

ITEM FOR ESTABLISHMENT SUBCOMMITTEE OF FINANCE COMMITTEE

HEAD 92 - DEPARTMENT OF JUSTICE Subhead 001 Salaries

Members are invited to recommend to Finance Committee the creation of the following permanent posts in the Department of Justice -

(a) with effect from 27 February 1998 -

1 Deputy Principal Government Counsel
(DL2) (\$110,000 - \$116,800)

(b) with effect from 1 April 1998 -

2 Deputy Principal Government Counsel
(DL2) (\$110,000 - \$116,800)

PROBLEM

The existing directorate establishment of the Department of Justice requires enhanced support at the Deputy Principal Government Counsel (DPGC) level in order to cope effectively with the increasing workload and responsibilities placed on the Department.

PROPOSAL

2. With a view to enabling the Department to cope with the demands placed on it, the Secretary for Justice proposes the creation of the following DPGC posts -

/(a)

- (a) **Law Drafting Division** : creating one permanent DPGC post in the Bilingual Drafting Unit (BDU) (formerly known as Chinese Drafting and Translation Unit) of the Law Drafting Division to draft the more complex bilingual legislation and to supervise the drafting work of non-directorate draftsmen of the Unit;
- (b) **Legal Policy Division** : creating one permanent DPGC post in the China Law Unit of the Legal Policy Division to provide continued support at the DPGC level for providing advice on China law following the lapse of the present supernumerary DPGC post on 1 April 1998; and
- (c) **International Law Division** : creating one permanent DPGC post in the International Law Division to cope with increasing volume and complexity of work of the Division following the lapse of the present supernumerary DPGC post on 1 April 1998.

JUSTIFICATION

(a) Law Drafting Division : creation of a DPGC post

3. We have been implementing the Bilingual Legislation Programme since 1987. The Programme requires that all new legislation are drafted in both English and Chinese. The Programme, now in full implementation, has increased substantially the work of the Law Drafting Division. Consequently, the Division has temporarily restructured the former Chinese Drafting and Translation Unit into a new three-team Unit entitled the BDU. The BDU currently has an establishment of three DPGC (one of whom being temporarily redeployed from the English Drafting Unit (EDU) from 1 July 1997), 11 Senior Government Counsel, nine Government Counsel and 23 Law Translation Officers (LTOs). We set out at Enclosure 1 the existing organisation of the Law Drafting Division.

Encl. 1

Increase in the volume and complexity of bilingual legislation

4. The volume of bilingual legislation produced by the Division has increased substantially in the past few years. To illustrate, the number of pages of bills and subsidiary legislation produced has increased from 814 pages in 1992 to 6 626 pages in 1997. In addition to bills and subsidiary legislation, the volume of committee stage amendments (CSAs) has also increased drastically since 1992, from 184 pages in 1992 to 1 954 pages in 1997. We set out at Enclosure 2 the relevant statistics.

Encl. 2

5. Volume aside, the number of lengthy and complex bills drafted has also increased significantly. The introduction of composite bills dealing with a number of matters e.g. the Law Reform (Miscellaneous Provisions and Minor Amendments) Bill 1996, further increased the difficulties and efforts required in producing the right drafts. Such bills touch upon different areas and require more drafting input. We expect that with the establishment of the Hong Kong Special Administrative Region (HKSAR), the demand for drafting of complex legislation will continue to increase. Examples include the mutual legal assistance scheme between other parts of the Mainland and the HKSAR, land supplies and compulsory buy-outs and large scale transport and other infrastructure projects etc., all these will require complex legislation. The continued socio-economic development of the HKSAR on the basis of a sophisticated legal framework will also necessitate the production of more and more complex legislation. For example, as part of the efforts to maintain the HKSAR's status as an international financial centre, we are drafting a 400 page Securities and Futures Bill to rationalise legislation in this field. The related subsidiary legislation will probably exceed 1 000 pages.

6. The DPGC in the BDU are responsible for drafting the more complicated legislation themselves. Very often, they have to draft long and complex legislation within an extremely short period of time in order to tackle political and social issues promptly. Tight schedules normally require the service of a senior draftsman in the BDU who will be responsible for producing both the English and Chinese texts of the draft legislation.

The need for effective management of counsel and LTO in the BDU

7. Clearing draft Chinese legislation prepared by non-directorate professional officers is an important part of the DPGC's work in the BDU and is the most effective method by which the less experienced draftsmen and LTO are trained. It is also a crucial component of the quality control mechanism of the Division. All draft legislation have to be vetted and cleared by a DPGC one or more times before it takes the final shape. With the substantial increases in workload, we would require three DPGC in the BDU to share all the necessary vetting work, in order to provide the necessary guidance and training and not to compromise the quality of the draft legislation. Each DPGC will have to supervise about 14 to 15 professional staff, of whom six to seven are counsel.

/Expanded

Expanded scope of work at DPGC level in BDU

8. In the past, although we have produced legislation bilingually, we usually drafted them first in English and then "translated" them into Chinese only when the English text reached a rather definitive shape. Due to the various constraints such as limited manpower and extremely tight legislative time-tables, we used to vet the Chinese drafts only when they were reaching the final version. The vetting also focused on ensuring that the Chinese draft corresponded to the English. Although such practice was sufficient to cope with the situation in the past, it will have to change now with legislative bilingualism in full swing. The DPGC will have to clear Chinese drafts from a drafting point of view, and also at an earlier stage of drafting.

9. Previously we have released draft legislation for consultation in English only. With legislative bilingualism in full swing, this no longer meets the need of the community. There are also increasing demands for us to issue bilingual drafts at more or less the same time, if not simultaneously. One recent example is the Electoral Affairs Commission which has requested the production of bilingual drafts. Earlier and increased involvement of a DPGC in the BDU in clearing Chinese drafts is thus necessary.

10. There is a clear trend that the Administration has to put in more efforts in steering bills through the committee stage to enactment. To give some concrete examples, the Bills Committee for the Estate Agents Bill met over 30 times and that for the Legal Services Legislation (Miscellaneous Amendments) Bill 1996, 20 times. The recent episode in respect of the Legislative Council Bill is another example. As a consequence, the demand for professional drafting and advisory support from legislative counsel of both the English and Chinese drafts has grown substantially. Apart from drafting bills, draftsmen have to attend meetings, participate in pre-meeting and post-meeting discussions, draft CSAs and attend drafting conferences, consider comments on and assist in the preparation of papers including speeches, Legislative Council briefs, written representations and minutes.

11. The BDU has taken up many assignments in relation to the promotion and development of bilingual laws, and has often been consulted as experts in this area. For example, the BDU is involved in projects to promote the use of Chinese in courts and within the Department of Justice, seminars on bilingual laws and lectures of Chinese for lawyers. The Judiciary also consults the BDU on Chinese legal terms and the preparation of their glossary. The BDU

/assists

assists the Law Reform Commission by vetting the Chinese version of a voluminous consultation paper. It regularly contributes to journals and newspapers on bilingualism in law. Holders of the DPGC posts in the BDU, who have the most experience and knowledge in these areas have undertaken such work.

Need for permanent DPGC post in BDU

12. With the substantial increase in workload arising from the increase in volume and complexity of work, the need for effective management of the draftsmen and expanded scope of the work of BDU, we consider it necessary to create an additional DPGC to cope with the tasks and to maintain and improve the quality of Chinese legislation. This is of utmost importance because any ambiguities and discrepancies in meaning between the English and Chinese texts of legislation will result in uncertainties in the law and expensive and unnecessary litigation. This will also greatly help the development of bilingual drafting of the laws, which is a key element in the bilingualism of our legal system.

13. The increase in volume and complexity of work in the Law Drafting Division applies also to the EDU, which therefore cannot continue to deploy the DPGC post to the BDU.

Encls. 3&4

14. We set out at Enclosures 3 and 4 the main duties and responsibilities of the proposed DPGC post and the proposed organisation of the Law Drafting Division respectively.

(b) Legal Policy Division : creation of a DPGC post

15. On 14 January 1994, Finance Committee approved the creation of a supernumerary DPGC post up to 31 March 1998 to head the China Law Unit of the Legal Policy Division to cope with the increasing work commitments in the run-up to 1997. During the past few years, the workload of the Unit has increased significantly, and has continued to increase drastically after the reunification. We set out below the number of written advice provided on China law from 1994 to 1997 -

/1994

Year	Number of written advice given on China law
1994	27
1995	51
1996	78
1997	177

16. Apart from the increase in number of advice given, the nature of the advice requested has also become increasingly complicated and detailed. For example, the advice includes those on People's Republic of China's constitutional law, criminal law and procedure, civil procedure, immigration law, household registration law, nationality law, the lawyers system, family law, administrative law and legal personality. Given the increasing demands on the Unit for advice across a wide spectrum of China law, we consider it necessary to have expertise of a level at least commensurate to a DPGC.

17. Counsel of the China Law Unit conduct legal research both in the library and on legal databases. At present, the Unit maintains comprehensive databases on the laws, rules and regulations and judicial decisions of the Mainland. These databases are important in facilitating the provision of legal advice with accurate citations and up-to-date information. The databases are also of assistance in the publication of the China Law Update, a publication issued by the Department of Justice regularly to legal practitioners and law libraries in academic institutions. We require the DPGC to oversee the maintenance and expansion of these databases.

Visits to and from the Mainland

18. In addition to advising on China law, the Unit also organises visits to the Mainland and programmes for incoming legal delegations from the Mainland. Such visits will help our counsel learn about the legal system in the Mainland, and give an opportunity for them to explain Hong Kong's legal system and the rule of law to their counterparts in the Mainland. We set out below the number of such visits to or from the Mainland since 1994 -

/1994

Year	Number of visits to and from the Mainland arranged by the Unit
1994	20
1995	30
1996	50
1997	31

19. During such visits, our counterparts in the Mainland included the Ministry of Justice, the People's Procuratorate, the People's Court, the National People's Congress Legislative Affairs Commission, the State Council Legislative Affairs Bureau, legal practitioners and academics of various universities in the Mainland. Representatives as senior as ministers and deputy heads are usually the points of contact with the Department. Given the importance the Department has placed on relations with these counterparts in the Mainland, it is vital, both in practical and protocol terms, to have an officer at the rank of DPGC as the head of the Unit.

Need for a permanent DPGC post in China Law Unit

20. At present, the Unit has an establishment of one supernumerary DPGC and one Senior Government Counsel posts. We consider it necessary to create a DPGC post on a permanent basis to -

- (i) supervise the work of counsel in the Unit;
- (ii) provide a properly balanced management structure;
- (iii) represent the Unit in contacts with high ranking officials of the Mainland;
- (iv) provide legal advice on sensitive and complex issues or projects which require input at directorate level; and
- (v) oversee the maintenance and expansion of the legal databases initiated by the Unit.

Encls. 5&6

21. We require the existing supernumerary DPGC post on a permanent basis to cope with the increasing volume and complexity of work in relation to provision of advice on China law. We also require the post for establishing and maintaining contacts with counterparts in the Mainland. This is particularly relevant and important after the handover, to ensure the smooth operation of the 'one country, two systems' principle. We need to research upon and understand the law of the Mainland and promote awareness of it in the Department. We should encourage and maintain on a long term basis mutual understanding with the Mainland on our respective legal systems. We set out at Enclosures 5 and 6 the main duties and responsibilities of the DPGC post and the proposed organisation of the Division respectively.

(c) International Law Division : creation of a DPGC post

22. On 14 January 1994, Finance Committee approved the creation of a supernumerary DPGC post up to 31 March 1998 to meet with increasing demands of the International Law Division in the run-up to 1997. The supernumerary DPGC post is mainly responsible for advising in more complex cases on application of treaties; advising on the subject of reciprocal juridical assistance in civil matters; liaising with the Ministry of Foreign Affairs on the bilateral negotiation programme on reciprocal enforcement of judgments; liaising with Consulates General HKSAR on the same subject; and advising on international trade law. The work of the Division has continued to increase even after the reunification. Apart from matters relating to mutual legal assistance (MLA), which we have recently established a dedicated MLA Unit in the Division to deal with, the following areas of work have now become the regular and basic parts of the Division's work -

(i) Bilateral international agreements

Hong Kong has entered into bilateral international agreements with many countries in various fields, including : 22 air services agreements, 13 investment protection and promotion agreements, ten surrender of fugitive offenders agreements, three agreements on MLA in criminal matters and two agreements on transfer of sentenced persons. The Division is responsible for providing legal advice to relevant departments and bureaux on the interpretation and application of these bilateral international agreements. The wide range of subjects covered by the bilateral agreements and the expertise required for each of the subjects including extensive knowledge on civil law, criminal law and private international law, demands an additional DPGC to handle.

/In

In addition to advising on agreements already in force, counsel from the Division also lead or assist delegations of the Government of the HKSAR to conduct negotiations for additional bilateral international agreements. These negotiations require the presence of an experienced lawyer at a senior level.

An important subject for future bilateral negotiations will, with the approval of the Central People's Government, be the reciprocal recognition and enforcement of judgments in civil and commercial matters (REJ). The subject is important to the HKSAR in maintaining its status as an international commercial centre with a respected legal system. The Commonwealth arrangements and the bilateral agreements on this subject entered into between the United Kingdom and other countries have ceased to apply to the HKSAR since 1 July 1997. This has become a subject of concern to the business and legal communities in Hong Kong and we are keen to negotiate REJ agreements with countries whose judgments were recognised and enforced by the HKSAR prior to the reunification, as well as to negotiate new REJ agreements with other important commercial and trading partner countries. The Division will play a leading role in the negotiation of these REJ agreements. The Division has meanwhile contacted all of the jurisdictions with which there were formerly arrangements for REJ, in order to ascertain how they now treat judgments from the HKSAR.

(ii) Advice on multilateral treaties that apply to the Government of the Hong Kong Special Administrative Region

Over 200 multilateral treaties, including many that do not apply to the rest of the Mainland, apply to the HKSAR Government. These include treaties on environmental protection, narcotics control, terrorism, hijacking, shipping, civil aviation, human rights, telecommunications, international legal co-operation and other subjects. Some of these treaties relate to international organisations of which the HKSAR is a member or in whose activities it participates. Counsel of the International Law Division give advice on the interpretation and application of treaties in these areas. Owing to the special status of the HKSAR, the newly implemented concept of 'one country, two systems' and the

/fundamental

fundamental differences in the law practised in the Mainland and the HKSAR, a lot of practical legal issues would have to be resolved between the Central People's Government and the HKSAR in relation to the assumption of international obligations under both multilateral treaties and bilateral agreements by the People's Republic of China (PRC) on behalf of the HKSAR.

In addition, Article 153 of the Basic Law requires the Central People's Government to seek the views of the HKSAR Government before applying to the HKSAR new international agreements to which the PRC is or becomes a party. The Division advises the HKSAR Government in formulating responses to the Central People's Government.

(iii) Advice on international legal issues relating to “external affairs”

Under Article 13 of the Basic Law, the Central People's Government authorises the HKSAR Government to conduct relevant external affairs on its own in accordance with the Basic Law. Chapter VII of the Basic Law (“External Affairs”) sets out various fields where the HKSAR Government may, either on its own or with the necessary authorisation from Central People's Government, maintain relations with foreign States and regions and relevant international organisations.

Other departments and bureaux seek advice from the Division on the implementation of this important Chapter, which includes provisions on participation of HKSAR Government in international organisations and conferences, and the setting up of representative offices of foreign consular and other official and semi-official missions. These are matters that require advice at a senior level. External affairs advice very often involves complex legal problems. Some examples are in the areas of conferring of consular privileges and immunities status and capacity of the HKSAR in its participation in international organisations and conferences.

(iv) Other matters

As a result of the HKSAR's membership of the World Trade Organization (WTO), the HKSAR Government increasingly requires advice from the Division on the resolution of trade disputes under the WTO procedures and on the legal implications of multilateral trade agreements such as the General Agreement on Trade in Services and the Agreement on Government Procurement. A Multilateral Agreement on Investment is also under active discussion by the Organisation for Economic Co-operation and Development. The Division needs Counsel at the appropriate level to advise the HKSAR Government, often at very short notice, in these complex areas.

Need for a permanent DPGC post in International Law Division

Encl. 7

23. The International Law Division is headed by a Law Officer and comprises two PGC, four DPGC (one of which is a supernumerary post) and 13 Senior Government Counsel (SGC). The organisation chart of the Division is at Enclosure 7. The Finance Committee approved on 28 November 1997 creation of a PGC post and establishment of the MLA Unit (EC(97-98)31) in the International Law Division. One PGC, two DPGC and 11 SGC are under the MLA Unit and are fully committed to work relating to MLA. The remaining PGC, two DPGC and two SGC are responsible for all other matters of the Division other than MLA. With the increase in volume and complexity of work mentioned in paragraph 22 above, we consider that the Division will not be able to cope with the increasing workload after the supernumerary DPGC post lapses on 1 April 1998. We therefore consider it necessary to make permanent the supernumerary DPGC post.

Encl. 8

24. The proposed DPGC post will continue to advise on trade matters and handle negotiations on bilateral agreements, in particular REJ agreements, and other outstanding treaties and agreements. The main duties and responsibilities of the post are at Enclosure 8.

FINANCIAL IMPLICATIONS

25. The additional notional annual salary cost of this proposal at MID-POINT is -

/New

	\$	No. of post
New permanent posts	4,082,400	3

26. The full annual average staff cost of the proposal, including salary and staff on-cost, is \$7,411,932.

27. This proposal will not necessitate the creation of non-directorate posts.

28. We have included sufficient provision in the 1997-98 Estimates and the 1998-99 draft Estimates to meet the cost of this proposal.

BACKGROUND INFORMATION

29. The Law Drafting Division comprises the EDU, the BDU, the Electoral Legislation Unit, the Law Revision Unit and the Administration Unit. The Division is responsible for drafting all legislation of the HKSAR in both English and Chinese, providing comprehensive legal advice on the planning of legislative proposals and vetting all subsidiary legislation produced by statutory bodies such as the Provisional Regional and Urban Councils. It is also responsible for developing the database of the Laws of the HKSAR and producing the Loose-Leaf Edition of the Laws of the HKSAR.

30. The Legal Policy Division of the Department of Justice comprises the Law Reform Commission Secretariat and five Units, each of which handles one of the following areas of work -

- (i) General Advisory;
- (ii) Human Rights;
- (iii) Basic Law;
- (iv) China Law; and
- (v) Electoral Affairs.

31. We established the China Law Unit in 1988 to provide expertise in China law. The existing supernumerary DPGC post is created up to 31 March 1998 to head the Unit which co-ordinates all advice/contacts between the Department and the Mainland. It also provides advice on the law in the Mainland and promotes knowledge of China Law within the Department, and publicises Hong Kong's legal system and its laws to the Mainland.

32. We established the Special Duties Unit in the Department in May 1985. We re-named it to the International Law Division in January 1989 in order to reflect the scope of the work done by the Division and to establish proper recognition by foreign governments with which members of the Division come into frequent contact in the course of their work. The existing supernumerary DPGC post is created up to 31 March 1998 to strengthen the directorate structure of the Division to meet increasing work commitments in the run up to 1997.

CIVIL SERVICE BUREAU COMMENTS

33. Having regard to the increasing workload arising from the increase in volume and complexity in respect of bilingual legislation, provision of advice on China law and international agreements, the Civil Service Bureau supports the creation of the proposed permanent directorate posts in the Department of Justice. The grading and ranking of the proposed posts are considered appropriate.

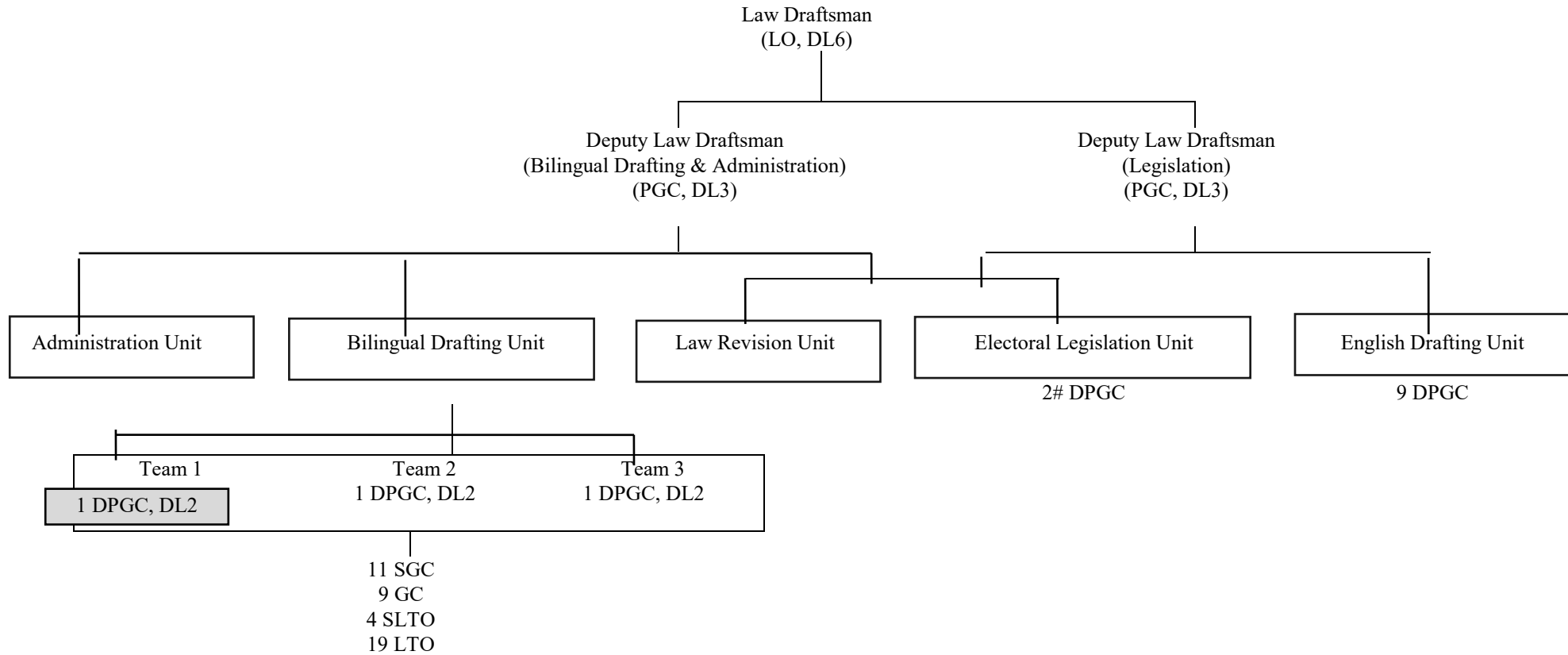
ADVICE OF THE STANDING COMMITTEE ON DIRECTORATE SALARIES AND CONDITIONS OF SERVICE

34. The Standing Committee on Directorate Salaries and Conditions of Service has advised that the grading proposed for the posts would be appropriate if the posts were to be created.


Department of Justice
January 1998

(LU0112/WIN5)

Existing Organisation Chart of the Law Drafting Division



Legend :

	=	DPGC post currently redeployed from English Drafting Unit
#	=	supernumerary post
LO	=	Law Officer
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

Volume of bilingual legislation prepared since 1992

Year	Pages of Bills	Pages of Subsidiary Legislation	Total
1992	722	92	814
1993	906	476	1 382
1994	1 738	812	2 550
1995	2 054	1 502	3 556
1996	3 038	1 636	4 674
1997	2 642	3 984	6 626

Volume of committee stage amendments prepared since 1992

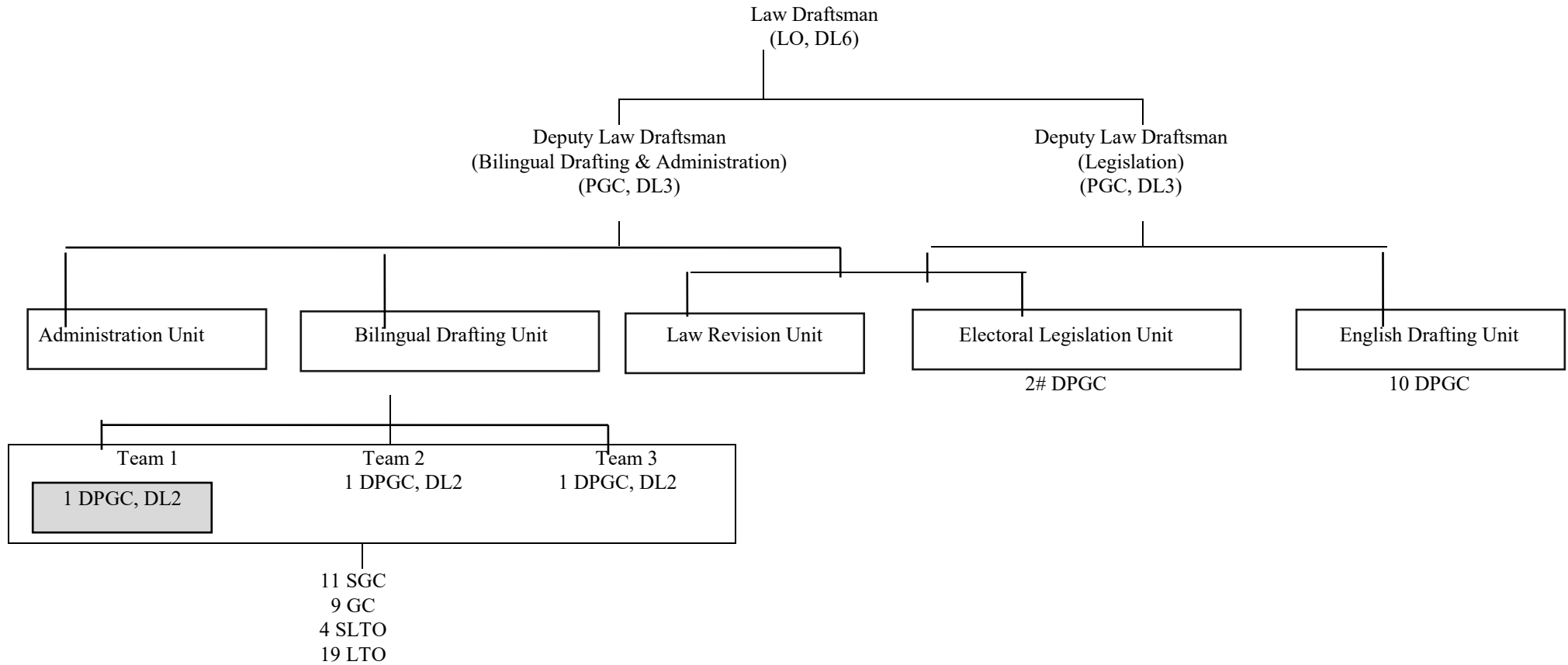
Year	Pages of committee stage amendments
1992	184
1993	160
1994	260
1995	670
1996	344
1997	1 954


**Main Duties and Responsibilities of
Deputy Principal Government Counsel/Bilingual Drafting
Law Drafting Division**

Responsible to the Law Draftsman, through the Deputy Law Draftsman (Bilingual Drafting and Administration) and Deputy Law Draftsman (Legislation), for -

1. the vetting of Chinese texts of ordinances and subsidiary legislation prepared by junior counsel and Law Translation Officers;
2. co-ordinating the work of counsel and Law Translation Officers engaged in drafting Chinese texts of ordinances and subsidiary legislation;
3. drafting the more complex and/or controversial Government legislation;
4. advising the Administration on legislative proposals and assisting in preparing Executive Council Memoranda dealing with proposed legislation;
5. providing professional service in relation to proposed legislation during the legislative process, including attending meetings of the Executive Council and the Legislative Council (including its committees), drafting committee stage amendments and giving incidental legal advice;
6. preparing legal reports for the Standing Committee of the National People's Congress in respect of the enacted ordinances and checking press releases for new legislation;
7. supervising the work of, and providing training to, junior counsel, Law Translation Officers and support staff; and
8. overseeing the compilation and publication of a bilingual legal glossary and related materials.

Proposed Organisation Chart of the Law Drafting Division



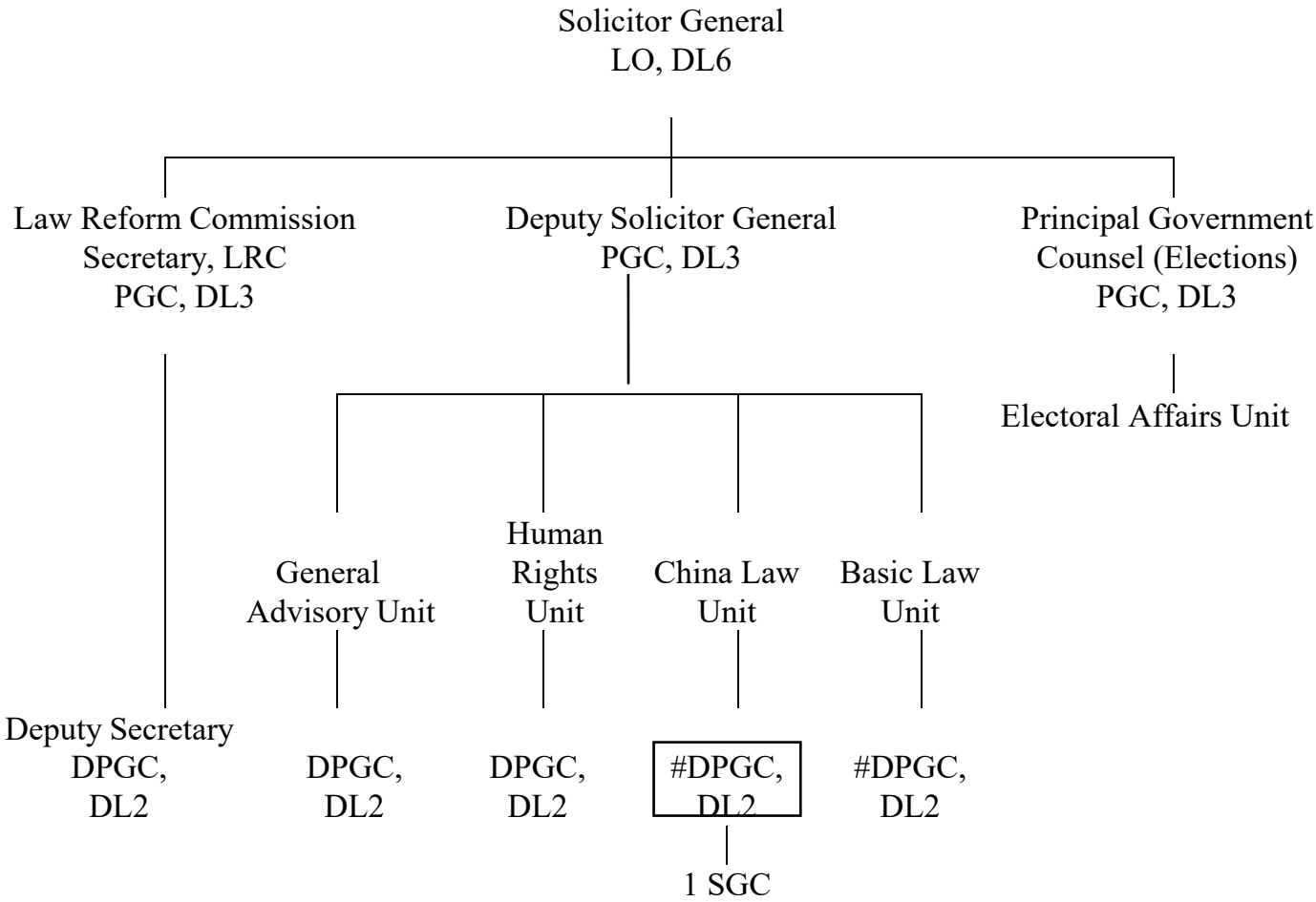
Legend :		=	Proposed permanent DPGC post
	#	=	supernumerary post
LO		=	Law Officer
PGC		=	Principal Government Counsel
DPGC		=	Deputy Principal Government Counsel
SGC		=	Senior Government Counsel
GC		=	Government Counsel
SLTO		=	Senior Law Translation Officer
LTO		=	Law Translation Officer

**Main Duties and Responsibilities of
Deputy Principal Government Counsel/China Law
Legal Policy Division**

Responsible to the Deputy Solicitor General for -

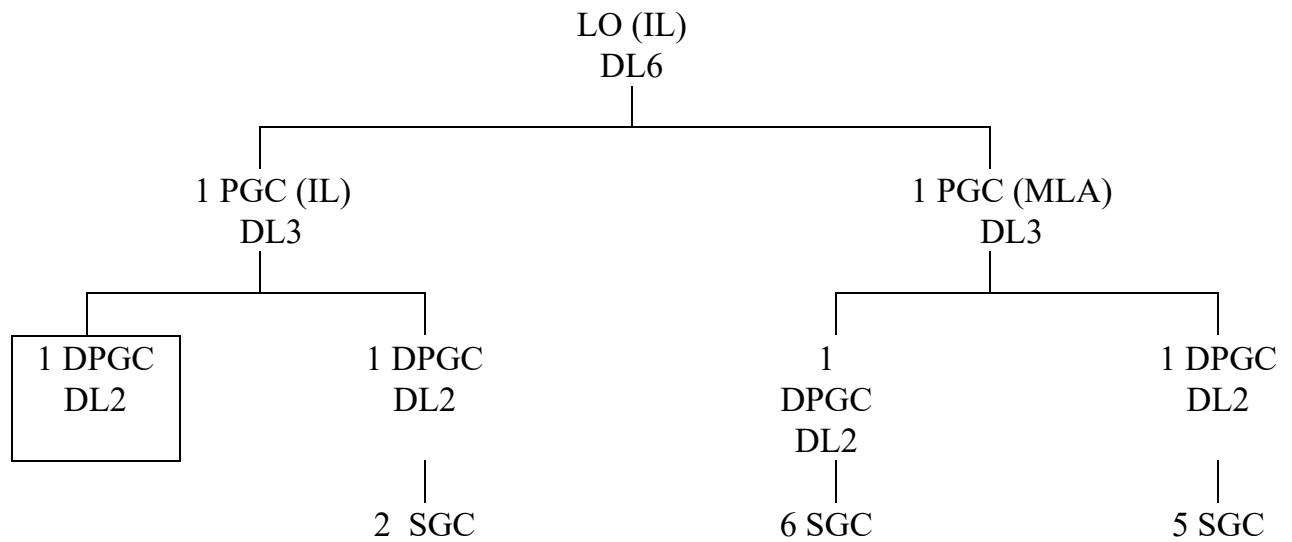
1. providing advice on the law of the People's Republic of China (except those of the Basic Law) to government departments and bureaux as requested;
2. consulting lawyers and others in the Mainland and establishing and developing legal contacts with the Ministry of Justice and other legal institutions in the Mainland;
3. overseeing the maintenance and expansion of a comprehensive research database on legal issues arising from the PRC Law (except those of the Basic Law);
4. facilitating training in PRC law for counsel in the Department of Justice;
5. directing and supervising the day-to-day work of the China Law Unit;
6. organising legal exchanges and exchange visits with lawyers in the Mainland;
7. promoting the understanding of the legal system of the Hong Kong Special Administrative Region in the Mainland; and
8. performing such other duties as may be assigned by the Deputy Solicitor General.

Organisation Chart of the Legal Policy Division



- Legend :
- LO = Law Officer
 - PGC = Principal Government Counsel
 - DPGC = Deputy Principal Government Counsel
 - SGC = Senior Government Counsel
 - # = Supernumerary post
 - #DPGC, DL2 = Proposed creation of DPGC post on a permanent basis

**Organisation Chart of
International Law Division**



Legend : LO (IL) : Law Officer (International Law)
PGC : Principal Government Counsel
DPGC : Deputy Principal Government Counsel
SGC : Senior Government Counsel
 : Proposed creation of DPGC post on a permanent basis
MLA : Mutual Legal Assistance

**Main Duties and Responsibilities of
Deputy Principal Government Counsel/International Law 2
International Law Division**

Responsible to the Principal Government Counsel (International Law) for the following duties -

1. advising on multilateral and bilateral international agreements extended to Hong Kong;
2. advising on reciprocal juridical assistance, in particular reciprocal recognition and enforcement of judgments in civil and commercial matters between Hong Kong and countries both in and outside the region. Participating in the negotiation of such arrangements and giving legal advice to Bureaux and Departments as required, including on the need for legislation in Hong Kong to give effect to such arrangements;
3. advising, against the background of the provisions of the Joint Declaration and Basic Law, on all forms of co-operation with legal and judicial authorities outside Hong Kong;
4. advising on double taxation arrangements and multilateral trade agreements such as the General Agreement on Trade in Services and legal issues in the resolution of trade disputes under procedures of the World Trade Organization;
5. advising on the drafting of Executive Council papers and attending Executive Council meetings as required on the various matters set out above; and
6. deputising for the Principal Government Counsel (International Law) and assuming the duties of the other Deputy Principal Government Counsel when they are absent and performing administrative and supervisory functions when required.