

For discussion on  
30 October 2012

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

**Proposal for the Creation of  
one Supernumerary Post of Deputy Principal Government Counsel  
in the Prosecutions Division of the Department of Justice**

**PURPOSE**

This paper seeks Members' views on the proposal to create one supernumerary Deputy Principal Government Counsel (DPGC) (DL2) post in the office of the Director of Public Prosecutions of the Prosecutions Division (PD) of the Department of Justice (DoJ) from 18 December 2012 to 30 September 2017 to handle the substantial corruption case ESCC 2530/2012 (HKSAR v HUI Rafael Junior and four others).

**JUSTIFICATION**

Directorate setup of Prosecutions Division

2. At present, the Director of Public Prosecutions (DPP) (ranked at Law Officer (DL6)) is supported by four Principal Government Counsel (PGC) (DL3). The four PGC oversee the operation of their respective sub-divisions which, in turn, comprise 17 specialist sections, 15 of which are headed by a DPGC while two are headed by an Assistant Principal Government Counsel (APGC) (DL1). Each DPGC / APGC is responsible for specific areas of criminal advisory and advocacy work.

3. There is pressing need to create a DPGC post to lead a prosecution in relation to the substantial corruption case ESCC 2530/2012 (HKSAR v HUI Rafael Junior and four others) that is likely to be of prolonged duration (of five years or even longer) and strenuously contested.

### The case

4. The case involves eight charges – two of misconduct in public office, contrary to Common Law; three of conspiracy to commit misconduct in public office, contrary to Common Law and Section 159A of the Crimes Ordinance (Cap. 200); two of conspiracy to offer advantages to a public servant, contrary to Section 4(1)(a) of the Prevention of Bribery Ordinance (Cap. 201) and Section 159A of the Crimes Ordinance; and one of furnishing false information, contrary to Section 19(1)(b) of the Theft Ordinance (Cap. 210).

5. The defendants were charged on 13 July 2012 and were brought before the Eastern Magistracy on the same day. No pleas were taken and the case was adjourned until 12 October 2012 for mention. On 12 October 2012, by the consent of all parties, the case was further adjourned to 25 January 2013 for mention. The prosecution will seek to commit the defendants in this case for trial before the Court of First Instance. In the meantime, the prosecution would prepare the committal bundles and obtain overseas as well as banking evidence. More details of the case are set out in the press release issued by the Independent Commission Against Corruption (ICAC) on 13 July 2012 at **Annex A**.

6. Having regard to the background of the defendants and the company in question, as well as the complexity of the case given its nature and the gravity of the crime involved, our assessment is that this will likely be unprecedented and one of the biggest corruption-related cases in Hong Kong. We understand that the defendants have already separately engaged an extensive array of local Senior Counsel (SC) and juniors as well as overseas Queen's Counsel (QC). Based on our experience in handling past cases of a similar nature and scale, we expect the trial and the subsequent appeals (if any) in respect of this case to be extremely lengthy and will be vigorously contested.

### Interim staffing arrangements

7. Given the circumstances set out above, we need to handle this case with a high degree of professional skills to ensure that due care and attention are being exercised in every step we take. In this regard, our current plan is to engage outside lawyers (including a local SC and, subject to the necessary admission procedures under section 27 of the Legal Practitioners Ordinance (Cap. 159), overseas QC, plus one or more junior counsel) to handle the actual prosecution work. Internally, we

consider it necessary for the case to be managed by a dedicated team directly under the DPP (the Team). As there is imminent need for additional manpower to undertake the on-going work, with the approval of the Civil Service Bureau, a six-month supernumerary DPGC post has been created under delegated authority for the period from 18 June to 17 December 2012. The DPGC is supported by a fiat counsel (engaged on a continuous basis) plus a Senior Government Counsel (SGC) (who provides assistance on top of her own schedule on a need basis) to handle the case.

#### The longer-term staffing need

8. In the past few months, the Team has been working full steam with the investigation team of the ICAC in taking forward the case. In particular, the Team has been liaising with and advising the ICAC regarding follow-up actions on the outstanding investigation upon the arrest of the defendants in late March, reviewing the evidence gathered, so as to facilitate a decision to be made by the DPP on whether or not charges should be pressed against any of the suspects<sup>1</sup>. Independent advice from local and overseas senior counsel have also been sought to ensure that prosecution decisions are made fairly and impartially.

9. Since the decision made to prosecute and the charges laid on 13 July 2012, the Team has been working with the ICAC in preparation for the court hearings (including the mention hearings in the Eastern Magistracy, and the subsequent hearings before the committal court and the Court of First Instance) and attending to all case management matters – including taking appropriate measures to ensure that the evidence is in admissible form and that the same can be presented in an orderly and organised manner in court, as well as providing all necessary support to prosecuting counsel at the pre-trial stage and during trial proper. It should be noted that as overseas QC will only be in Hong Kong intermittently before the trial, he will need extremely strong support from the Team in the trial preparation as well as during the trial.

10. Taking into account the nature of the case, its particularly high profile and sensitivity, as well as the volume and complexity of the work that it will entail, we consider this case to be unprecedented in terms of workload when compared to any other mega cases that PD has handled in

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<sup>1</sup> The former and current Secretary for Justice, in order to avoid any possible perception of bias or improper influence, after satisfying themselves that the DPP has no connection with any persons involved in the case, have delegated to the DPP the authority to handle the case and if and when required to make any decision as to whether any prosecution action was warranted.

the past. Hence, we are of the view that there is need for the Team to be headed by a DPGC on a full-time basis. In particular, the Team will not only play a supporting role to the outside counsel but also a leading role in the Hong Kong Special Administrative Region Government in taking forward this case. Professional knowledge and expertise aside, the work would also demand a high level of management responsibility and skills. Against these substantial requirements, we consider that there is genuine and real need for the team-head post to be pitched at DPGC rank.

11. The job description of the proposed post is at **Annex B**. The organisation chart of PD showing the proposed post is at **Annex C**.

#### Other supporting staff

12. As for the supporting staff, we have critically reviewed the current level of one fiat counsel engaged on a continuous basis plus an SGC engaged on a part-time basis. The workload arising from the case so far is enormous: apart from the highly complex nature of the case involving a substantial amount of materials, we understand that the various defendants have separately engaged their own legal representatives involving an extensive array of local SCs and juniors as well as overseas QCs, and the resultant workload is comparable to that involved in handling a number of separate cases. To ensure that there is sufficient manpower in the Team so that it can effectively and efficiently handle the different teams of counsel representing the different defendants, and at the same time provide the essential solicitorial back-up to our team of outside lawyers (in particular overseas QC) in handling the actual prosecution work, we will separately create under delegated authority two dedicated time-limited posts (also for up to 30 September 2017) comprising one SGC post and one GC post for the purpose.

#### Alternatives explored

13. We have considered alternative staff redeployment other than the creation of the DPGC post but found that not feasible. Other DPGC in PD are tasked with, and fully tied up with, their respective directorate supervision, management functions and professional work, and it is not feasible to redeploy another DPGC officer to take up the work on top of his/her current duties without adversely affecting the discharge of their duties and compromising the quality of work. Indeed, there are already a number of identifiable mega cases in respect of which criminal prosecution has already been brought but the trial proper of them has not even started. At the same time, there are also a good number of other

criminal cases of similar complexity and sensitivity in relation to which criminal prosecution may likely be brought and are already receiving the personal attention of officers at DPGC level. Hence, it is practically not possible to further stretch the manpower at that level to absorb the additional work of the proposed DPGC post arising from the mega case concerned.

## **FINANCIAL IMPLICATIONS**

14. The proposed creation of the DPGC post in DoJ will bring about an additional notional annual salary cost at mid-point of \$1,696,200. The full annual average staff cost, including salaries and on-cost, is \$2,383,000. In addition, this proposal will necessitate the creation of one SGC post and one GC post, at a notional annual mid-point salary cost of \$1,949,940. The full annual average staff cost, including salaries and on-cost, is \$2,638,300. We have sufficient provision in the 2012-13 Estimates to meet the cost of this proposal and will include the resources required in the Draft Estimates of subsequent years.

## **ADVICE SOUGHT**

15. Members are invited to comment on the proposal. Subject to Members' support, we will seek the recommendation of the Establishment Subcommittee in November 2012 and approval from the Finance Committee afterwards.

Department of Justice  
October 2012



廉 政 公 署

INDEPENDENT COMMISSION AGAINST CORRUPTION

國 安 處

13 July 2012

Former Chief Secretary and four others face court for bribery and misconduct

A former Chief Secretary for Administration (CS) of the Hong Kong Government, three senior members of a listed company in Hong Kong (Company A) and a businessman appeared in Eastern Magistracy this (Friday) afternoon after being charged by the ICAC with bribery and misconduct offences involving payments and unsecured loans totalling over \$35 million.

The defendants were D1, 64, former CS of the Government of the Hong Kong Special Administrative Region and former managing director of the Mandatory Provident Fund Schemes Authority (MPFA); D2, 60, D3, 59, both joint chairmen of Company A; D4, 65, executive director of Company A; and D5, 61, businessman.

They faced eight charges - two of misconduct in public office and three of conspiracy to commit misconduct in public office; two of conspiracy to offer advantages to a public servant, contrary to Section 4(1)(a) of the Prevention of Bribery Ordinance and Section 159A of the Crimes Ordinance; and one of furnishing false information.

No pleas were taken. Magistrate Mr David Dufton adjourned the case until October 12 for mention.

D1 alone faced two misconduct charges, which alleged him of, in the course of or in relation to his public office, namely the Managing Director of MPFA and CS, having wilfully misconducted himself by accepting the rent free use of two flats and three unsecured loans totalling \$5.4 million from a subsidiary of Company A, failing to disclose or declare such matters to the MPFA and the Hong Kong Government, and involving himself in the lease renewal of the MPFA's office premises and in matters in his capacity as managing director of MPFA and CS, who was also the chairman of the Steering Committee of the West Kowloon Cultural District Project.

D1 and D2 faced a joint charge of conspiracy to commit misconduct in public office, alleging that they conspired together for D1 as CS to accept \$5 million from D2 for remaining favourably disposed to D2 and/or his interests.

D1 and D3 jointly faced a similar charge of conspiring together for D1 as CS to accept \$4.125 million through a company owned by D1 from Company A for D1's remaining favourably disposed to D3 and/or his interests.

D1 and D3 also jointly faced one count of furnishing false information on an invoice to purportedly show that the payment of \$4.125 million was for settlement of consultancy services provided by D1.

D1 and D3 were charged with one count of conspiring together to offer D1 the annual extensions of an unsecured loan of \$3 million advanced by the subsidiary of Company A as a reward for D1 to remain favourably disposed to D3 and/or his interests.

D1, D2, D4 and D5 were charged with one count of conspiracy to commit misconduct in public office, which alleged them of having conspired together for D1 as CS to accept a series of payments totalling \$8.35 million from D2, D4 and D5 for D1's remaining favourably disposed to D2 and/or his interests.

D1, D4 and D5 were also jointly charged with one count of conspiring together to offer D1 a series of payments totalling \$11.182 million from D4 and D5 as a reward for D1 to remain favourably disposed to D4 and/or his interests.

The above offences allegedly took place between June 2000 and January 2009.

D1 was granted cash bail of \$500,000, while D2 and D3 were each on cash bail of \$10 million. D4 was allowed cash bail of \$5 million, while D5's bail was \$200,000 cash.

D1 and D5 were also ordered not to leave Hong Kong, while the remaining defendants were required to inform the ICAC of their itineraries 24 hours before leaving Hong Kong. All defendants were ordered not to interfere with the prosecution witnesses.

The prosecution was represented by Director of Public Prosecutions Kevin Zervos and Acting Senior Assistant Director of Public Prosecutions Winnie Ho and assisted by ICAC officer Hazel Law.

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**Job Description**

**Senior Assistant Director of Public Prosecutions (Special Prosecution)**

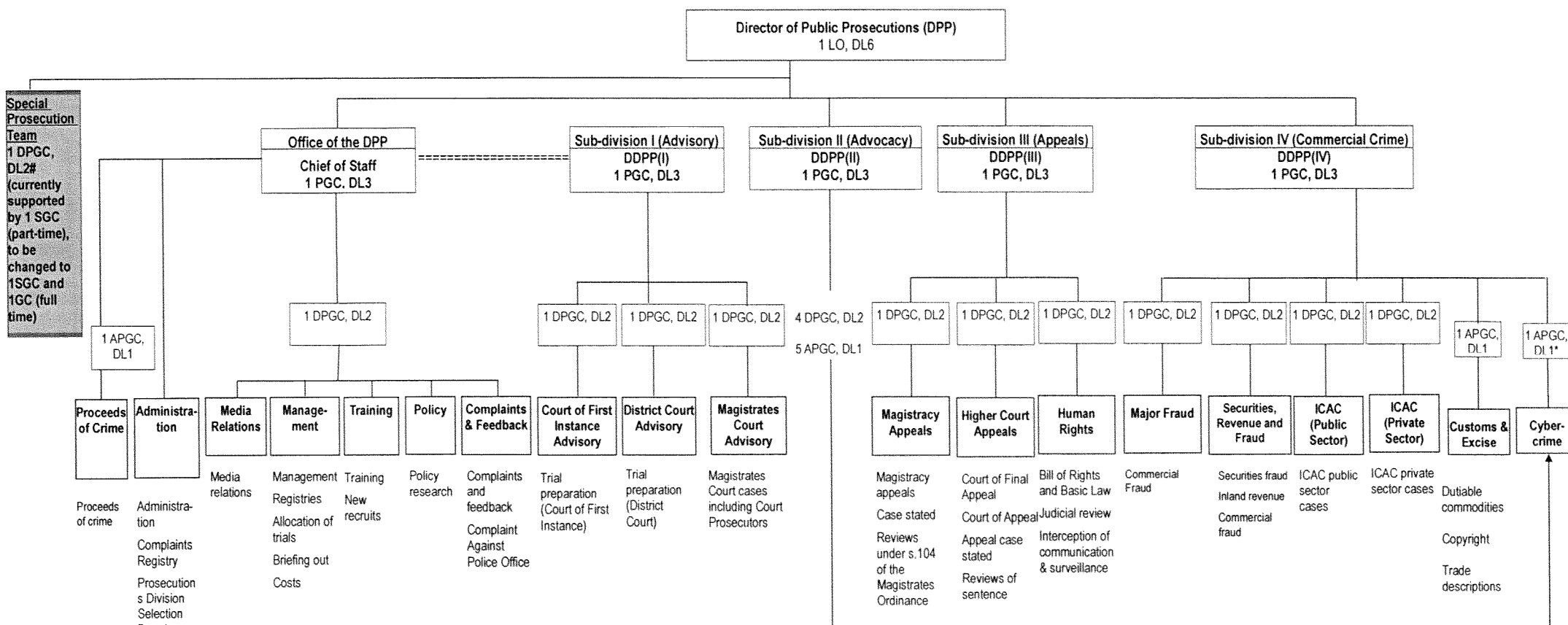
**Rank** : Deputy Principal Government Counsel (DL2)

**Responsible to** : Director of Public Prosecutions

**Main Duty and Responsibilities :**

1. To provide advice to the law enforcement agency in respect of the handling of the substantial corruption case ESCC 2530/2012 (HKSAR v HUI Rafael Junior and four others) (the case).
2. To provide all necessary support to the outside prosecuting counsel (local and / or overseas) at the pre-trial stage and during trial proper.
3. To perform a coordinating role between the relevant parties within the Hong Kong Government and the outside counsel in respect of the handling of the case.
4. To prepare the case for trial, including reviewing the evidence gathered, ensuring the evidence is in admissible form and the same is presented in an orderly and organised manner in court.
5. To handle any residual prosecution-related matters arising from the outcome of trial of the case.
6. Through the Public Relations and Information Unit of the Department, to handle enquiries from the media regarding the case.
7. To ensure smooth running of the Special Prosecution Team.

**Organisation Chart of the Prosecutions Division of the Department of Justice showing the Post Proposed to be created**



### Legend

LO, DL6	Law Officer, at DL6 rank
DDPP	Deputy Director of Public Prosecutions
PGC, DL3	Principal Government Counsel, at DL3 rank
DPGC, DL2	Deputy Principal Government Counsel, at DL2 rank
APGC, DL1	Assistant Principal Government Counsel, at DL1 rank

☐ Post proposed to be created

# 6-month supernumerary post created under delegated authority on 18 June 2012 and will expire on 17 December 2012; formal creation of a supernumerary post from 18 December 2012 to 30 September 2017 is proposed.

\* The APGC post is temporarily redeployed from Sub-division II (Advocacy) to specifically handle cybercrime cases and technology crime cases. The need to create a dedicated post will be reviewed in mid 2013.