraph 57 below would enable the establishment of the two LRC research teams with each, in principle, comprising one DPGC (team leader), two to three SGC and one GC. The number of counsel in the respective teams could be adjusted as appropriate, depending on the number of projects and the comparative complexity of the work to be handled by each team in any given period.

55. The adoption of LRC research team approach should substantially speed up the work on LRC projects. This should significantly enhance the operation model of LRC and help address concerns and expectations about the efficiency and effectiveness of Hong Kong's law reform process within the broader context of the administration of justice as a whole.

56. For reference purpose, a list showing the proposed distribution of LRC projects between the two proposed LRC research teams is at **Annex 5**. The job description of the proposed DPGC post is at **Annex 6** and the proposed organisation chart of LRC is at **Annex 7**.

Non-directorate support

57. Three additional permanent posts comprising one SGC, one Law Translation Officer (LTO) and one Personal Secretary (PS) I will be created to provide support to the proposed DPGC and LRC Secretariat.

(C) Proposed upgrading of one APGC post to DPGC and the creation of one supernumerary DPGC post for five years in the PA Sub-division of the LPD

Existing Manpower of PA Sub-division of LPD

58. PA Sub-division of LPD currently comprises four units, viz. Policy Affairs Unit (PAU) 1 (formerly known as General Legal Policy Unit (GLPU) 1, PAU2 (formerly known as GLPU2), ChLU and the ArbU. PAU1, ChLU and the ArbU are each headed by a DPGC whereas PAU2 is headed by an APGC.

59. Before the re-organisation of GLPU in 2011, its work portfolio comprised the following duties :

- (a) to promote and steer bills which are within the policy purview of DoJ to their enactment;
- (b) to give advice on Government's legislative proposals from the legal policy perspective;
- (c) to assist in formulating policy in relation to the legal system and the legal profession;
- (d) to advise on legal issues arising from petitions and appeals from prisoners and other three new categories of petitions which have emerged since 2008¹⁶; and
- (e) to advise on appeals made by way of petition to the Chief Executive (CE) submitted by torture claimants under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

60. With the workload of GLPU having increased both in breadth and depth, the demand on the DPGC of the Unit was stretched and it warranted the reinforcement of manpower at directorate level. The GLPU was then re-organised in 2011 and divided into two asymmetrical units (i.e., GLPU1 and GLPU2) which were subsequently renamed as PAU1 and PAU2. GLPU1 has been headed by the incumbent DPGC, while one SGC post was upgraded to APGC to head GLPU2. The APGC has taken over from the incumbent DPGC the

¹⁶ There are various types of petitions and appeals, including (i) petitions from prisoners seeking remission of sentences or referral of their cases to the Court of Appeal or the Court of First Instance as the case may be; (ii) statutory appeals to the Chief Executive (CE)/CE-in-Council made by members of the public; (iii) petitions to the CE under Article 48(13) of the Basic Law; and (iv) statutory appeals / representations (under section 20 of the Public Service (Administration) Order) from civil servants. Among them, (ii), (iii) and (iv) were new types of petitions emerged since 2008.

various types of work on petitions, appeals and torture claims.

61. Over the past years, the workload of both PAU1 and PAU2 has grown substantially. The existing manpower of both teams becomes very stringent. Taking into account the increase in work of PA Sub-division generally, it is necessary to strengthen the overall capacity in handling policy affairs work by upgrading the APGC to DPGC post and creating one supernumerary DPGC post for five years to ensure long-term continuity, enhance flexibility in the distribution of work and also properly take forward the anticipated tasks in the next five years.

(1) Proposed upgrading of one APGC post to DPGC

Workload of PAU2

62. At the time of creation of the APGC post to head PAU2, the bulk of the workload was expected to come from various types of petitions and statutory appeals (which may arise under different statutes and straddle a wide spectrum of different areas of the law). The APGC has been providing dedicated legal support in relation to matters arising from various types of petitions and statutory appeals and takes on some supervisory and management duties appropriate for APGC level. Specifically the main duties and responsibilities are —

- (a) to direct and supervise the day-to-day work of a team of counsel to provide dedicated legal support in relation to matters arising from various types of petitions and statutory appeals;
- (b) to prepare draft notes for the SG and the SJ dealing with petitions from prisoners (including cases for pardon or remission of sentence) in order to assist the SG and, as the case may be, the SJ in advising the CE on those petitions;
- (c) to provide advice on petitions to the CE under Article 48(13) of the Basic Law and on statutory appeals to the CE or the CE-in-Council;
- (d) to provide advice on petitions under section 83P of the Criminal Procedure Ordinance (Cap. 221) or section 113A of the Magistrates Ordinance (Cap. 227), as the case may be;
- (e) to oversee the processing of and to give legal advice on petitions made by claimants for non-refoulement protection against removal orders issued against them under the Immigration Ordinance (Cap. 115);
- (f) to advise on public enquiries and complaints; and
- (g) to oversee the general administration of PAU2, as well as to perform any

other duties as and when required in order to assist in the efficient and effective performance of the LPD.

63. While the workload arising from the various types of petitions and statutory appeals has become increasingly heavy¹⁷, the current APGC is shouldering other additional responsibilities, including the supervisory role of a number of new tasks, as set out below. The variety, breadth, depth, and complexity of the existing and additional tasks all point to the need to upgrading the head of PAU2 to DPGC level.

(i) Work arising from maintaining a firewall within DoJ

64. When the CE or the CE-in-Council is charged with the function to consider a particular matter in a fair and impartial manner, independent legal advice thereon may have to be given by PAU2 if another Division or Unit within DoJ has previously advised a government B/D on the same matter. In this context, PAU2 will serve as a firewall within DoJ by ensuring that the CE and the CE-in-Council will be able to receive independent and impartial legal advice when required. This arrangement may minimise the risk of potential legal challenge against the CE or the CE-in-Council (as the case may be) on the ground that there is actual or perceived bias in the decision making process involving the CE or the CE-in-Council.

65. Under this arrangement, a broad range of matters has come to PAU2 for advice, ranging from those relating to the internal deliberations of the CE-in-Council, to matters where DoJ has been representing one party to a litigation or matter, or where the SJ as guardian of public interest has a unique constitutional role to play in the matter. These matters are usually not routine and typically fall outside the usual range of PAU2's work. Due to the urgent and sensitive nature of advice expected, it is more appropriate for this work to be supervised, or handled personally, by a more senior directorate officer pitched at DPGC level rather than at APGC level.

(ii) Judicial reviews against determinations made by Torture Claims Appeal Board (TCAB)

66. Previously, it was envisaged that petitions by torture claimants would be dealt with by the non-directorate counsel in LPD under the supervision of the DPGC in the then GLPU. After the creation of the APGC post of PAU2, the

¹⁷ For example, the numbers of petitions from prisoners handled by PAU2 have increased from 51 in 2013 to 205 in 2017, the number of new judicial review (JR) cases which require PAU2's advice has increased from 15 in 2012 to 716 in 2018 (up to 14 November 2018) and the number of advice given by PAU2 on torture claims has increased from 37 in 2013 to 1 158 (up to 31 October 2018).

supervisory role of advisory work on such petitions was passed to the APGC.

67. The unified screening mechanism (USM) commenced operation in March 2014 to determine claims for non-refoulement protection against expulsion, return or extradition from Hong Kong to another country on three applicable grounds.¹⁸ Under the USM, the Director of Immigration (D of Imm) will assess their non-refoulement claims on all applicable grounds in one go. To allow TCAB to consider appeals/petitions lodged by aggrieved claimants in one go, the CE has delegated the authority under Article 48(13) of the Basic Law to all TCAB Members, in their personal capacity, to handle petitions in regard to grounds other than torture risks under Part VIIC of the Immigration Ordinance (Cap. 115).

68. As at the end of September 2018, there were still 1 743 outstanding torture claims made to the D of Imm (Tier one) and many more outstanding torture claims cases to be determined by TCAB (Tier two). The number of cases referred from TCAB to PAU2 for advice is expected to increase rapidly having regard to the recent increase in manpower of TCAB deployed to determine Tier two cases. According to the record of PAU2, the number of advice given to TCAB were 37 in 2013, 85 in 2014, 123 in 2015, 135 in 2016, 220 in 2017 and 1 158 in 2018 (up to 31 October 2018). In the circumstances, there is, and will continue to be, a significant demand from TCAB for a substantial amount of PAU2's legal services thus resulting in an urgent need for increase in the manpower of PAU2 in handling requests for advice from TCAB.

69. Amongst those torture claims rejected by TCAB, many of them have resulted in judicial review (JR) proceedings against TCAB. The number of new JR cases which require PAU2's advice were 15 in 2012, 10 in 2013, 42 in 2014, 45 in 2015, 44 in 2016, 95 in 2017 and 716 up to November 2018. The vast majority of these applications for JR involve several grounds of JR with lengthy and complicated factual and legal arguments, such as the meaning of state acquiescence under CAT. Besides, numerous local and overseas authorities are often cited by claimants in support of their JR applications. Counsel in PAU2 need to put in a substantial amount of time to study the relevant papers and may be required to conduct extensive legal research on the relevant legal issues in order to properly advise TCAB. At times, expert views from leading outside counsel are sought on difficult issues of strategic importance. With the increase in number of cases referred from TCAB to PAU2 for advice, it is envisaged that the number of JR cases will increase correspondingly, and PAU2 will be required to provide

¹⁸ Including risks of (i) torture under Part VIIC of the Immigration Ordinance (Cap. 115); (ii) torture or cruel, inhuman or degrading treatment or punishment under Article 3 of Section 8 of the Hong Kong Bill of Rights Ordinance (Cap. 383); and (iii) persecution with reference to the non-refoulement principle under Article 33 of the 1951 Convention relating to the Status of Refugees. The Director of Immigration will also assess the risk of violation of the right to life under Article 2 of Section 8 of the Hong Kong Bill of Rights Ordinance (Cap. 383).

substantial amount of legal assistance to TCAB in handling these cases.

70. Compounded with the increasing caseload, the complexity of the issues involved calls for a more senior officer (i.e. a DPGC) to be responsible for advice to be given to TCAB on complex and important issues arising from these cases, especially when TCAB comprises usually members of the legal profession or former members of the Judiciary.¹⁹ It is also possible for TCAB's Secretariat to seek advice from PAU2 on complicated legal issues in cases where the claimants are legally represented. These issues are important and would probably have a precedent-setting effect on subsequent cases. The head of PAU2 needs to liaise directly or supervise the liaison with the TCAB Chairman and staff members, and oversee and co-ordinate individual advice to TCAB within PAU2 to ensure overall consistency and accuracy.

71. The current APGC has to supervise not only advisory work, but also litigation work arising from JRs in relation to such appeals/petitions (as opposed to only advisory work on merely petitions initially). It is noteworthy that LegCo approved in February 2010 the creation of a DPGC post in CD to head a dedicated legal team there to cope with the new and additional workload arising from the Government's obligation to screen claims lodged under CAT. (There is a need for such segregation to ensure fairness for claimants for non-refoulement protection, so that the CD advises the Director of Immigration on the handling of non-refoulement claims, while PAU2 in the LPD advises on the processing of appeals/petitions by claimants for non-refoulement protection aggrieved by the Director of Immigration's decisions.) With PAU2 having to handle similar types of advisory and litigation work as the CD does, it is considered appropriate that PAU2 should also be led by a directorate supervisor similarly pitched at DPGC level.

(iii)Ex gratia payment, petitions under section 83P of the Criminal Procedure Ordinance (Cap. 221) or section 113A of the Magistrates Ordinance (Cap. 227) and surrender of fugitives

72. The work on handling applications for *ex gratia* payments (made by persons who have spent time in custody following a wrongful conviction or charge) and advising the CE on surrender of a fugitive to a requesting jurisdiction involves specialised and complicated areas of law, as well as convoluted and subtle factual matrix, so much so that there is a need to seek expert views from specialist outside counsel in some cases. The same applies to petitions under section 83P of the

¹⁹ Pursuant to section 2(2) of Schedule 1A to the Immigration Ordinance (Cap. 115), the CE may appoint a person as a member of TCAB if (a) the person was formerly a judge or magistrate; (b) the person is qualified to practise as a barrister, solicitor or advocate in a court in Hong Kong or a common law jurisdiction having unlimited jurisdiction either in civil or criminal matters, and has so practised for a period of or periods totalling not less than five years; or (c) the person, in the opinion of the CE, is suitably qualified to be a member.

Criminal Procedure Ordinance (Cap. 221)²⁰ which may involve complicated substantive and procedural issues, and calls for the ability to appreciate the factual and legal nuances. Very often, the relevant claimants and petitioners are legally represented (sometimes by senior counsel) and their legal representatives have raised lengthy and complicated legal arguments and cited case authorities to substantiate the claims and petitions. In cases involving complicated legal issues and factual matrix, the APGC would also need to supervise the co-ordination of work between PAU2 and the International Law Division with a view to ensuring that the surrender of fugitives would be conducted smoothly and in accordance with the applicable legal requirements.

73. SG's decisions on application for ex gratia payments, as well as CE's decisions on petitions under section 83P of the Criminal Procedure Ordinance (Cap. 221) and on surrender of fugitives, are amenable to legal challenges by way of JR, while the CE's decisions on surrender of fugitives obviously would also have an external affairs dimension. In view of the complexity, technicality, sensitivity of these matters, it is not only appropriate, but also imperative, that the officer taking up the immediate supervisory role should be pitched at DPGC level.

(iv) Preparing and promoting bills that fall within the policy purview of DoJ

74. Whilst not originally intended, by way of internal re-distribution of work, PAU2 now also bears the responsibility of preparing and promoting bills for implementing recommendations of LRC that fall within the policy purview of DoJ, and steering such bills first for public consultation and then through LegCo. This internal re-distribution of work has been necessitated by the heavy workload of PAU1 (please see elaborations in **Annex 8**). At the same time, PAU2's expertise in criminal law and practice also makes it uniquely suitable in handling legislative bill items which are the subject of criminal law. Currently, PAU2 is working on the Evidence (Amendment) Bill 2018 which seeks to implement the subject of the LRC's Report on Hearsay in Criminal Proceedings. It is also working on another bill to implement the LRC Report on Double Jeopardy.

75. Although we propose separately to create a supernumerary DPGC post to, inter alia, expedite the clearing of backlog in legislative items (see paragraphs 82 to 84), PAU2 will continue to take up legislative items with a substantial criminal law element. Due to the strong policy content and the high degree of legal complexity, and the need to be well versed in criminal law and procedures, this

²⁰ Under the said provision, a person who had been convicted on indictment or been tried on indictment and found not guilty by reason of insanity, or been found by a jury to be under disability may petition to the CE to refer the case to the Court of Appeal for handling as an appeal. Similarly, under section 113A of Magistrates Ordinance (Cap. 227), a person who had been convicted by a magistrate of any offence or been made the subject of any order or determination by a magistrate relating to an offence may petition to the CE to refer the case to a judge for handling as an appeal.

portfolio should more appropriately be supervised by a DPGC rather than an APGC.

Need for the upgrading of one APGC to DPGC post

76. Taking into account the prevailing work handled by the APGC and the tasks ahead, it is apparent that, when compared to the work handled at the time of the establishment of PAU2, the work of the Unit and its APGC has substantially increased in terms of variety, breadth, depth, volume and complexity. This has gone much beyond the original scope of work anticipated for the APGC post and PAU2. The current responsibility of the incumbent APGC is, without the slightest doubt, on par with any DPGC in the LPD. The Government's commitment to each of the diverse tasks explained above can easily be questioned or even challenged if ranking of the unit head is not commensurate with the requirements of the work in question.

77. It should also be noted that the bulk of PAU2's work relates to the giving of advice to the CE and the CE-in-Council. Moreover, where the SG has to recuse himself from the matter to avoid conflict of interests due to his previous involvement in legal proceedings against the petitioner/ applicant/appellant, the substantive advice may be issued upon clearance under delegated authority by DSG(P) at PGC level. Thus, strong legal and technical input is required from PAU2 in order to ensure that the CE or the CE-in-Council (as the case may be) is properly advised. The head of PAU2 must provide guidance to the counsel in the team, in particular in handling complicated and sensitive cases which straddle a wide spectrum of different areas of law. The complexity and diversity of the work as well as the high level of responsibility currently shouldered by the APGC has gone beyond his level. Without an officer pitched at DPGC level to cope with the current and anticipated workload as the head of PAU2, the incumbent filling the APGC post would have to continue taking up the supervisory role. As a consequence, work that warrants contribution and representation at a higher level, particularly work related to processing of appeals and petitions to the CE (and the CE-in-Council), JR cases, *ex gratia* payment and surrender of a fugitive, would unnecessarily burden officers at senior directorate level for the kind of attention which such work would otherwise have received from a DPGC lest the case in question suffers from inadequate supervision. The job description of the proposed DPGC post is at **Annex 9**.

Non-directorate support

78. The upgraded DPGC will continue to be supported by the existing three SGC and two GC. One PS I post will be created to provide secretarial support to the proposed DPGC post.

(2) Proposed creation of one supernumerary DPGC post for five years

Workload of PAU1

79. PAU1 is headed by a DPGC who is supported by three SGC and five GC. The details of the current work portfolio of the Unit are set out at **Annex 8**.

Workload of ChLU

80. ChLU is headed by a DPGC who is supported by two SGC and three GC. The details of the current work portfolio of the Unit are set out at **Annex 10**.

Forthcoming projects

81. On top of the already substantial on-going projects which require close monitoring and generate substantive work at DPGC level, a substantial amount of work would be coming up in PA Division. The work is complicated and some projects having wide implications will require the dedicated attention at DPGC level. Such projects are set out below —

(i) Implementation of LRC recommendations

82. With the provision of additional manpower to LRC as proposed in paragraphs 53 to 54 above, it is expected that the progress of completion of LRC projects and the implementation of its recommendations will be expedited. As LRC projects from time to time would cover issues relating to the development of the legal system and the legal profession, which are under DoJ's policy purview (and for which PAU1 has policy carriage), it means that the workload of PAU1 relating to the promotion of bills will also increase in the years ahead.

83. Currently, amongst other things, the work being carried out by LRC includes : work related to the implementation of the recommendations in 15 LRC reports (**Annex 4**); five formal references and continuing background work on two formal references which are soon to commence. Out of the 15 LRC reports, PAU2 is currently taken forward the bills on hearsay in criminal proceedings and double jeopardy. PAU1 is working on class actions and the Jury (Amendment) Bill. Due to the lack of manpower in PA Sub-division, limited human resources are pooled together. This resulted in DSG(P) now directly heading the legislative exercise on the continuing powers of attorney bill (without the support of a junior directorate counsel) whereas the two subject counsel working on the project (an SGC and a GC) have to work on it part-time outside their usual area of expertise.

84. To meet the public expectation that the implementation of LRC recommendations should be expedited, we expect a substantive legislative agenda

in the coming few years. It is therefore necessary to have additional resources in PA Sub-division to cope with the duties in respect of the preparation and promotion of bills.

(ii) Legal Cooperation with the Mainland

85. With the increase in social and economic interactions and thus civil and commercial disputes between Hong Kong and the Mainland, and in light of the vast differences of the legal systems operating in the two places, there is a need to enhance legal co-operation. Throughout these years, the Government has been seeking to strengthen legal co-operation with the Mainland in civil and commercial matters. However, due to the vast differences in the legal systems between the two places, the legal issues involved are complex and difficult, and consultations take time. As a result, progress on legal co-operation has been relatively modest, and there is still considerable room for expanding the scope and depth of co-operation in civil and commercial matters.

86. Given the Government's firm policy to promote Hong Kong as a leading centre for international legal and dispute resolution services, and in face of competition from major cities in the region, Hong Kong needs to strengthen its efforts in expanding legal co-operation in civil and commercial matters with the Mainland, so as to facilitate the resolution of civil and commercial disputes in a more timely and cost-effective manner, which will benefit members of the public as well as the business sector. The 2018 Policy Address of the CE contains, among other things, a reference to the enhancement of legal co-operation with the Mainland in civil and commercial matters.

87. DoJ has been taking active steps to take forward this initiative. Such area of work is of paramount importance. It is extensive in scale and includes numerous subject matters. The key areas of work in this regard are set out below

(a) Mainland Judgment in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Bill

88. In view of the significant number of "cross-boundary marriages" between Mainland and Hong Kong residents, the need to provide better legal protection and certainty to parties should the marriage break down, and to provide for other related family matters, DoJ and the Supreme People's Court (SPC) signed in June 2017 the Arrangement on Reciprocal Recognition and Enforcement of Civil Judgments in Matrimonial and Family Cases by the Courts of the Mainland and of the Hong Kong Special Administrative Region (關於內地與香港特別行政區法院相互認可和執行婚姻家庭民事案件判決的安排) (Matrimonial Arrangement). The Matrimonial Arrangement applies to civil judgments in matrimonial or family

matters, which include decrees absolute of divorce, decrees absolute of nullity, maintenance orders, custody orders etc. made by Hong Kong courts; and judgments on divorce, validity of marriage, duty to maintain the other party to a marriage, custody of a child etc. made by Mainland courts.

89. The Matrimonial Arrangement will be implemented in Hong Kong by way of legislation and in the Mainland by way of judicial interpretation to be issued by SPC. The LPD is taking forward the legislative exercise to give effect to the Matrimonial Arrangement in Hong Kong. The implementing legislation, i.e. the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Bill (the Bill) seeks to establish a registration mechanism to facilitate the recognition and enforcement of the applicable Mainland judgments in Hong Kong, as such, to better protect the rights and interests of families and children, in particular cross-boundary families. DoJ consulted the AJLS Panel on the key features of the Bill on 26 March 2018. We noted that there is a strong expectation of the stakeholders (including the Judiciary²¹ and the legal professional bodies²²) that the Matrimonial Arrangement should take effect the soonest. We are therefore seeking to bring the Matrimonial Arrangement into operation as soon as practicable and are working on a very tight legislative timetable in respect of the Bill. The LPD is considering the policy and legal issues arising from the Bill, including subsidiary legislation and amendments to court rules. We aim at issuing the Bill for public consultation in early 2019 and introduce it into LegCo by mid-2019.

90. To facilitate an efficient and constructive exchange with the major stakeholders (including the Judiciary and the legal professional bodies), the LPD will pro-actively liaise and discuss with them during and after the public consultation exercise, so that we could, through working meetings or otherwise, explain to them the relevant policy considerations and invite their views and suggestions on the technical and operational issues arising from the Bill. Responsible counsel would continue to discuss with SPC on those parts of the Bill which would have an impact on the operation of the Mainland courts to ensure that they would work smoothly. After public consultation, the LPD will finalise the Bill. It is hoped that the Bill could be passed by LegCo within the 2019/20 session.

²¹ See paragraph 91 of the judgment dated 1 November 2017 of the Court of Appeal in CACV 204/2016: “[n]owadays, cross-border marriages between Hong Kong residents and Mainland residents are common occurrence. The Reciprocal Arrangement is a long overdue arrangement. As the present appeal illustrates, absent formal arrangement of this nature, there can be a lack of effective judicial redress for problems arising from the breakdown of such marriages. In the interest of our society, we would urge that the preparation and enactment of the legislative scheme be proceeded diligently and expeditiously”.

²² The Law Society of Hong Kong sent a letter dated 6 July 2018 to the LPD/DoJ urging the legislative exercise be expedited as far as possible.

(b) Reciprocal Recognition and Enforcement of Judgments (REJ) between the Mainland and the HKSAR

91. In July 2006, the first arrangement was signed between Hong Kong and the Mainland on REJ in civil and commercial matters. The arrangement was titled “Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region Pursuant to Choice of Court Agreements between Parties Concerned” (《關於內地與香港特別行政區法院相互認可和執行當事人協議管轄的民商事案件判決的安排》); and took effect from August 2008. In July 2018, DoJ issued a consultation paper on a proposal to enter into an arrangement with the Mainland on REJ in civil and commercial matters, which will provide a broader legal framework for the enforcement of judgments in civil and commercial matters between the two places than the current confined scope under the 2006 Arrangement (the Framework Arrangement). The consultation period ended in September 2018. The AJLS Panel was last briefed about the consultation outcome and the current key features of the proposed Framework Arrangement at the meeting on 26 November 2018.

92. The LPD is pressing ahead with the work on the proposed Framework Arrangement in full steam with a view to its early conclusion. Thereafter, the LPD will actively take forward the preparation of the implementing bill for early introduction into LegCo. Based on previous experience, it is anticipated that it will take around two years to implement the bill (from commencement of drafting work to the actual enactment of the law).

(c) Arrangement for mutual recognition and assistance on cross-border insolvency matters

93. Hong Kong is one of the last common law jurisdictions without any statutory regime for cross-border insolvency. Without a statutory regime empowering the Hong Kong court to recognise and provide assistance to the Mainland and other foreign liquidators as well as Mainland and other foreign insolvency proceedings, the Hong Kong court has been relying on the common law powers to recognise and grant assistance to liquidators and insolvency proceedings outside Hong Kong. On the other hand, recognition of Hong Kong judgments and grant of assistance to Hong Kong liquidators and insolvency proceedings by the courts outside Hong Kong, would depend on the law of the relevant jurisdictions (including the Mainland). The situation is far from satisfactory. The need for a legal mechanism for reciprocal legal assistance in cross-border insolvency matters between Hong Kong and the Mainland has become particularly acute in recent years, given the increasing extent of cross-border investment and commercial activities between Hong Kong and the Mainland. The problems arising from the current lack of a legal mechanism for reciprocal legal assistance

between the two places in cross-border insolvency matters have also long been recognised by the stakeholders (notably the legal and accountancy practitioners as well as the business sector) and the Judiciary. The Mainland side has shown positive response to the initiative of a proposed arrangement between Hong Kong and the Mainland on mutual recognition of and assistance in cross-border insolvency matters.

94. The LPD plans to issue a consultation paper by the first quarter of 2019 on the proposed mechanism for mutual legal assistance with the Mainland on corporate insolvency matters. Before signing of the Arrangement, the AJLS Panel would be briefed on the results of the consultation and the details of the proposed mechanism. It is anticipated that it will take around two years from commencement of drafting work to the enactment of the law.

(d) Other REJ Projects

95. At present, a number of important subject areas have been tentatively excluded from the initial scope of the draft Framework Arrangement due to the high degree of complexity and specialisation involved, the high policy content as well as vast differences between the current systems of the Mainland and Hong Kong. One such area is cross-border insolvency as mentioned in (c) above, which merits separate consideration. Other areas tentatively excluded from the Framework Arrangement and merit separate considerations, include, among others, succession of estate of deceased persons, maritime matters as well as the mutual recognition and enforcement of interlocutory orders (e.g. orders for preservation of assets and interim payment). It is expected that work in these other areas will only begin after the existing REJ projects and other pressing PA Sub-division projects have completed (or at least have reached an advanced stage). As such, manpower resources will continue to be required for some time, at least in the next five years (if not longer) to take forward the matters.

Need for creation of one supernumerary DPGC post for five years

96. The above on-going and forthcoming projects are complicated and some are also controversial. All these tasks require close monitoring and would generate substantive work at DPGC level. The LPD generally has the capacity to promote one to two bills at any one time, depending on the complexity, length and urgency of the bill. The heavy portfolio of PAU1 explains why, while it was not originally intended for PAU2 to assume any legislative work, PAU2 has actually been entrusted to take up the responsibility of preparing and promoting bills for implementing recommendations of LRC that fall within the policy purview of DoJ. Moreover, due to the manpower situation of PAU1, DSG(P) has to work with SGC or GC in PA Sub-division directly without contributions at DPGC level on a number of matters, including legal education and the Continuing Powers of Attorney Bill. The arrangement is not desirable as DSG(P) is already overseeing

four teams (PAU1, PAU2, ChLU and the ArbU) and is not an effective use of senior directorate resources.

97. It usually takes two to three years to complete the enactment process (excluding the promotion work) of a bill with average complexity. A dedicated team led by a directorate officer will be assigned to deal with each bill. In view of the heavy workload of all four Units of the PA Sub-division, it is not possible for them to take up the various forthcoming projects. In order not to compromise the legislation for and implementation of LRC recommendations, as well as the important REJ-related measures and other pressing projects in PA Sub-Division's portfolio, it is necessary to create a supernumerary DPGC for five years to head a new PAU3 for taking forward the various tasks set out in paragraphs 81 to 95 above which require dedicated directorate support. The job description of the proposed DPGC post is at **Annex 11**.

Non-directorate support

98. Two time-limited SGC posts and one time-limited PS I post for five years will be created to provide support to the proposed DPGC post.

Organisation Chart of PA Sub-division

99. The proposed organisation chart of PA Sub-division after the creation of the supernumerary DPGC post and the upgrading of the APGC post to DPGC is at **Annex 12**.

ALTERNATIVES CONSIDERED

100. There is no viable alternative. The existing PGC and DPGC posts in the Department 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 the Department are already fully stretched.

FINANCIAL IMPLICATIONS

101. The proposed creation of the one permanent PGC post, one permanent DPGC post and one supernumerary DPGC post, and the upgrading of one APGC to DPGC post will bring about an additional notional annual salary cost at mid-point of \$7,233,600.

Post	Notional annual salary cost at mid-point \$	No of posts
PGC	2,530,800	1
DPGC	6,539,400	3
APGC	-1,836,600	-1
Total	7,233,600	3

The additional full annual average staff cost, including salaries and staff on-cost, is \$10,390,000.

102. The additional notional annual salary cost at mid-point for the eight additional non-directorate posts as mentioned in paragraphs 42, 57, 78 and 98 above is \$7,126,980 and the additional full annual average staff cost, including salaries and staff on-cost, is \$10,321,000.

103. DoJ will include sufficient provision in the draft Estimates of 2019-20 and subsequent years to meet the cost of the proposals.

ADVICE SOUGHT

104. Members are invited to comment on the proposals. Subject to Members' views, we will seek the approval from LegCo.

Department of Justice
December 2018

**Job Description of
the Proposed Principal Government Counsel post
Secretary for Justice's Office**

Rank : Principal Government Counsel (DL3)

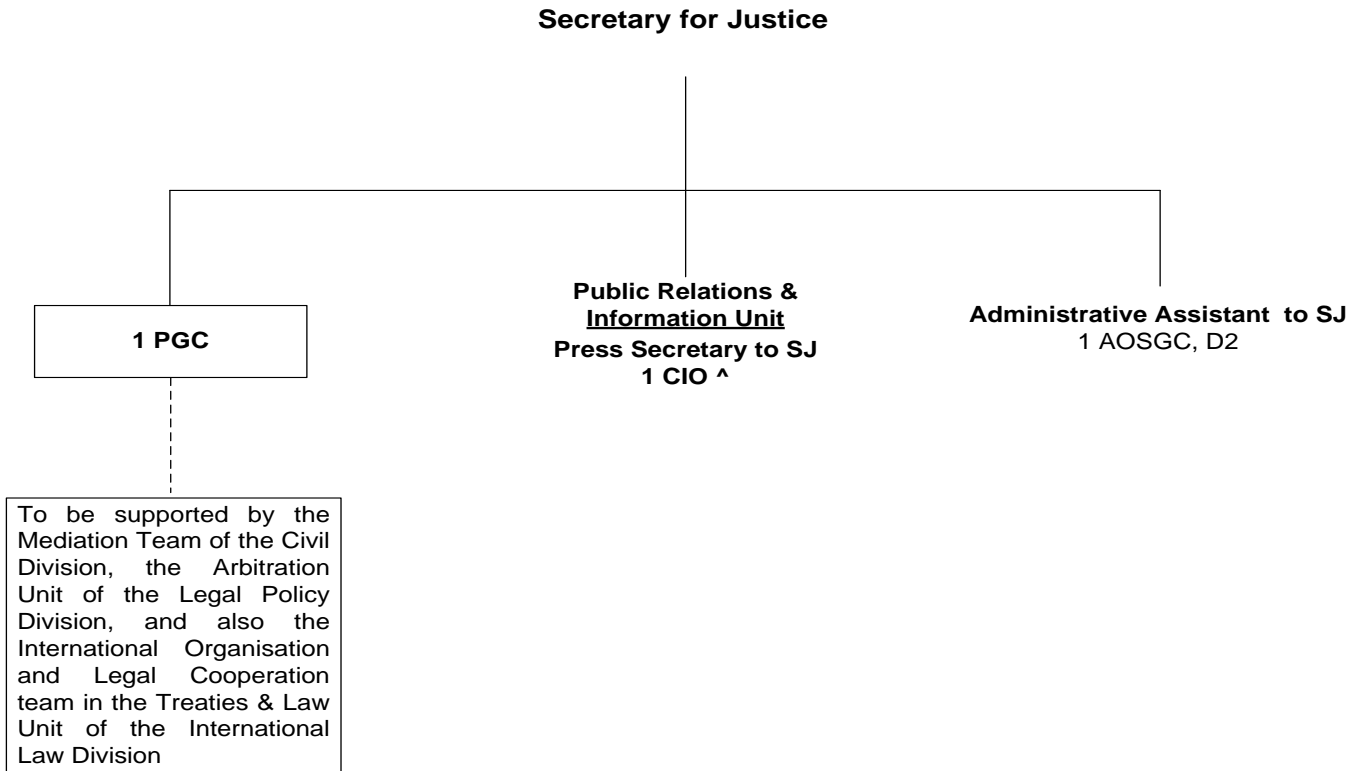
Responsible to : Secretary for Justice (SJ)

Major duties and responsibilities

To provide direct support to the SJ in planning and taking forward various initiatives and a range of programmes which contribute to the enhancement of Hong Kong's role as an ideal hub for deal making and a leading centre for international legal and dispute resolution services in the Asia-Pacific region and beyond, taking into account the prevailing situation (international, regional, mainland and local) in which the Hong Kong legal and dispute resolution services providers operate, and also through Inclusive Dispute Avoidance and Resolution Office (IDAR Office) to promote rule of law and inclusive development by facilitating access to civil justice. In particular :

1. To oversee the overall policy development (including the overall servicing of the relevant steering committees) in respect of dispute avoidance and resolution including arbitration and mediation matters, as well as deal making services;
2. To act as the single point of contact in the Department of Justice (DoJ) on all matters related to the promotion of dispute avoidance and resolution including deal making services and related capacity building, and to provide strategic planning and coordination in the promotion of Hong Kong's profile and status for provision of such legal services;
3. To represent DoJ in liaising with international, regional and mainland organisations (including the most senior officials) as well as other governments to explore and develop co-operation opportunities and planning joint projects, and to negotiate and conclude the necessary arrangements related thereto;
4. To represent DoJ in international, regional, mainland and local conferences and to organise or participate in international regional, mainland and local events to promote Hong Kong as an ideal hub in deal making and an international legal services and dispute resolution centre; and
5. To be responsible for the overall operation of IDAR Office, and to direct and supervise the day-to-day work of Senior Assistant Law Officer (Civil) (Mediation), Senior Assistant Solicitor General (Arbitration) as well as Deputy Principal Government Counsel (Treaties & Law) (International Organisation and Legal Cooperation in the relevant legal divisions in their work in support of the various tasks set out above.

Existing and Proposed Organisation Chart of the Secretary for Justice's Office



Legend : PGC = Principal Government Counsel
CIO = Chief Information Officer
AOSGC = Administrative Officer Staff Grade C

^ = Post on loan from ISD
 = Proposed new post

Specific functions of the Law Reform Commission (LRC) Secretariat

Leading up to the publication of an LRC report

A counsel in LRC Secretariat usually serves as an LRC sub-committee secretary and undertakes all necessary research and writing associated with the project. The typical duties of an LRC counsel in relation to the various stages of an LRC project are:

- (a) to prepare the initial background paper (which sets out the relevant law and identifies problems);
- (b) to record sub-committee discussions and research and prepare the sub-committee's consultation paper (which greatly expands the initial paper by including the law in other jurisdictions and sets out the sub-committee's proposals for reform);
- (c) to co-ordinate the consultation (preparing press release/press conference; hard copy/soft copy of consultation paper; and targeted circulation lists);
- (d) to collate and analyse the consultation responses for the sub-committee's consideration;
- (e) to prepare the sub-committee's final report (which amends/confirms proposals in the consultation paper as necessary in light of public responses received);
- (f) to assist the sub-committee to present its draft report to LRC; and
- (g) to prepare the final LRC report (based on the sub-committee report, amended as determined by LRC).

During the implementation phase

2. LRC counsel will continue to play a part in the implementation of the LRC's recommendations. This may include:

- (a) promoting the recommendations by organising seminars and briefings;
- (b) assisting in the preparation of legislative drafting instructions and the process of drafting any necessary legislation;
- (c) providing further research materials, information and advice on the LRC's recommendations to the government bureaux which have policy responsibility for the subject; and
- (d) attending to other matters arising from the implementation.

3. As at June 2018, 15 LRC reports are being considered for implementation, or are in the process of being implemented, by the Government. This number accounts for approximately 23% of the total number of LRC reports so far published. This means that, in addition to handling their substantive work on current LRC projects, LRC counsel may from time to time be called upon to provide further research materials, information and advice to the relevant bureaux/departments (B/Ds) on any of these 15 projects still under implementation.

4. Furthermore, LRC Secretariat has since 2013 taken on the additional work of assisting the SJ as Chairman of LRC in presenting an annual report to the Legislative Council Panel on Administrative of Justice and Legal Services on LRC reports' implementation. This involves closely liaising with the relevant B/Ds, and preparing papers, etc.

Other duties

5. Another area of work for LRC counsel involves promotional activities of LRC, including the Law Reform Essay Competition.

6. In addition to those promotional initiatives, LRC is increasingly called upon to receive visiting delegations from other jurisdictions (particularly from overseas law reform agencies), provide briefing sessions and in some cases host visitor attachments. LRC Secretariat is responsible for liaising with the overseas bodies and making logistical arrangements. Considerable staff time and effort are involved in handling the administrative arrangements for each of these events.

* * * * *

Current Workload of the Law Reform Commission (LRC) Secretariat

Current formal LRC references

LRC is currently working on the following five formal references-

- (a) *Review of Sexual Offences* : The LRC Sub-committee was set up in September 2006. It plans to roll the work on its four remaining separate consultation areas – i.e.: (i) rape and other non-consensual sexual offences (where it has already issued a consultation paper); (ii) sexual offences against children and mentally incapacitated persons and offences involving abuse of a position of trust (where it has already issued a consultation paper); (iii) the miscellaneous sexual offences (where it has already issued a consultation paper in May 2018); and (iv) sentencing – into one or two final reports, following completion of the detailed study of the results of each public consultation exercise.
- (b) *Causing or Allowing the Death of a Child or Vulnerable Adult* : The LRC Sub-committee was set up in November 2006 and is in the final stages of completing a consultation paper on causing or allowing the death or serious harm of children or vulnerable persons. (The delay in finalising the work on this project is partly because its scope and focus have been evolving in response to local and overseas developments; and progress was also affected by the illness and passing away of the former Chairman.) Following the release of the consultation paper, the Sub-committee will study in detail the results of the public consultation with a view to preparing a final report as soon as possible.
- (c) *Archives Law* : The LRC Sub-committee was set up in May 2013 and the consultation paper was issued on 6 December 2018. This is a controversial project and its progress has been under close public scrutiny, in particular by the media and non-government organisations, as well as the Legislative Council (LegCo). The Chief Executive (CE) has also made express reference to the LRC's work in this area in the Policy Address in both 2017 and 2018. After the end of the consultation period (ie after 5 March 2019), the Sub-committee will review the results of the public consultation with a view to preparing a final report as soon as possible.
- (d) *Access to Information* : The LRC Sub-committee was set up in May 2013 and the consultation paper was issued on 6 December 2018. This is a controversial project, the progress of which has been closely scrutinised by the public, in particular by the media and non-government organisations, as well as the LegCo. The CE has made express reference to the LRC's work in this area in the 2018

Policy Address. After the end of the consultation period (ie after 5 March 2019), the Sub-committee will study in detail the results of the public consultation with a view to preparing a final report as soon as possible.

- (e) *Periodical Payments for Future Pecuniary Loss in Personal Injury Cases* : The LRC Sub-committee was set up in March 2015 and published a consultation paper in April 2018. The Sub-committee is studying in detail the results of the public consultation with a view to preparing a final report.

Other key areas of work undertaken by LRC Secretariat

Reforming law reform

2. At the request of the SJ as Chairman of LRC, the LRC Secretariat has been undertaking, over the past two years, the detailed study on *Enhancing the Operation Model for the Law Reform Commission in Hong Kong*, the preliminary findings of which were presented to the LegCo Panel on Administrative on Justice and Legal Services (AJLS Panel) in December 2017, and the implementation of which is one of the subjects of this paper.

Implementation of LRC reports

3. In addition to the core work on current formal references, LRC counsel are also responsible for follow-up work related to the implementation of a large number of LRC reports. (Of the 65 LRC reports published to-date, 15 are being considered for implementation or are in the process of being implemented by the Government.) In respect of these, LRC counsel may be heavily involved in advising the relevant bureaux/department (B/Ds) on the LRC's recommendations (e.g. detailed information on the background and thinking behind the recommendations) and monitoring progress towards implementation. In some cases, this work has to be undertaken by the directorate counsel in the LRC Secretariat due to the stringent manpower position.

4. LRC counsel have also undertaken other work on behalf of implementing B/Ds to, for example, update the comparative research originally carried out by LRC during the course of producing the reports, particularly where a number of years had elapsed since publication, and so the comparative research contained in the report may be out of step with more recent overseas developments.

5. In addition to the above tasks, LRC counsel are also required to prepare for and assist the SJ as the Chairman of LRC to present an annual report to the AJLS Panel on progress on the implementation of LRC recommendations, including collating the latest updates from the relevant B/Ds, and compiling the bilingual annual report.

Promotional initiatives

6. There has been increasing workload for LRC counsel since 2014 on the important promotional efforts on which the LRC has embarked, including the annual LRC Essay Competition.

* * * * *

Proposed distribution of Law Reform Commission LRC projects (current and in implementation)

between proposed

**LRC Research Team (1) (Civil & Public Law¹) and
LRC Research Team (2) (Criminal & Public Law)**

LRC Research Team (1) (Civil & Public Law)		LRC Research Team (2) (Criminal & Public Law)	
CURRENT LRC PROJECTS			
1.	Archives Law	1.	Review of Sexual Offences
2.	Periodical Payments for Future Pecuniary Loss in Personal Injury Cases	2.	Causing or Allowing the Death of a Child
		3.	Access to Information
PROPOSED LRC PROJECTS			
		4.	Cybercrime ²
		5.	Revenge Porn ³

¹ It is intended that both teams may deal with public law topics, so as to adjust the assignment of projects between the two LRC Research Teams as appropriate, having regard to their respective workloads and other operational considerations.

² In January 2015, the LRC discussed and agreed in principle that the subject of cybercrime should be referred to it by the SJ and the Chief Justice. When the LRC discussed taking on this topic, it was recognised that it was likely to be large in scope, would take some time to complete, and the formation of the sub-committee itself might not be easy. Since then, the LRC Secretariat has carried out local and international research on the topic and prepared and updated a preliminary background study paper.

Relevant overseas jurisdictions already identified by the LRC Secretariat for comparative study in this context include Australia (both federal and state), Canada (federal), the Mainland, England and Wales, the Council of Europe, New Zealand, Singapore, and the United States. It should be noted that the reason this project has not formally commenced earlier is because of the current shortage of manpower within LRC Secretariat to take it up, as other more urgent priorities on current projects have taken priority. As a sub-committee on the topic of cybercrime is being set up, the workload of LRC Secretariat is expected to increase substantially soon.

³ As with the topic of cybercrime, the topic of revenge porn was agreed in principle by LRC and a preliminary background study was undertaken by LRC Secretariat. It has yet to be taken forward substantively, as LRC counsel have to focus on other projects as a matter of priority.

Revenge porn is essentially the posting of, or threatening to post online explicit images or videos of someone (usually a former partner in a relationship) without the victim's consent, as an act of vengeance or malice. LRC Secretariat observed that, in light of various factors – including: (i) the emergence of, and widespread reliance on, the internet and social media platforms; (ii) increasing number of cases of revenge porn arising overseas; and (iii) the increasing likelihood of revenge porn cases arising in Hong Kong. “There may be a need to conduct a systematic review on the relevant legislation and other measures which have been introduced to regulate revenge porn in different jurisdictions, to stay current on the developments in this area.” LRC Secretariat has briefly examined a range of local legislative provisions that may be relevant, as well as new developments in this area in Australia, Ireland, New Zealand, the United Kingdom and the United States.

LRC Research Team (1) (Civil & Public Law)		LRC Research Team (2) (Criminal & Public Law)	
LRC REPORTS IN IMPLEMENTATION			
3.	Insolvency - Part 2: Corporate rescue and insolvent trading [Financial Services and the Treasury Bureau]	6.	Privacy – Part 3: Stalking [Constitutional and Mainland Affairs Bureau (CMAB)]
4.	Contracts for the supply of goods [Commerce and Economic Development Bureau]	7.	Privacy – Part 4: Privacy and media intrusion [CMAB]
5.	Guardianship and custody – Part 4: Child custody and access [Labour and Welfare Bureau]	8.	Privacy – Part 5: Civil liability for invasion of privacy [CMAB]
6.	Substitute decision-making and advance directives in relation to medical treatment [Food and Health Bureau]	9.	Hearsay in criminal proceedings [DoJ]
7.	Enduring powers of attorney: personal care [Department of Justice (DoJ)]	10.	Criteria for service as jurors [DoJ]
8.	Class actions [DoJ]	11.	Double jeopardy [DoJ]
9.	Charities [Home Affairs Bureau]	12.	Excepted Offences under Schedule 3 to the Criminal Procedure Ordinance (Cap 221) [Security Bureau]
10.	Adverse possession [Development Bureau]		

**Job Description of
the Proposed Deputy Principal Government Counsel
in the Law Reform Commission (LRC) Secretariat
of the Legal Policy Division (LPD)**

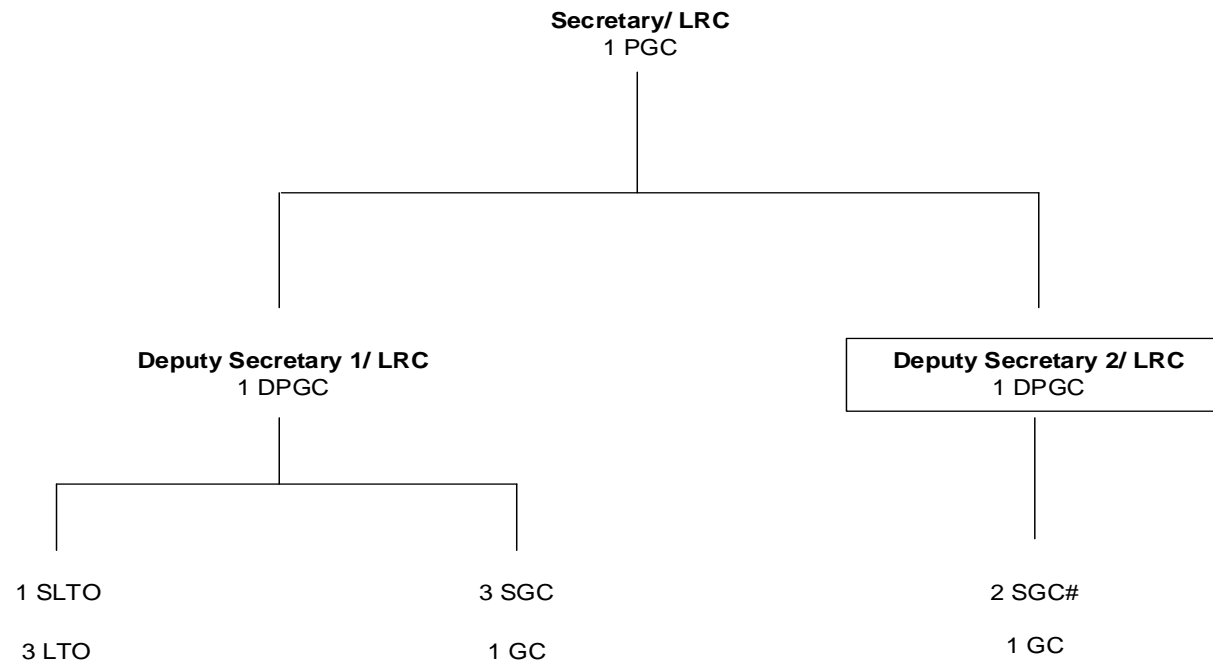
Rank : Deputy Principal Government Counsel (DL2)

Responsible to : Secretary/ LRC (S/LRC) (DL3)

Major duties and responsibilities

- (1) To assist S/LRC in the execution of his or her duties, including the supervision and direction of counsel within LRC; particularly, leading the counsel within the LRC Research Team to which he or she is assigned responsibility in consultation with S/LRC;
- (2) To compile LRC references as directed by S/LRC, including carrying out all necessary research and preparing the final report on behalf of LRC;
- (3) To assist in the administration of LRC;
- (4) To carry out the editorial work and organising the publication of LRC reports and papers;
- (5) To plan and co-ordinate LRC research programmes;
- (6) To liaise with professional bodies, chambers of commerce, District Councils, and other bodies and individuals for input into the work of LRC; and
- (7) To perform such other duties as may be assigned from time to time by S/LRC.

**Existing and Proposed Organisation Chart of
the Law Reform Commission Secretariat**



Legend :

#	= Including one new post to be created on 1.4.2019
PGC	= Principal Government Counsel
DPGC	= Deputy Principal Government Counsel
SGC	= Senior Government Counsel
GC	= Government Counsel
SLTO	= Senior Law Translation Officer
LTO	= Law Translation Officer
<div style="border: 1px solid black; width: 30px; height: 15px; display: inline-block;"></div>	= Proposed new post

Current Work Portfolio of Policy Affairs Unit 1 (PAU1)

(i) Assisting the Secretary for Justice (SJ) in preparing and promoting bills, and steering them through Legislative Council (LegCo)

PAU1 was tasked to promote and steer bills which are within the policy purview of the Department of Justice (DoJ) to their enactment. Where SJ has responsibility for a particular piece of new legislation, counsel in PAU1 will take an active part in the preparation of the bill until its enactment. These legislative exercises involve substantial amount of work in terms of researching into the relevant area of law, formulating policies to tackle the problems intended to be addressed, consulting the public and the relevant stakeholders, balancing the different and sometimes conflicting interests of various stakeholders, preparing drafting instructions, working closely with the law draftsman in finalising the bill, and then taking the bill through the Policy Committee (PC), Executive Council (ExCo) and LegCo. For this purpose, PAU1 counsel have to attend meetings, prepare detailed papers for the PC, ExCo, LegCo and its Bills Committee, issue drafting instructions for Committee Stage Amendments (CSAs) if necessary. After a bill is enacted, PAU1 counsel are required to give support to promotional work designed to educate members of the public on the regulations and provisions in the newly enacted Ordinance. Since PAU1 is also responsible for the other types of work which are usually more urgent in nature (the details of which are set out in paragraphs 2 to 5 below), PAU1 could only promote no more than one piece of proposed legislation (whether principal or subsidiary) at any one time.

(ii) Advising on matters raising questions of legal policy

2. PAU1 is also responsible for advising government bureaux/departments (B/Ds) and other DoJ divisions on matters raising questions of legal policy, namely, whether existing or proposed legislation, or a particular policy or proposed course of action, is contrary to established principles underlying the legal system. Given the breadth of this portfolio, requests for advice are often made in relation to an area of law which is outside the expertise of PAU1 counsel, who must be able to master the law of the area quickly and also grasp the often profound, complex and sensitive underlying facts and implications for other relevant parties and the profession.

(iii) Policy carriage for the development of the legal system and the legal profession

3. PAU1 has policy carriage of matters regarding the development of the legal system and the legal profession in Hong Kong. As part of its routine work, PAU1 provides input from the policy angle to the Chief Justice on all legislative proposals submitted by the Council of the Hong Kong Bar Association, the

Council of The Law Society of Hong Kong, and the Council of Management of the Hong Kong Society of Notaries, which are empowered under sections 72AA, 73, 73A, 73B, 73D and 73E of the Legal Practitioners Ordinance (Cap. 159) to make subsidiary legislation regulating the professional practice, conduct, and discipline etc. of the legal profession. Apart from the routine advisory work, PAU1 also has policy purview over all matters concerning the legal profession. These matters arise in a wide range of contexts, including those in the context of liberalisation of market access to the legal services sector under Free Trade Agreements being negotiated between Hong Kong and other economies, and in the context of periodic reviews conducted by various international bodies/agencies to gauge the compliance of Hong Kong's legal services sector with various international standards and treaty obligations.

(iv) Advising government B/Ds on the procedures and practice of LegCo from the legal perspective

4. Another important area within PAU1's purview is the advisory work on the procedure and practice of LegCo and its Committees, Sub-committees and Panels from the legal perspective. Advice on scope and charging effect of CSAs to government bills is in most cases urgent, typically with only one or two days for the Government to provide its views to LegCo. To ensure the giving of sound advice, it invariably requires immediate and meticulous attention and follow-up on the part of the Deputy Principal Government Counsel of PAU1 as well as the Deputy Solicitor General (Policy Affairs) (DSG(P)).

(v) Study of the LRC Report on Class Actions

5. In December 2012, a cross-sector working group was established by DoJ to study LRC report on "Class Actions" which recommends the introduction of a class action regime in Hong Kong. The Working Group on Class Actions (WG) is chaired by the Solicitor General (SG) with members from the business sector, relevant government bureaux and departments, the two legal professional bodies, the Consumer Council and the Judiciary. In April 2014, a sub-committee chaired by DSG(P) was formed to assist the WG on technical issues. PAU1 has been tasked to provide legal and secretariat support to the WG and its Sub-committee. The introduction of a class action regime in Hong Kong is a controversial and sensitive subject. The WG and its Sub-committee have to look into the many complicated substantive and procedural legal issues that come with the LRC Report. A vast number of topics have in fact been discussed by the WG. The WG meets every three months and its Sub-committee meets on a need basis. For each of these meetings, apart from preparing agenda and notes of meeting, PAU1 counsel have to produce discussion papers covering extensive research on different legal and practical issues as well as giving policy options with justifications and relevant considerations. There has been heavy demand on the legal and secretariat support provided by PAU1.

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**Job Description of the Proposed
the Proposed Deputy Principal Government Counsel Post
in the Policy Affairs Unit 2 of the Policy Affairs (PA) Sub-division
of the Legal Policy Division (LPD)**

Rank : Deputy Principal Government Counsel (DL2)

Responsible to : Deputy Solicitor General (Policy Affairs) (DSG(P) (DL3)

Major duties and responsibilities

- (1) To direct and supervise the day to day work of a team of counsel to provide dedicated legal advice and support in relation to matters arising from various types of petitions (including petitions to the Chief Executive (CE) under Article 48(13) of the Basic Law) and statutory appeals to the CE or the Chief Executive in Council (CE-in-Council);
- (2) To serve as a firewall within the Department of Justice (DoJ) in providing independent legal advice to the CE and/or CE-in-Council as and when appropriate in order to avoid potential conflict of interests within DoJ;
- (3) To prepare draft notes for the Solicitor General (SG) and the Secretary for Justice (SJ) dealing with petitions from prisoners in order to assist SG and, as the case may be, the SJ in advising the CE on those petitions;
- (4) To provide advice on claims for *ex gratia* compensation for wrongful imprisonment;
- (5) To oversee the processing of and to give legal advice on petitions made by claimants for non-refoulement protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and other applicable grounds against removal orders issued against them under the Immigration Ordinance (Cap. 115) pursuant to the unified screening mechanism for the determination of claims for non-refoulement protection, and to provide advice on judicial reviews made by claimants for non-refoulement protection against decisions of the Torture Claims Appeal Board/Non-refoulement Claims Petition Office;
- (6) To prepare draft SG's advice to the CE on whether the CE should order the surrender of a fugitive to a requesting jurisdiction;
- (7) To prepare and promote bills that are within the policy purview of the SJ

from development of legislative proposals to enactment;

- (8) To advise on public enquiries and complaints;
- (9) To be responsible for the general administration of PAU2; and
- (10) To perform any other duties as and when required in order to assist in the efficient and effective performance of the LPD.

Current Work Portfolio of China Law Unit (ChLU)

(i) Advising on the laws and regulations of the Mainland

ChLU provides advice to government bureaux/departments (B/Ds) on the laws and regulations of the Mainland and other parts of the Cross Strait Four Regions, including national laws that apply to the Hong Kong Special Administrative Region pursuant to Annex III to the Basic Law as well as other Mainland laws and regulations. Counsel in the Unit are required to conduct in-depth research into the relevant laws and practices so that sound advice can be given. Where such advice is needed for legal proceedings in Hong Kong such as judicial review, the timeframe can be very tight.

(ii) Seeking greater liberalisation of the legal and dispute resolution services market in the Mainland

2. ChLU also attends to matters on the further liberalisation of the Mainland's legal and dispute resolution services market. These include consultation with stakeholders and ongoing discussions with relevant Mainland authorities as well as attending meetings of the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA).

3. Moreover, as the Mainland intensifies its legal and economic reforms under various major national initiatives, including the Belt and Road Initiative (BRI) and the Greater Bay Area Plan, ChLU counsel are heavily engaged on consultations with Mainland authorities, including putting forward/commenting on draft proposals and documents with a view to securing further liberalisation of the Mainland's legal and dispute resolution services market for Hong Kong service providers.

(iii) Common Law Training Scheme and other co-operation arrangements with Mainland Justice B/Ds

4. ChLU oversees the Common Law Training Scheme which is an annual programme providing Mainland officials with legal background the opportunity to study common law and to get familiarised with the legal system in Hong Kong. It also oversees the various co-operation arrangements with Mainland justice bureaux and departments and arrange for short term exchanges, visits and attachments by officials from these Mainland justice B/Ds.

(iv) Incoming visits to and from the Mainland

5. ChLU provides support in relation to these visits, including preparing speaking points and background briefs and liaising with the relevant Mainland organs. Counsel in the Unit also conduct briefings for visiting delegations.

(v) Promoting Hong Kong's legal and dispute resolution services in the Mainland

6. In order to promote Hong Kong's legal and dispute resolution services in the Mainland, particularly in the context of the BRI, ChLU has conducted various promotional activities in the form of roadshows, conferences, seminars and forums in various Mainland cities (in conjunction with the Government's Economic and Trade Offices in the Mainland and the Hong Kong legal and dispute resolution sectors), including Chengdu (in 2015), Chongqing (in 2015), Beijing (in 2015), Shanghai (in 2015), Guiyang (in 2016), Xi'an (in 2016), Wuhan (in 2016) and Nanning (in 2018).

7. Besides, the Unit is responsible for the organisation of the large-scale flagship event, i.e., Hong Kong Legal Services Forum which has been held in the major cities in the Mainland since 2010. Five Forums were held in Shanghai (2010), Guangzhou (2012 and 2018), Qingdao (2014) and Nanjing (2016). It is a biennial event jointly organised by the DoJ, Hong Kong Trade Development Council and other law related organisations. At the Forums, Hong Kong practising barristers, solicitors and dispute resolution professionals discussed practical legal issues with a view to promoting the use of legal and dispute resolution services of Hong Kong.

8. Counsel of the ChLU have to spend substantial amount of time in the coordination work of the events which entails meticulous advanced planning and extensive coordination and liaison work with stakeholders and supporting organisations. To enhance Hong Kong's status as a leading centre for international legal and dispute resolution services in the Asia-Pacific region, it is expected that more promotional work will be conducted in the Greater Bay Area as well as other major cities in the Mainland, to promote Hong Kong's legal and dispute resolution services and to deepen co-operation with the legal professionals in the Greater Bay Area and other major Mainland cities. More demand in this area of work provided by ChLU is expected.

9. In addition, counsel of the Unit are also tasked with arranging or co-organising seminars with other legal professional bodies on Mainland-related subjects for the benefit of the local legal community, as well as providing organisation support for those seminars mentioned in paragraph 13(a) of the paper. In sum, the amount of time to be entailed in the coordination and liaison work with stakeholders, co-organisers and speakers is expected to be enormous.

10. As trade and economic interactions between Hong Kong and the Mainland deepen, and as Mainland enterprises seek to “go global”, there is a clear interest and demand for Hong Kong legal services in the Mainland. ChLU’s involvement in promotional work is expected to continue to increase.

(vi) Review of the existing arrangements on mutual legal assistance in civil and commercial matters (MLA) with the Mainland and the development of new instruments on other MLA subjects

11. Various MLA projects are on-going. They include projects related to the enhancement of legal co-operation with the Mainland in civil and commercial matters as detailed in paragraphs 88 to 94 of the paper. Besides, the Unit is also reviewing existing MLA arrangements which include the *Arrangement for Mutual Service of Judicial Documents in Civil and Commercial Proceedings between the Mainland and Hong Kong Courts* (the Service Arrangement)²⁶. The Unit has commenced discussions with the relevant Mainland authority on the feasibility of including the use of public announcement as a mode of service, thereby enhancing the efficiency of the Service Arrangement.

* * * * *

²⁶ The Chinese title of this Arrangement is: 《關於內地與香港特別行政區法院相互委托送達民商事司法文書的安排》。

**Job Description of the Proposed
Supernumerary Deputy Principal Government Counsel Post
in the Policy Affairs Unit 3 of the Policy Affairs (PA) Sub-division
of the Legal Policy Division (LPD)**

Rank : Deputy Principal Government Counsel (DL2)

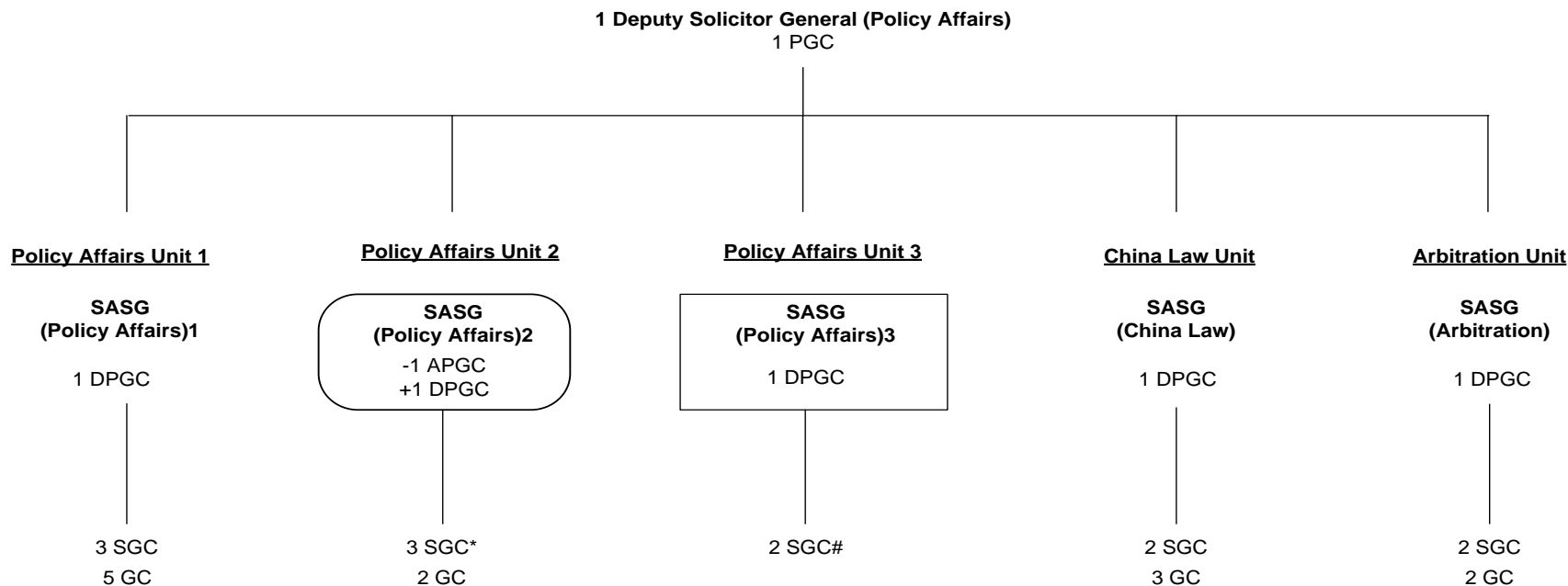
Responsible to : Deputy Solicitor General (Policy Affairs) (DSG(P)) (DL3)

Major duties and responsibilities

- (1) To prepare and promote bills that are within the policy purview of the Secretary for Justice (SJ) from development of legislative proposals to enactment;
- (2) To advise on legal policy issues as allocated by the SJ, the Solicitor General (SG) or DSG(P);
- (3) To assist in various projects, including but not limited to the ones set out below, for the consultation and legislative implementation of legal co-operation arrangements between the Mainland and Hong Kong in civil and commercial matters, including conducting legal research, consultation and discussion with stakeholders and relevant Mainland authorities, drafting papers for the Policy Committee, the Executive Council, the Legislative Council and its panels and the Bills Committees as well as preparing drafting instructions and promoting the Bill —
 - (a) Mainland Judgment in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Bill;
 - (b) Reciprocal recognition and enforcement of judgments (REJ) between the Mainland and the Hong Kong Special Administrative Region;
 - (c) Mutual recognition and assistance on cross-border insolvency matters; and
 - (d) other REJ projects;
- (4) To act as the secretary or as a member of Working Groups/committees as appointed by the SJ, the SG or DSG(P);
- (5) To direct and supervise the day-to-day work of counsel in the PAU3;

- (6) To be responsible for the general administration of the PAU3; and
- (7) To perform any other duties as and when required in order to assist in the efficient and effective performance of the LPD.

**Existing and Proposed Organisation Chart of
Policy Affairs (PA) Sub-division
of the Legal Policy Division (LPD)**



Legend :

- # = Time-limited posts to be created for a period of five years up to 31.3.2024
- * = Including one time-limited post to lapse on 1.4.2019
- PGC = Principal Government Counsel
- SASG = Senior Assistant Solicitor General
- DPGC = Deputy Principal Government Counsel
- APGC = Assistant Principal Government Counsel
- SGC = Senior Government Counsel
- GC = Government Counsel
- = Proposed new supernumerary post for a period of five years
- = Proposed upgrading of one APGC to one DPGC