

ITEM FOR ESTABLISHMENT SUBCOMMITTEE OF FINANCE COMMITTEE

HEAD 92 – DEPARTMENT OF JUSTICE Subhead 000 Operational expenses

Members are invited to recommend to Finance Committee the creation of the following supernumerary post in the Prosecutions Division of the Department of Justice from 18 December 2012 to 30 September 2017 –

1 Deputy Principal Government Counsel
(DL2) (\$133,150 - \$145,650)

PROBLEM

We need to strengthen the staffing support at the directorate level in the office of the Director of Public Prosecutions of the Prosecutions Division (PD) of the Department of Justice (DoJ) to handle the substantial corruption case ESCC 2530/2012 (HKSAR v HUI Rafael Junior and four others).

PROPOSAL

2. We propose to create a supernumerary post of Deputy Principal Government Counsel (DPGC) (DL2) in PD from 18 December 2012 to 30 September 2017.

/JUSTIFICATION

JUSTIFICATION

Directorate setup of Prosecutions Division

3. 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.

4. There is a 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

5. 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).

6. The defendants in the case in question 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

Encl. 1 Enclosure 1.

7. 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

8. Given the circumstances set out above, we need to handle this case with a high level of professional competency 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 several junior counsel) to handle the actual prosecution of the case in court.

9. Internally, we consider it necessary for the case to be managed by a dedicated team directly under the DPP (the Team). As there is immediate 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 before a longer term post can be created. The supernumerary post is being filled by an APGC on an acting basis, who was assigned to handle the case in accordance with established mechanism having regard to her experience and ability. 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

10. In the past few months, the Team has been working 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 action 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^{Note}. Independent advice from local and overseas senior counsel have also been sought.

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^{Note} 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.

11. 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 forthcoming 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 the trial proper. It should be noted that the prosecuting counsel, including overseas counsel, will need extremely strong support from the Team in the trial preparation and prosecution of the case at trial as well.

12. Taking into account the nature of the case, 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 the past. Hence, when the supernumerary post mentioned in paragraph 9 above expires on 17 December 2012, there is a need to create a DPGC post to head the Team on a full-time basis from 18 December 2012 to 30 September 2017. In particular, the Team will not only play a supporting role to the prosecuting counsel but also a leading role in taking forward the prosecutorial process in respect of 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.

Encl. 2 13. The job description of the proposed post is at Enclosure 2. The
Encl. 3 organisation chart of PD showing the proposed post is at Enclosure 3.

Non-directorate support

14. 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

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time provide the essential solicitorial back-up to our team of outside lawyers (in particular overseas counsel) 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 CONSIDERED

15. We have considered alternative staff redeployment other than the creation of the DPGC post but found that not feasible. At present, there are a total of 15 staff at DPGC level in PD, who are tasked with respective directorate supervision, management functions and professional work. As they are all tied up with their duties, 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. It is also not practicable to share out the additional work among a number of DPGC, as such arrangement will make the handling of the case highly ineffective and inefficient, and may adversely affect the standard of prosecution. Details of the major responsibilities and current workload of the DPGC in the various Sub-divisions of PD are set out in Enclosure 4.

Encl. 4

16. We have also considered the engagement of outside lawyer to handle the work and concluded that this is not advisable. Putting aside the higher costs involved, it would be more suitable and effective for the duties concerned to be performed by an experienced in-house counsel who will have the accumulated knowledge on the internal operation of the Department in general and experience in working with the ICAC in taking forward the prosecution of corruption cases and undertaking the preparatory and coordinating work for the actual trial.

17. The creation of a dedicated position at directorate level to deal with a substantial case is in line with previous practice in handling cases of a significant scale. In some mega cases in the past (such as the “Carrian Case”), the Administration had arranged through other means for officers at DPGC-equivalent rank to handle the work on a dedicated basis (e.g. engagement of consultants or redeployment of post). The duration that the dedicated officers were engaged tied in with the main part of the judicial proceedings in respect

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of the case. In the current case, having regard to the unavailability of any post at suitable rank for redeployment, it is necessary to seek approval for the creation of a supernumerary DPGC post.

FINANCIAL IMPLICATIONS

18. 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 staff 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 staff on-cost, is \$2,638,000. 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.

PUBLIC CONSULTATION

19. We consulted the Legislative Council Panel on Administration of Justice and Legal Services on 30 October 2012. The Panel has no objection to the Department submitting the proposal to the Establishment Subcommittee and Finance Committee. Members enquired how the candidate for filling the post would be selected. We explained that currently, the six-month supernumerary DPGC post created under delegated authority mentioned in paragraph 9 above is filled by an APGC on an acting basis, who was assigned to handle the case in accordance with established mechanism having regard to her experience and ability. If the creation of the proposed supernumerary post is approved by the Finance Committee, it is intended that the officer would fill the post and continue to handle the work concerned on an acting basis. In accordance with established mechanism for the selection of suitable officers for promotion or acting appointment in the civil service, the continued acting arrangement of the officer in the post would be reviewed every year together with all other eligible officers. In general, if the officer continues to perform satisfactorily, she could continue to fill the post for continuity. This intended arrangement will cause the least disruption to the preparation work for the trial.

20. Members also enquired about the ranking of the post, and whether the post should be ranked at APGC given that it was filled by an officer at that rank on an acting basis. We explained that the ranking for the post was determined based on actual operational need and having regard to the nature, profile and sensitivity of the case, as well as the volume and complexity of the work that it would entail. We also explained that the filling of the post was decided on the basis of the officer's ability, experience and suitability.

21. Some members asked whether the post was genuinely needed for over four years. We explained that the proposed duration of the post was based on the nature and complexity of the case as well as our experience in handling similar past cases, and the possibility of appeal was taken into account. We assured members that the post was created solely for the purpose of handling the case in question and the post would not be kept for a duration longer than would be necessary.

22. Members also requested information on PD's experience in handling past cases of a similar nature as well as the viability of other alternative arrangements. The detailed information is provided in paragraphs 15 to 17 above.

ESTABLISHMENT CHANGES

23. The establishment changes in the DoJ for the last two years are as follows –

Establishment (Note)	Number of posts			
	Existing (as at 1 October 2012)	As at 1 April 2012	As at 1 April 2011	As at 1 April 2010
A	87+(1)#	87*	87*	73*+(1)
B	339	339	335	340
C	760	757	748	731
Total	1 186+(1)	1 183	1 170	1 144+(1)

Note :

A - ranks in the directorate pay scale or equivalent

B - non-directorate ranks, the maximum pay point of which is above MPS Point 33 or equivalent

C - non-directorate ranks, the maximum pay point of which is at or below MPS Point 33 or equivalent

() - number of supernumerary directorate post

- as at 1 October 2012, there was no unfilled directorate post

* - there was an increase of 14 directorate posts at the new rank of APGC (DL1) from 1 April 2010 to 1 April 2012, which were approved by the FC on 28 January 2011 vide EC(2010-11)12.

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CIVIL SERVICE BUREAU COMMENTS

24. The Civil Service Bureau supports the proposed creation of the supernumerary DPGC post. The grading and ranking of the proposed post are considered appropriate having regard to the level and scope of responsibilities.

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

25. As the post is proposed on a supernumerary basis, its creation, if approved, will be reported to the Standing Committee on Directorate Salaries and Conditions of Service in accordance with the agreed procedure.

Department of Justice
November 2012



廉政公署

INDEPENDENT COMMISSION AGAINST CORRUPTION

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)

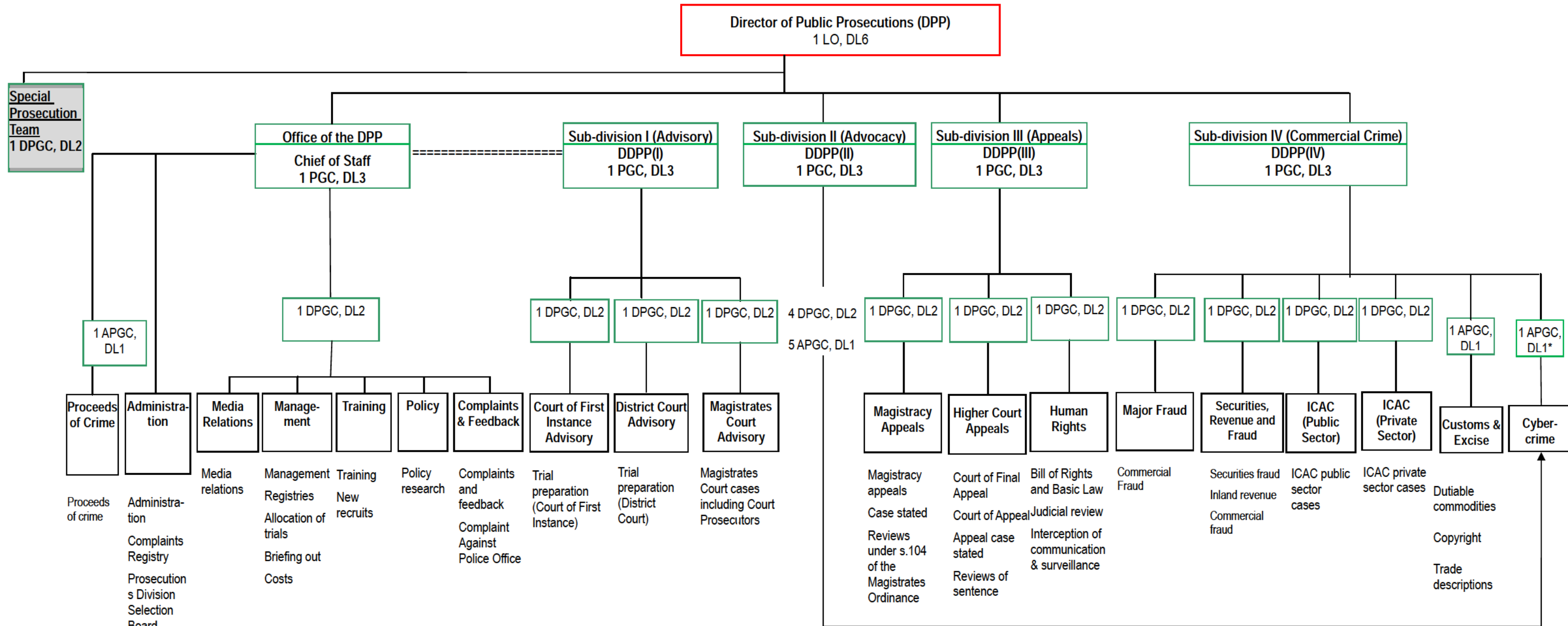
Rank : Deputy Principal Government Counsel (DL2)

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.

Existing and Proposed 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

* 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.

**Major Responsibilities and Current Workload of the
Deputy Principal Government Counsel (DPGC) in the various Sub-divisions
of the Prosecutions Division (PD) of the Department of Justice**

- **Office of the Director of Public Prosecutions (ODPP)** : The DPGC in ODPP handles all management responsibilities and policy development matters of the Division. She is also the officer overall in charge of the negotiation, settlement and taxation of court costs of all criminal cases. With training and development of counsel being one of the key areas pursued by PD in recent years, on top of her already very full schedule in respect of management, media relations, complaint-handling and court costs-related matters, the DPGC is working full steam on various training initiatives and updating of PD publications. On policy matters, PD has also taken a more and more active role in providing support to legislative changes proposed by the Administration and responding to consultations by the Law Reform Commission over criminal matters.
- **Sub-division I (Advisory)** : The three DPGC in this sub-division are responsible for providing advice on and preparing cases for trial. With the increase in the complexity of the cases, workload in terms of trial preparation is increasingly heavy. They also have to undertake heavy management and supervisory duties in leading large teams of counsel (with about 10 to 20 counsel in each team). The plates of the three DPGC handling advisory matters in relation to Court of First Instance, District Court and Magistrates' Courts respectively are full.
- **Sub-division II (Advocacy)** : Served by four DPGC, this sub-division is tasked to prosecute sensitive and major cases at all levels of the criminal court, as well as to assist the coroner with inquests. Given the complexity of the cases concerned, the workload arising from the necessary preparation of the cases is very heavy. Moreover, the number of court days is on a rising trend. Apart from advocacy work, the sub-division is also engaged in the advocacy training of new public prosecutors joining the Department and in relevant training activities in respect of court prosecutors and law enforcement agencies.
- **Sub-division III (Appeals)** : This sub-division is responsible for advising on and conducting appellate advocacy work including Basic Law, Human Rights and Judicial Review : DPGC III(1) considers requests for reviews under section 104 of the Magistrates Ordinance (Cap. 227) so as to ensure that wrong decisions made at the magistracy level are reviewed and corrected within a very tight time frame; DPGC III(2) has the responsibility of ensuring that appeal

cases in the Court of Appeal and the Court of Final Appeal are properly processed, as well as monitoring decisions of acquittal and sentences in the higher courts and to take prompt appellate actions when such decisions or sentences are considered wrong in principle or manifestly inappropriate; DPGC III(3) shoulders the responsibility of providing expert advice on human rights related issues whenever they are raised by defendants in trials or appellants in appeals, and is also consulted when legislative proposals are being vetted for human rights compliance purposes. As it has been the practice of PD not to brief out appellate works as far as possible, all three DPGC are deployed to prosecute such appeal cases regularly. From time to time, the DPGC also prosecute trials involving difficult or sensitive issues. Together with their supervisory responsibilities, all three officers shoulder a very heavy workload.

- **Sub-division IV (Commercial Crime)** : Cases handled by the teams in this sub-division are by nature complex and sensitive, and the four DPGC in the sub-division (specialising in Major Fraud; Securities, Revenue and Fraud; private sector ICAC cases; and public sector ICAC cases respectively) are already fully engaged. They supervise the advisory and court work of counsel in their respective teams for quality control and consistency and provide input from time to time. They also personally advise on more complicated cases of their teams, prosecute the trials and appeals. In fact, a good number of the mega crime cases mentioned in paragraph 15 of the paper for which criminal prosecution has already been brought but the trial proper has not started yet are commercial crime cases handled by the sub-division and are attended to by the DPGC.
