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Replies to initial written questions raised by Finance Committee Members in examining the Estimates of Expenditure 2021-22

Director of Bureau : Secretary for Justice

Session No. : 2

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CONTROLLING OFFICER'S REPLY

SJ001

(Question Serial No. 0521)

Head: (92) Department of Justice

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

Programme: (1) Prosecutions

(2) Civil

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

Director of Bureau: Secretary for Justice

Question:

Please set out the following information for the past 3 years:

1. the total costs of briefing out;
2. the total costs of briefing out in relation to criminal cases, among which the 10 cases that incurred the highest costs and the respective costs incurred;
3. the total costs of briefing out in relation to civil cases, among which the 10 cases that incurred the highest costs and the respective costs incurred;
4. the total costs of briefing out in relation to construction cases, among which the 10 cases that incurred the highest costs and the respective costs incurred;
5. the total costs of briefing out in relation to judicial review cases, among which the 10 cases that incurred the highest costs and the respective costs incurred.

Asked by: Hon CHENG Chung-tai (LegCo internal reference no.: 35)

Reply:

1. The total costs of briefing out in the past 3 financial years are as follows:

| Financial year | Expenditure (\$) |
|----------------|------------------|
| 2017-18 | 303,504,219 |
| 2018-19 | 345,528,340 |
| 2019-20 | 311,140,383 |

2. The total costs of briefing out in relation to criminal cases in the past 3 financial years are as follows:

| Financial year | Expenditure (\$) |
|----------------|------------------|
| 2017-18 | 162,850,719 |
| 2018-19 | 139,731,253 |
| 2019-20 | 129,181,035 |

3. The total costs of briefing out in relation to civil cases in the past 3 financial years are as follows:

| Financial year | Expenditure (\$) |
|----------------|------------------|
| 2017-18 | 87,127,907 |
| 2018-19 | 115,083,722 |
| 2019-20 | 103,811,638 |

4. The total costs of briefing out in relation to construction cases involving the Government in the past 3 financial years are as follows:

| Financial year | Expenditure (\$) |
|----------------|------------------|
| 2017-18 | 53,525,593 |
| 2018-19 | 90,713,365 |
| 2019-20 | 78,147,710 |

5. The total costs of briefing out in relation to judicial review cases in the past 3 financial years are as follows:

| Financial year | Expenditure (\$) |
|----------------|------------------|
| 2017-18 | 37,955,471 |
| 2018-19 | 42,637,018 |
| 2019-20 | 35,946,810 |

The Department of Justice annually submits to the Finance Committee of the Legislative Council an information paper on “Legal Expenses for Briefing Out Cases Not Covered by Approved Fee Schedules” providing details of cases involving relatively high briefing-out costs for the preceding financial year. We have submitted the reports for 2017-18 and 2018-19 and the report for 2019-20 will be submitted as soon as possible.

- End -

CONTROLLING OFFICER'S REPLY

SJ002

(Question Serial No. 0752)

Head: (92) Department of Justice

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

Programme: (1) Prosecutions

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

Director of Bureau: Secretary for Justice

Question:

Please set out the numbers of items of advice provided for each of the law enforcement agencies in the past 3 years.

Asked by: Hon CHENG Chung-tai (LegCo internal reference no.: 36)

Reply:

The numbers of items of legal advice provided by the Prosecutions Division in the past 3 years are tabulated below:

| Year | 2018 | 2019 | 2020 |
|--|--------|--------|--------|
| Number of items of legal advice provided | 13 105 | 12 225 | 13 895 |

The Department of Justice does not maintain breakdown of the legal advice provided for individual law enforcement agencies.

- End -

CONTROLLING OFFICER'S REPLY

SJ003

(Question Serial No. 0753)

Head: (92) Department of Justice

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

Programme: (2) Civil

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

Director of Bureau: Secretary for Justice

Question:

Please set out the numbers of civil litigation cases involving the Government in the past 3 years.

Asked by: Hon CHENG Chung-tai (LegCo internal reference no.: 37)

Reply:

The number of civil litigation cases involving the Government in the past 3 years are set out below:

| Year | Number of civil litigation cases involving the Government^{Note} |
|-------------|---|
| 2018 | 3 788 |
| 2019 | 5 213 |
| 2020 | 3 427 |

Note: The figures include new proceedings brought by or against the Government in the relevant year.

- End -

CONTROLLING OFFICER'S REPLY

SJ004

(Question Serial No. 0754)

Head: (92) Department of Justice

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

Programme: (4) Law Drafting

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

Director of Bureau: Secretary for Justice

Question:

Please set out the legislative proposals submitted to the various panels of the Legislative Council for discussion in the past 3 years and the latest progress as at 28 February 2021.

Asked by: Hon CHENG Chung-tai (LegCo internal reference no.: 38)

Reply:

The stage at which a legislative proposal is submitted to a panel of the Legislative Council for discussion is determined by the bureaux concerned. Such submissions often take place before the involvement of the officers of the Law Drafting Division (LDD). Therefore, LDD does not maintain any records of the relevant information and figures required for answering the Honourable Member's question.

- End -

CONTROLLING OFFICER'S REPLY

SJ005

(Question Serial No. 2856)

Head: (92) Department of Justice

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

Programme: (-) Not Specified

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

Director of Bureau: Secretary for Justice

Question:

Please advise on the number of vehicle(s) procured for the Secretary for Justice last year, the actual maintenance expenditure and the number of usage of such vehicle(s); and the number of vehicle(s) to be procured this year and the estimated expenditure involved.

Asked by: Hon CHENG Chung-tai (LegCo internal reference no.: 245)

Reply:

The Department of Justice (DoJ) did not procure any new vehicle for the Secretary for Justice (SJ) in 2020-21, nor has it any plan to do so in 2021-22 for the time being. The actual maintenance expenditure on the vehicle currently used by SJ is about \$40,000 (as at 28 February 2021).

SJ routinely uses office vehicle to travel to and from different destinations to attend official functions, etc. according to operational needs, hence a large number of trip records are involved. DoJ has not compiled information on the number of such usage.

- End -

CONTROLLING OFFICER'S REPLY

SJ006

(Question Serial No. 2857)

Head: (92) Department of Justice

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

Programme: (-) Not Specified

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

Director of Bureau: Secretary for Justice

Question:

Please set out the places, dates, number and actual expenditure of duty visits made by the Secretary for Justice outside Hong Kong last year.

Asked by: Hon CHENG Chung-tai (LegCo internal reference no.: 246)

Reply:

Information on the duty visits of the Secretary for Justice (SJ) in 2020-21 is as follows:

| Date of visit | Place of visit | Purpose of visit and content of event | Total Expenditure |
|---|----------------------|---|----------------------------------|
| 2020-21 (Up to February 2021) (3 times) ^{Note 1} | Beijing, Shenzhen | To accompany the Chief Executive on a visit to Beijing regarding the enactment of laws by the Standing Committee of the National People's Congress for establishing and improving the legal system and enforcement mechanisms for the Hong Kong Special Administrative Region (HKSAR) to safeguard national security, to attend the celebration of the 40th anniversary of the establishment of the Shenzhen Special Economic Zone as a member of the HKSAR Government delegation, and to sign the Supplemental Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the HKSAR with the Supreme People's Court | About \$36,000 ^{Note 2} |

Remarks:

Note 1 The duty visits are short trips.

Note 2 Subject to the actual itinerary of each visit, the total expenditure may include charges for accommodation and passage, subsistence allowance for duty outside Hong Kong and sundry expenses of SJ and her entourage from SJ's Office (if any).

- End -

CONTROLLING OFFICER'S REPLY

SJ007

(Question Serial No. 2885)

Head: (92) Department of Justice

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

Programme: (2) Civil

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

Director of Bureau: Secretary for Justice

Question:

It is reported in the media that 731 unlawful detention claims were made against the Immigration Department in the past 5 years, all of which were settled out of court.

In relation to the Department of Justice's estimates under Programme (2): Civil, please provide information on the cost incurred by the Department of Justice in dealing with matters relating to unlawful detention (including providing legal advice and representing the Government in tribunals and courts), for each year from 2014-2020.

Asked by: Hon CHENG Chung-tai (LegCo internal reference no.: 212)

Reply:

Unlawful detention claims made against the Immigration Department are referred to the Civil Division (CD) of the Department of Justice (DoJ) for handling. According to our records, some of these cases have been settled out of court, some are being contested by DoJ, some have been withdrawn by the plaintiffs, and some are being processed.

CD provides legal advice to Government bureaux and departments and represents the Government in all civil litigation and tribunal cases, including detention cases and related claims. These detention cases and related claims are handled by DoJ staff among their other duties, and the manpower and expenditure involved cannot be separately identified.

- End -

CONTROLLING OFFICER'S REPLY

SJ008

(Question Serial No. 1630)

Head: (92) Department of Justice

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

Programme: (1) Prosecutions

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

Director of Bureau: Secretary for Justice

Question:

1. As regards the actual expenditure for the past 3 years and the estimated expenditure for 2021-22, please set out the numbers of Government Counsel in each section of the Prosecutions Division, together with their salaries and allowances.

2. Please provide information on various specialist sections with reference to the following 16 areas for the past 3 years:

| Area | Number involved | Average number of days required to provide legal advice or reply upon receipt of instructions/requests | Average number of days required to take follow-up action on criminal cases upon referral by client department |
|--------------------------------|-----------------|--|---|
| Corruption | | | |
| Fraud | | | |
| Labour and immigration | | | |
| Vice and obscenity | | | |
| Gambling | | | |
| Anti-terrorism | | | |
| Triads and organised crime | | | |
| Human rights and the Basic Law | | | |
| Complaints against the Police | | | |
| Narcotics | | | |
| Recovery of proceeds of crime | | | |
| Customs and excise | | | |

| | | | |
|------------------------|--|--|--|
| Computer crime | | | |
| Copyright infringement | | | |
| Market misconduct | | | |

Asked by: Hon CHOW Ho-ding, Holden (LegCo internal reference no.: 6)

Reply:

1. From time to time we review the volume of work and manpower of various sections in the Prosecutions Division (PD), deploying staff according to operational needs; hence information on the number of Government Counsel in each section together with their salaries and allowances is not available. The numbers of Government Counsel in PD and the salary expenses involved for the past 3 years are as follows -

| | As at 1 March 2019 | As at 1 March 2020 | As at 1 March 2021 |
|--|-----------------------|-----------------------|-----------------------|
| Strength | 141 | 150 | 152 |
| Notional annual mid-point salary value | \$185,976,600 | \$206,295,900 | \$220,198,920 |

In 2021-22, the establishment of Government Counsel in PD is 170 and the total notional annual mid-point salary value is \$251,565,420.

2. The numbers of items of legal advice provided by PD for the past 3 years are tabulated below -

| Year | 2018 | 2019 | 2020 |
|--|--------|--------|--------|
| Number of items of legal advice provided | 13 105 | 12 225 | 13 895 |

PD at all times strives to provide legal advice to law enforcement agencies as quickly as practically possible. The actual time taken to provide substantive advice on individual cases would however depend on a number of factors, including the nature and complexity of the case, and the quantity of the evidence and materials involved. Given the large volume of legal advice provided each year, PD does not maintain statistics by area of criminal offence involved in each case or in respect of the time required to provide legal advice/take follow-up action for each case.

- End -

CONTROLLING OFFICER'S REPLY

SJ009

(Question Serial No. 1631)

Head: (92) Department of Justice

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

Programme: (1) Prosecutions

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

Director of Bureau: Secretary for Justice

Question:

1. Please set out the numbers of appeals involved in the past 3 years and in 2021-22 in each level of court, broken down by those conducted by Government Counsel and those conducted by barristers and solicitors instructed to prosecute.

Asked by: Hon CHOW Ho-ding, Holden (LegCo internal reference no.: 7)

Reply:

The numbers of appeals handled by Government Counsel and by barristers and solicitors instructed to prosecute (“fiat counsel”) at appeal courts in the past 3 years are tabulated below:

| Number of appeals handled at appeal courts | | 2018-19 | | 2019-20 | | 2020-21 (up to 31 December 2020) | |
|--|-----------------------|--------------------|--------------|--------------------|--------------|-------------------------------------|--------------|
| | | Government Counsel | Fiat Counsel | Government Counsel | Fiat Counsel | Government Counsel | Fiat Counsel |
| Appeal Court | Court of Final Appeal | 178 | 9 | 83 | 12 | 61 | 0 |
| | Court of Appeal | 412 | 21 | 371 | 4 | 312 | 19 |
| | Magistracy Appeal | 604 | 4 | 599 | 1 | 270 | 6 |
| Total | | 1 194 | 34 | 1 053 | 17 | 643 | 25 |

The numbers of appeals handled by Government Counsel and fiat Counsel at appeal courts in 2021-22 cannot be anticipated.

- End -

CONTROLLING OFFICER'S REPLY

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|--------------|
| SJ010 |
|--------------|

(Question Serial No. 1632)

Head: (92) Department of Justice

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

Programme: (1) Prosecutions

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

Director of Bureau: Secretary for Justice

Question:

1. Please set out the following information relating to the conviction rates at the Magistrates' Courts, the District Court and the Court of First Instance for the past 3 years:

| | Number of cases conducted by Court Prosecutors | Number of cases conducted by Government Counsel | Number of cases conducted by barristers and solicitors instructed |
|--|--|---|---|
| Defendants convicted after trial | | | |
| Defendants convicted after trial and defendants convicted on their own pleas | | | |

Asked by: Hon CHOW Ho-ding, Holden (LegCo internal reference no.: 8)

Reply:

The Department of Justice does not maintain separate breakdown of the conviction rates of cases conducted by Court Prosecutors, Government Counsel and by barristers and solicitors instructed to prosecute ("fiat counsel").

The numbers of cases conducted by Government Counsel and by fiat counsel instructed to prosecute in place of Government Counsel in the Magistrates' Courts, the District Court and the Court of First Instance for the past 3 years are:

| Number of cases conducted | 2018-19 | | 2019-20 | | 2020-21 (up to 31 December 2020) | |
|---------------------------|--------------------|------------------|--------------------|------------------|-------------------------------------|------------------|
| | Government Counsel | Fiat Counsel | Government Counsel | Fiat Counsel | Government Counsel | Fiat Counsel |
| Magistrates' Courts | 163 | 593 ¹ | 102 | 548 ¹ | 177 | 824 ¹ |
| District Court | 757 | 581 | 725 | 501 | 587 | 566 |
| Court of First Instance | 346 | 169 | 371 | 120 | 170 | 48 |
| Total | 1 266 | 1 343 | 1 198 | 1 169 | 934 | 1 438 |

¹ Apart from prosecuting in the Magistrates' Courts in place of Government Counsel, fiat counsel are also engaged to prosecute in the Magistrates' Courts in place of Court Prosecutors, attending to all cases before a particular magistrate on each day or half day. Such engagement is on court-day basis rather than case-based, and the statistics of prosecution work handled by Court Prosecutors are counted on the same basis. We are therefore unable to provide a separate breakdown on the number of cases handled by Court Prosecutors and fiat counsel instructed to prosecute in place of Court Prosecutors. The numbers of court days undertaken by Court Prosecutors and by fiat counsel instructed to prosecute in place of Court Prosecutors in the Magistrates' Courts for the past 3 years are:

| Number of court days undertaken in the Magistrates' Courts | 2018-19 | 2019-20 | 2020-21 (up to 31 December 2020) |
|--|---------|---------|-------------------------------------|
| Court Prosecutors | 7 757 | 7 271 | 6 509 |
| Fiat Counsel | 4 668 | 3 097 | 1 984 |

The conviction rates at the Magistrates' Courts, the District Court and the Court of First Instance for the past 3 years are tabulated below:

| | 2018 | 2019 | 2020 |
|--|------|------|------|
| Magistrates' Courts | | | |
| - defendants convicted after trial (%) | 57.5 | 54.6 | 52.4 |
| - defendants convicted after trial and defendants convicted on their own pleas (%) | 71.5 | 68.3 | 65.1 |
| District Court | | | |
| - defendants convicted after trial (%) | 59.2 | 67.4 | 70.5 |
| - defendants convicted after trial and defendants convicted on their own pleas (%) | 89.8 | 92.9 | 93.5 |
| Court of First Instance | | | |
| - defendants convicted after trial (%) | 67.9 | 60.7 | 56.3 |
| - defendants convicted after trial and defendants convicted on their own pleas (%) | 90.8 | 90.0 | 88.8 |

- End -

CONTROLLING OFFICER'S REPLY

SJ011

(Question Serial No. 1633)

Head: (92) Department of Justice

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

Programme: (1) Prosecutions

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

Director of Bureau: Secretary for Justice

Question:

1. As regards the actual expenditure for the past 3 years and the estimated expenditure for 2021-22, please set out the work and expenditure of the Prosecutions Division (PD) on enhancing the public's understanding of the criminal justice system and their role in the system:

- i) the details of and expenditure for the internal events organised by the Department of Justice (DoJ); and
- ii) the organisations, districts and activities involved in or details of any open or private events organised by outside organisations that DoJ participated in or co-hosted.

Asked by: Hon CHOW Ho-ding, Holden (LegCo internal reference no.: 9)

Reply:

Since the introduction of the "Vision 2030 for Rule of Law" initiative in 2019, DoJ has stepped up and focused its efforts on various public education and promotional activities. These include, among others, "Studio DoJ" launched in early 2020 to disseminate basic legal knowledge to the general public through a series of animated short videos; and the launch of "Rule of Law through Drama" project for all local primary schools in February this year, with the aim to educating primary school students on the proper understanding of the rule of law and developing their law-abiding awareness through performances and live interactions.

Meanwhile, under the "Vision 2030 for Rule of Law" initiative, DoJ also supports various projects organised by other institutions on the promotion of the rule of law, including the "Pilot Scheme on Rule of Law Education for Secondary School Students" launched by the Hong Kong Policy Research Institute in the 2020/21 school year to promote the understanding and proper recognition of the core concepts of the rule of law among secondary school students through legal seminars and interactive group discussions; the "e-Resources for Rule of Law and Basic Law" produced by the Basic Law Foundation which provides a series of teaching materials and seminars covering topics on Constitutional

law, the Basic Law and the rule of law for teachers; and the training course entitled “Respecting the Law, Reinforcing the Rule of Law” co-organised by the Endeavour Education Centre and the Education Bureau for teachers to strengthen their understanding on topics such as Constitutional law, the Basic Law, national security, Hong Kong’s legal system and the rule of law through seminars and small group discussions. Regarding the “Vision 2030 for Rule of Law” 10-year initiative, please refer to Paper No. CB(4)314/20-21(03) of the Legislative Council Panel on Administration of Justice and Legal Services.

In addition, over the years, DoJ, including PD, has been committed to organising various public relations activities, including the “Meet the Community” Programme and the “Prosecution Week”, through which the public will come to know not only more about its work and how prosecutorial decisions are made but also, more importantly, the role that they, as citizens of Hong Kong, can play in furthering the interests of criminal justice.

The “Meet the Community” Programme has been run by PD for the past 3 years with a view to enhancing public understanding (in particular the young people) of the criminal justice system and their role in the system as well as the importance of the rule of law. Under the programme, our prosecutors visit schools and other interested community institutions to give talks on various topics related to their work. Apart from this, PD also organised the “Prosecution Week” in 2018 and 2019 with the aim to engage the general public, so as to deepen their understanding of the criminal justice system. The “Prosecution Week” comprises various lively and informative activities, e.g. school talks, guided visits to courts and different types of competitions.

The staff costs and other related expenses for the above activities have been and will continue to be absorbed by existing resources of DoJ. The actual and estimated expenditure involved in these activities cannot be separately identified.

- End -

CONTROLLING OFFICER'S REPLY

SJ012

(Question Serial No. 1634)

Head: (92) Department of Justice

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

Programme: (4) Law Drafting

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

Director of Bureau: Secretary for Justice

Question:

1. Provision for 2021-22 is \$17.9 million (14%) [*sic*] higher than the revised estimate for 2020-21 mainly due to the anticipated increase in general departmental expenses and filling of vacancies. Please set out a specific breakdown of the anticipated increase in general departmental expenses and whether they are recurrent or non-recurrent expenditures. Please also set out the number of vacancies to be filled.
2. Regarding the net decrease of 4 posts in 2021-22, what is the expenditure involved?

Asked by: Hon CHOW Ho-ding, Holden (LegCo internal reference no.: 11)

Reply:

1. The 2020-21 Revised Estimates reflect underspending that is largely due to the COVID-19 pandemic. The 2021-22 Estimates are drawn up on the basis that the Department will essentially resume normal operation in the upcoming financial year. Therefore, there is a noticeable difference between the 2021-22 Estimates and the 2020-21 Revised Estimates. By comparing the 2021-22 Estimates for Programme (4) under Head 92 against the 2020-21 Original Estimates, there is actually a slight decrease of 1%.
2. The net decrease of 4 posts in 2021-22 will result in a reduction in expenditure of \$1.97 million.

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CONTROLLING OFFICER'S REPLY

SJ013

(Question Serial No. 1664)

Head: (92) Department of Justice

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

Programme: (-) Not Specified

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

Director of Bureau: Secretary for Justice

Question:

1. Please advise on the numbers of Non-Civil Service Contract (NCSC) staff employed by the Secretary for Justice's Office, the related expenditure and their schedules of duties in the past 3 years and the estimates for 2021-22.

2. Are there any restrictions on the establishment of NCSC staff employed by the Secretary for Justice and the expenditure incurred? If yes, what are the ceilings for the establishment and expenditure, and limit on the schedules of duties? If not, what are the reasons for not imposing such restrictions?

Asked by: Hon CHOW Ho-ding, Holden (LegCo internal reference no.: 56)

Reply:

1. The numbers of Non-Civil Service Contract (NCSC) staff employed by the Secretary for Justice's Office (SJ's Office) as at 30 June of 2018, 2019 and 2020 are set out below:

| 2018 | 2019 | 2020 |
|------|------|----------------|
| - | - | 1 [#] |

To assist in the development of and publicity for the work of the Department of Justice (DoJ)

The expenditures on the emoluments (including Mandatory Provident Fund contribution, annual leave pay and terminal gratuity) of the NCSC staff employed by SJ's Office in the past 3 financial years are set out below:

| 2018-19 (\$'000) | 2019-20 (\$'000) | 2020-21 (\$'000) |
|---------------------|---------------------|---------------------|
| - | 796 | 1,367 |

2. Under the NCSC Staff Scheme, Heads of Bureaux/Departments (B/Ds) may employ NCSC staff to meet changing operational and service needs that (a) may be time-limited, seasonal, or subject to market fluctuations; or (b) require staff to work less than the conditioned hours; or (c) require tapping the latest expertise in a particular area from the labour market; or (d) the mode of service delivery of which is under review or likely to be changed. Furthermore, a ceiling on the number of NCSC staff has been set by the Civil Service Bureau (CSB) for each B/D in the light of their specific operational needs. Prior approval from CSB is required for employing NCSC staff exceeding the prescribed ceiling.

As such, NCSC staff are employed by the various divisions/units (including SJ's Office) of DoJ in accordance with the above requirements having regard to operational needs and the estimated operational expenses.

- End -

CONTROLLING OFFICER'S REPLY

SJ014

(Question Serial No. 3163)

Head: (92) Department of Justice

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

Programme: (2) Civil

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

Director of Bureau: Secretary for Justice

Question:

1. Please provide information on the performance of the Civil Division in respect of the following matters in the Estimates for the past 3 years and 2021-22:

| Matter | Number of items of legal advice provided upon receipt of instructions/ requests | Number of follow-up actions taken on civil litigation cases upon referral by client department |
|--|---|--|
| Basic Law and Bill of Rights | | |
| Administrative law | | |
| Immigration | | |
| Revenue | | |
| Charities and trusts | | |
| Contempt of court | | |
| Election | | |
| Contractual/commercial disputes | | |
| Personal injuries and other damages claims | | |
| Land | | |
| Building | | |
| Town planning | | |
| Environment | | |

Asked by: Hon CHOW Ho-ding, Holden (LegCo internal reference no.: 10)

Reply:

The number of items of legal advice provided and the number of civil litigation cases involving the Government handled by the Civil Division (CD) in the past 3 years, together with the estimated figures for 2021 are set out below:

| Year | Number of items of legal advice provided | Number of civil litigation cases involving the Government |
|-----------------|---|--|
| 2018 | 15 587 | 3 788 |
| 2019 | 14 072 | 5 213 |
| 2020 | 15 116 | 3 427 |
| 2021 (Estimate) | 15 620 | 3 415 |

CD of the Department of Justice advises government bureaux and departments on legal issues as required from time to time over a wide variety of issues. Given the large volume of advice given each year, CD does not keep any statistical breakdown of the number of each piece of advice given. As to the civil litigation cases involving the Government, we do not maintain any breakdown of such cases in relation to individual matters or relevant departments.

- End -

CONTROLLING OFFICER'S REPLY

SJ015

(Question Serial No. 3067)

Head: (92) Department of Justice

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

Programme: (1) Prosecutions

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

Director of Bureau: Secretary for Justice

Question:

Hong Kong experienced incidents such as “Occupy Central”, the “Mong Kok Riot” and “disturbances arising from opposition to the extradition law amendments” in 2014, 2016 and 2019 respectively involving confrontation and unlawful disruptions of social order. Regarding these incidents, would the Administration inform this Committee of the following:

1. Given the current slow pace of criminal prosecutions, will the Government consider briefing out more cases so as to counter the growing perception of “justice delayed is justice denied”?
2. How many Government Counsel are currently responsible for criminal prosecutions?

Asked by: Hon HO Kwan-yiu, Junius (LegCo internal reference no.: 28)

Reply:

1. The Department of Justice (DoJ) has all along maintained communication with the Police to allow early and effective follow-up of such cases. Nevertheless, the time required from commencement of investigation to institution of prosecution for each case depends on various factors, such as the time required for investigation by law enforcement agencies, the volume of evidence, and the nature and complexity of the case.

In respect of briefing out, DoJ will actively consider engaging and will from time to time engage counsel in private practice to provide assistance in handling cases, mainly for meeting operational needs arising from prosecutions. Generally speaking, DoJ may resort to briefing out when -

- (i) there is a need for expert assistance where the requisite skill is not available in DoJ;
- (ii) there is no suitable in-house counsel to appear in court for the Hong Kong Special Administrative Region;

- (iii) the size, complexity, quantum and length of a case so dictate;
- (iv) it is deemed appropriate to obtain independent outside counsel's legal advice or services so as to address possible perception of bias or issues of conflict of interest;
- (v) there is a need for continuity or economy; and
- (vi) there is a need for legal advice or legal proceedings in respect of cases involving members of DoJ.

The criteria for selection of fiat counsel for individual cases include whether the expertise and experience of the fiat counsel meet the requirements of the case. The level of fees charged by the fiat counsel is also a consideration factor, since public money is involved.

We have a mechanism in place to cope with manpower shortfall where certain cases may be briefed out according to the established briefing-out and selection criteria above. DoJ will review its work progress and manpower situation from time to time and make appropriate arrangements.

Moreover, since some of the cases concerning "public order events" may involve complex legal and constitutional issues, Government Counsel from other legal divisions may also be deployed to assist prosecutors in the Prosecutions Division (PD) in jointly conducting prosecution work where necessary and practicable.

2. All Government Counsel in PD are required to render assistance to criminal prosecution work in the light of actual operational needs. The strength of Government Counsel in PD as at 1 March 2021 was 152.

- End -

CONTROLLING OFFICER'S REPLY

SJ016

(Question Serial No. 3068)

Head: (92) Department of Justice

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

Programme: (-) Not Specified

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

Director of Bureau: Secretary for Justice

Question:

Courts around the world are moving from paper-based systems to greater use of information technology (IT) to speed up court proceedings. Electronic filing and court proceedings can bring more than environmental benefits. In Hong Kong, in spite of commencement of computerisation in the 1990s, local court proceedings remain largely paper-based and manually operated. According to a study of the World Bank in 2019, Hong Kong scored a low grade of 1 on a 0-4 scale in "court automation". In this connection, would the Government inform this Committee of the following:

The LawTech Fund set up under the second round of the Anti-epidemic Fund to assist eligible law firms and barristers' chambers in procuring and upgrading IT systems aims at encouraging the application of technology to the delivery of legal services in response to implementation of the General Adjourned Period by the Judiciary. In respect of the Fund, what are the latest number of applications received and the total number of applications approved? For applications that are rejected, what are the major reasons for the rejection?

Asked by: Hon HO Kwan-yiu, Junius (LegCo internal reference no.: 29)

Reply:

The LawTech Fund under the Anti-epidemic Fund does not fall within the scope of the Appropriation Bill nor the Estimates of Expenditure of the Government's General Revenue Account. Nonetheless, the information sought is provided below:

The LawTech Fund was open for application by over 60% of small and medium-size law firms and more than 50% of barristers' chambers to reimburse the expense in procuring and upgrading information technology systems and arranging for their staff to attend lawtech training courses. Under a Memorandum of Understanding with the Department of Justice, the Law Society of Hong Kong and the Hong Kong Bar Association have established a Joint Committee to administer the Fund, to process and assess applications, and to arrange for the disbursement.

The Fund was open for application from 28 April to 6 September 2020. A total of 528 applications from small and medium-size law firms and barristers' chambers were received, of which over 99% were approved eventually. The major reasons for rejection included ineligibility, late submission, failure to submit all the information required within the prescribed period, and application withdrawal.

- End -

CONTROLLING OFFICER'S REPLY

SJ017

(Question Serial No. 1776)

Head: (92) Department of Justice

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

Programme: (1) Prosecutions

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

Director of Bureau: Secretary for Justice

Question:

1. Of the 3 651 and 3 061 cases conducted by Government Counsel in 2019 and 2020 respectively, how many were related to the 2019 social incidents in Hong Kong? How many involved the charge of riot?
2. Of the 1 415 and 1 609 cases conducted by Counsel instructed to prosecute in all courts in 2019 and 2020 respectively, how many were related to the 2019 social incidents in Hong Kong? How many involved the charge of riot?
3. According to the Administration, some cases are briefed out to members of the Bar and solicitors in private practice. Please set out a breakdown of cases that were briefed out to members of the Bar and solicitors in private practice in the past 3 years with reference to their names, types of cases and amounts of briefing-out expenditure.
4. What is the estimated expenditure for the coming year on briefing out cases to members of the Bar and solicitors in private practice?

Asked by: Hon LAU Ip-keung, Kenneth (LegCo internal reference no.: 21)

Reply:

1 & 2. According to the information provided by the Security Bureau, the Police Force arrested a total of 10 242 persons between 9 June 2019 and 28 February 2021 in relation to the “anti-extradition law amendments” incidents, 2 521 of whom have undergone or are undergoing judicial proceedings, including about 720 charged with the offence of riot.

As at 28 February 2021, of the 2 521 arrestees having undergone or undergoing judicial proceedings, 883 have to bear legal consequences (including 614 convicted, 261 bound over, 4 subject to a care or protection order and 4 punished in civil proceedings for contempt of court), the charges against another 50 have been withdrawn and another 186 have been acquitted after trial, while the rest are undergoing judicial proceedings. The prosecution of the above cases are conducted by Government Counsel of the Department of Justice (DoJ) and/or Counsel in private practice instructed to prosecute.

3. The total costs of briefing out and the numbers of cases briefed out in relation to criminal cases for the past 3 years are as follows:

| Year | Number of cases briefed out ¹ | Expenditure (\$) |
|---------|--|------------------|
| 2017-18 | 1 561 | 162,850,719 |
| 2018-19 | 1 385 | 139,731,253 |
| 2019-20 | 1 186 | 129,181,035 |

We do not maintain a detailed breakdown of briefing-out expenditure with reference to Counsel's names, types of cases and amounts of briefing-out expenditure. DoJ annually submits to the Finance Committee of the Legislative Council an information paper on "Legal Expenses for Briefing Out Cases Not Covered by Approved Fee Schedules" providing details of cases involving relatively high briefing-out costs for the preceding financial year. We have submitted the reports for 2017-18 and 2018-19 and the report for 2019-20 will be submitted as soon as possible.

4. For Programme (1), the estimate for briefing out for 2021-22 is \$251 million.

¹ For criminal cases, apart from prosecuting in place of Government Counsel at various courts, fiat counsel are also engaged to prosecute in the Magistrates' Courts in place of Court Prosecutors, attending to all cases before a particular magistrate on each day or half day. Such engagement is on court-day basis rather than case-based, and the numbers of court days concerned in 2017-18, 2018-19 and 2019-20 are 5 327 days, 4 668 days and 3 097 days respectively.

- End -

CONTROLLING OFFICER'S REPLY

SJ018

(Question Serial No. 1826)

Head: (92) Department of Justice

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

Programme: (-) Not Specified

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

Director of Bureau: Secretary for Justice

Question:

Starting from March 2019, the geographical scope of setting up partnership associations has been extended from Guangzhou, Shenzhen and Zhuhai to the entire Mainland. A total of 11 partnership associations have been set up, with 7 in Shenzhen, 2 in Zhuhai and 2 in Guangzhou. Members of the legal profession have reflected that after having been granted a Legal Professional Qualification Certificate, they still face difficulties in obtaining a practicing certificate and commencing practice. Would the Government inform this Committee of:

- 1) the total number of Hong Kong residents who have passed the relevant examination so far;
- 2) whether consultations will be conducted with the Mainland government to allow Hong Kong lawyers limited practice, without sitting any examination, engaging in the same practice as their Mainland counterparts in specific commercial matters in Qianhai on a pilot basis. If yes, what are the details? If not, what are the reasons?

Asked by: Hon LEE Wai-king, Starry (LegCo internal reference no.: 4)

Reply:

- 1) Since 2004, Hong Kong candidates have been allowed to sit the National Judicial Examination¹. From then on until the National Unified Legal Professional Qualification Examination in 2019, a total of 541 Hong Kong candidates have obtained a pass².
- 2) Under Article 5 of the Law of the People's Republic of China on Lawyers, one of the conditions for applying for legal practice is to obtain legal professional qualification by getting a pass in the National Unified Legal Professional Qualification Examination. Since the proposal for Hong Kong lawyers to practise in the Mainland without going through an examination goes beyond the requirement of national treatment and the chance of success is slim, we do not intend to raise it with the Mainland authorities. Rather, in order to promote the development of legal services

in the Guangdong-Hong Kong-Macao Greater Bay Area (GBA) and in response to the aspirations of the Hong Kong legal sector, the GBA Legal Professional Examination (GBA Legal Exam) was launched in October last year, allowing Hong Kong solicitors and barristers with accumulated practice experience of 5 years or above to apply to take the examination. After obtaining a lawyer's practice certificate (GBA), Hong Kong solicitors and barristers can provide legal services in the 9 Mainland municipalities in the GBA on specified civil and commercial matters (including litigation and non-litigation matters) to which Mainland laws apply.

¹ Since 2018, the National Judicial Examination has been replaced by the National Unified Legal Professional Qualification Examination.

² As the Ministry of Justice is vetting the qualification of those who have passed the 2020 examination, the relevant statistics are not available.

- End -

CONTROLLING OFFICER'S REPLY

SJ019

(Question Serial No. 2459)

Head: (92) Department of Justice

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

Programme: (3) Constitutional and Policy Affairs

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

Director of Bureau: Secretary for Justice

Question:

1. For each of the past 3 years, what were the numbers of bureaux and departments for which the Department of Justice (DoJ) provided legal advice on the Basic Law in relation to their legislative or policy proposals and what were the numbers of these legislative or policy proposals?
2. For each of the past 3 years, how many events on enhancing public knowledge of the Basic Law were organised by DoJ or attended by its representatives? Please provide the ranks of DoJ representatives and the names of the organisers and events.

Asked by: Hon LEUNG Mei-fun, Priscilla (LegCo internal reference no.: 37)

Reply:

1. DoJ provides legal advice on Basic Law provisions to bureaux and departments, scrutinises legislative and policy proposals to ensure their consistency with the Basic Law, and assists the Hong Kong Special Administrative Region (HKSAR) Government in Basic Law-related litigation. The numbers of pieces of legal advice provided by DoJ on the Basic Law from 2018 to 2020 were as follows:

| Pieces of legal advice on the Basic Law provided in the past 3 years | | |
|--|------|-------|
| 1. | 2018 | 1 762 |
| 2. | 2019 | 1 119 |
| 3. | 2020 | 1 601 |

2.

Basic Law seminars

DoJ counsel have been conducting Basic Law seminars for the training of civil servants to enhance their understanding of the Basic Law, with particular emphasis on explaining in everyday language fundamental concepts such as the relationship between the Constitution and the Basic Law, “one country” being the premises of “two systems”, the political structure of HKSAR, and civil servants’ obligation to be dedicated to their duties. Despite the pandemic, DoJ organised 2 Basic Law seminars in collaboration with the Civil Service Bureau (CSB) in 2020.

On 27 November last year, upon the invitation of the Education University of Hong Kong (EdUHK), a DoJ counsel conducted a video seminar which was pre-recorded on campus under the title “The Basic Law and One Country, Two Systems”. The seminar covered, among others, the historical background of “one country, two systems”, the drafting process and legislative purpose of the Basic Law, the Constitution as the constitutional basis of the Basic Law, the constitutional status of HKSAR, as well as the rights and freedoms safeguarded by the Basic Law. The seminar is a component of the General Education Foundation Course for students in the first year.

The details of Basic Law seminars organised in the past 3 years are as follows:

| 2018 | | | | |
|------|---------------------------|--|--|-----------|
| | Date | Speaker | Title | Organiser |
| 1. | 28 March 2018 p.m. | 1 Senior Government Counsel (SGC) | Basic Law seminar | CSB |
| 2. | 4 May 2018 p.m. | 1 Deputy Principal Government Counsel (DPGC) | Basic Law seminar | CSB |
| 3. | 28 May 2018 p.m. | 1 Principal Government Counsel (PGC) | Political Structure of the Hong Kong Special Administrative Region and Matters relating to the Procedures of the Legislative Council | CSB |
| 4. | 17 August 2018 p.m. | 1 DPGC | Basic Law seminar | CSB |
| 5. | 12 September 2018 p.m. | 1 SGC | Basic Law seminar | CSB |
| 6. | 12 October 2018 p.m. | 1 SGC | Basic Law seminar | CSB |
| 7. | 31 October 2018 p.m. | 1 PGC | Political Structure of the Hong Kong Special Administrative Region and Matters relating to the Procedures of the | CSB |

| | | | | |
|--|--|--|---------------------|--|
| | | | Legislative Council | |
|--|--|--|---------------------|--|

| 2019 | | | | |
|------|------------------------|---------|--|-----------|
| | Date | Speaker | Title | Organiser |
| 1. | 3 May 2019 p.m. | 1 DPGC | Basic Law seminar | CSB |
| 2. | 8 May 2019 a.m. | 1 PGC | Political Structure of the Hong Kong Special Administrative Region and Matters relating to the Procedures of the Legislative Council | CSB |
| 3. | 3 June 2019 p.m. | 1 DPGC | Basic Law seminar | CSB |
| 4. | 7 August 2019 p.m. | 1 DPGC | Basic Law seminar | CSB |
| 5. | 28 August 2019 p.m. | 1 DPGC | Basic Law seminar | CSB |
| 6. | 4 October 2019 p.m. | 1 DPGC | Basic Law seminar | CSB |
| 7. | 9 October 2019 p.m. | 1 DPGC | Basic Law seminar | CSB |

| 2020 | | | | |
|------|--|---------|--|-----------|
| | Date | Speaker | Title | Organiser |
| 1. | 22 September 2020 p.m. | 1 DPGC | Basic Law seminar | CSB |
| 2. | 29 October 2020 p.m. | 1 SGC | Basic Law seminar | CSB |
| 3. | 27 November 2020 p.m. (videoing) | 1 DPGC | Basic Law and One Country, Two Systems | EdUHK |

Basic Law 30th Anniversary Legal Summit — “Back to Basics”

To celebrate the 30th anniversary of the promulgation of the Basic Law and to enhance understanding of the Basic Law, DoJ hosted the Basic Law 30th Anniversary Legal Summit with the theme “Back to Basics” on 17 November 2020 at the former French Mission Building which is part of the complex of the Legal Hub. The summit was the first of its kind hosted by DoJ. We were privileged to have the support of many renowned Mainland and Hong Kong legal professionals, experts and academics with expertise in the Constitution and the Basic Law to share their insights, which had greatly inspired the

audience. Over 100 guests attended the summit in person. The morning session of the summit was broadcast live on 4 local television stations while the whole summit was webcast live, attracting a click rate of over 80 000. All speeches and discussions of the summit have been uploaded to the webpage of Hong Kong Legal Hub (https://www.legalhub.gov.hk/events_detail.php?l=en&a=115#) for public viewing.

Through the theme “Back to Basics”, DoJ hoped to revisit the background, purposes and drafting process of the Basic Law to ensure an accurate understanding of the fact that the Constitution is the legal basis of the Basic Law, and that the constitutional order of HKSAR was jointly established by the Constitution and the Basic Law. The summit also aimed at enhancing public understanding of the nature of the Basic Law which is, in essence, an “authorisation law”. As a local administrative region within a unitary state, all powers of HKSAR come from the Central Government.

To enable a more in-depth understanding of the insights of the speakers of the summit and to promote an accurate appreciation of the Basic Law, and to facilitate further discussion and study of the Basic Law, DoJ plans to publish the proceedings of the Legal Summit with all its addresses, speeches and discussions incorporated in the second quarter of 2021.

- End -

CONTROLLING OFFICER'S REPLY**SJ020****(Question Serial No. 2468)**Head: (92) Department of JusticeSubhead (No. & title): (-) Not SpecifiedProgramme: (4) Law DraftingControlling Officer: Director of Administration and Development (Gracie Foo)Director of Bureau: Secretary for JusticeQuestion:

For each of the past 5 legislative sessions, what were the numbers of bills presented by Legislative Council (LegCo) members to which certificates were issued by the Law Draftsman of the Department of Justice (DoJ) and what were the numbers of such members? Please set out the names of these LegCo members and the bills.

Asked by: Hon LEUNG Mei-fun, Priscilla (LegCo internal reference no.: 83)Reply:

The information on certificates issued by the Law Draftsman of DoJ for private bills presented by LegCo Members in the past 5 legislative sessions is tabulated below:

| Legislative Session | Number of LegCo Members presenting private bills to the Law Drafting Division | Number of certificates issued by the Law Draftsman |
|-------------------------------------|--|---|
| 2016-17 | 3 | 4 |
| 2017-18 | 7 | 10 |
| 2018-19 | 11 | 16 |
| 2019-20 | 7 | 8 |
| 2020-21 (as at 28 February 2021) | 4 | 4 |

Not all private bills for which the Law Draftsman have issued certificates have been introduced into LegCo. As we cannot ascertain whether the Members concerned consent to the disclosure of the relevant information, we are unable to set out the names of the LegCo Members and the titles of the bills.

- End -

CONTROLLING OFFICER'S REPLY

SJ021

(Question Serial No. 2495)

Head: (92) Department of Justice

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

Programme: (-) Not Specified

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

Director of Bureau: Secretary for Justice

Question:

As revealed by the information, the Inter-departmental Working Group on Gender Recognition (IWG), chaired by the Secretary for Justice, provides support for studying possible legislation on gender recognition in respect of transsexual persons in the light of observations made by the Court of Final Appeal in the *W* case (FACV 4/2012). In this connection, would the Department of Justice (DoJ) inform this Committee of the following:

What were the establishments, salaries and total expenditures involved in the past 3 years and those for the coming year?

How many formal and informal meetings were conducted by IWG in 2018, 2019 and 2020?

What is the work progress in respect of the compilation and analysis of submissions received during the consultation period? When will the next stage of work be launched?

Asked by: Hon LEUNG Mei-fun, Priscilla (LegCo internal reference no.: 154)

Reply:

Regarding the establishment, salary and total expenditure involved, the existing 1 Senior Government Counsel post and 1 Government Counsel post for dealing with the work, which were created in 2014-15, have been further extended for 2 years starting from 2020-21 to provide ongoing legal support to the IWG chaired by the Secretary for Justice. The annual staff costs of the above posts were around \$2.5 million in 2019-20, and around \$2.6 million in both 2020-21 and 2021-22. The estimated annual staff costs of the above posts for 2022-23 are around \$2.6 million. For other officers providing support to the IWG, as their work in this regard is undertaken among their other duties, the staff costs and other related expenses involved cannot be separately identified.

The scope of the study covers both recognition and post-recognition issues. On recognition issues, the IWG issued a consultation paper on 23 June 2017. The consultation period ended on 31 December 2017. A meticulous count has revealed that, during the consultation period, the IWG in fact received about 18 800 submissions, which gave divided and opposite views

on a whole range of issues from different perspectives. From 2018 to 2020, the IWG had held a total of 4 formal meetings. The IWG was briefed in late August 2018 by its Secretariat on a preliminary report in respect of those submissions. The IWG is further analysing and considering the submissions received and will compile a report on the results of the public consultation.

The second part of the study concerns post-recognition issues, which includes the Government reviewing all the existing legislative provisions and administrative measures in Hong Kong that may be affected by legal gender recognition so that the relevant Government bureaux and departments can take forward any required legislative or procedural reform.

- End -

CONTROLLING OFFICER'S REPLY

SJ022

(Question Serial No. 2526)

Head: (92) Department of Justice

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

Programme: (1) Prosecutions

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

Director of Bureau: Secretary for Justice

Question:

How many Court Prosecutors (CP) were legally qualified and what percentages did they represent of the total strength of the CP grade as at 31 March 2019, 31 March 2020 and 28 February 2021 respectively?

Asked by: Hon LEUNG Mei-fun, Priscilla (LegCo internal reference no.: 32)

Reply:

Among the total strength of the Court Prosecutor grade, 6 (8.2%), 6 (8%) and 5 (6.9%) officers were legally qualified as at 31 March 2019, 31 March 2020 and 28 February 2021 respectively.

- End -

CONTROLLING OFFICER'S REPLY

SJ023

(Question Serial No. 2529)

Head: (92) Department of Justice

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

Programme: (-) Not Specified

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

Director of Bureau: Secretary for Justice

Question:

With regard to cases administered by the Hong Kong International Arbitration Centre in the past 5 years, please advise on the total numbers of new cases and arbitration cases, the percentage of international arbitration cases in the overall arbitration cases, the top 5 geographical origins or nationalities of the parties and the total amounts in dispute, respectively.

Asked by: Hon LEUNG Mei-fun, Priscilla (LegCo internal reference no.: 36)

Reply:

The Hong Kong International Arbitration Centre (HKIAC) is an independent private organisation which publishes its statistics every year.

According to HKIAC's Annual Reports and published statistics, the total number of new cases (including arbitrations, mediations and domain name disputes) in the past 5 years (i.e. from 2016 to 2020) was 2,498. Among those, 1,450 were arbitration cases, of which over 70% were international arbitrations (i.e. at least one party was not from Hong Kong). The total amount in dispute in all arbitration cases was approximately US\$27.3 billion.

As shown in HKIAC's case statistics for 2020, the top 5 geographical origins or nationalities of the parties (apart from Hong Kong) were Mainland China, the British Virgin Islands, the United States, the Cayman Islands and Singapore. Please refer to HKIAC's press release dated 9 February 2021 for detailed statistics for 2020.

- End -

CONTROLLING OFFICER'S REPLY

SJ024

(Question Serial No. 2589)

Head: (92) Department of Justice

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

Programme: (5) International Law

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

Director of Bureau: Secretary for Justice

Question:

Regarding the Department of Justice (DoJ)'s work to "promote Hong Kong as an ideal regional and international hub for deal-making and dispute resolution, as well as a leading centre for international legal services and capacity building in this region and beyond", please advise on:

1. the establishment, salaries and total expenditure involved;
2. the details and effectiveness of such work as DoJ once mentioned that additional resources would be made available from 2020-21 onwards for stepping up efforts in this respect.

Asked by: Hon LEUNG Mei-fun, Priscilla (LegCo internal reference no.: 134)

Reply:

1. The promotion work is primarily undertaken by the Inclusive Dispute Avoidance and Resolution (IDAR) Office under the Secretary for Justice's Office. The establishments and estimated annual expenditure on the emoluments of the staff of IDAR Office and other supporting units of the Department of Justice (DoJ) (including the Mediation Team, the Arbitration Team and the International Organizations and Legal Cooperation Team), who were involved in the promotion work in 2020-21 are tabulated below:

| Unit involved in the promotion work | Establishment for 2020-21 | Estimated annual expenditure on emoluments for 2020-21 (notional annual mid-point salary) |
|-------------------------------------|---|---|
| IDAR Office | 1 Principal Government Counsel, 2 Senior Government Counsel (SGC), 1 Government Counsel (GC), 1 Law Clerk | \$5,300,580 |

| | | |
|--|--|--------------|
| | (LC), 1 Personal Secretary (PS) I, and 1 Assistant Clerical Officer (ACO) | |
| Mediation Team | 1 Deputy Principal Government Counsel (DPGC), 3 SGC, 4 GC, 2 LCs, 1 PS I and 1 ACO | \$12,774,420 |
| Arbitration Team | 1 DPGC, 3 SGC, 4 GC, 1 LC, 1 PS I, 1 PS II and 1 ACO | \$12,622,080 |
| International Organizations and Legal Cooperation Team | 1 DPGC, 1 SGC, 3 GC, 1 LC and 1 PS I | \$7,936,980 |

Note: (1) IDAR Office is also responsible for other duties; (2) the Mediation Team, the Arbitration Team and the International Organizations and Legal Cooperation Team also provide support to the promotion work of IDAR Office in addition to their own duties; (3) as the promotion work is undertaken by the above officers among their other duties, the manpower/expenditure actually involved cannot be separately identified.

2. Notwithstanding the impact of the COVID-19 pandemic, DoJ continued to organise various activities and take forward new initiatives and work in 2020-21 to promote the rule of law and Hong Kong's legal system with a view to consolidating Hong Kong's role as an ideal hub for deal-making and a leading centre for international legal and dispute resolution services and capacity building in the region and beyond.

One of the flagship events was the opening of the Hong Kong Legal Week 2020 cum opening of the Hong Kong Legal Hub and the official launch of "Vision 2030 for Rule of Law". Held on 2 November, it was widely covered by local TV channels and media, attracting over 48 000 viewers on the day. The Hong Kong Legal Week 2020 comprised a series of virtual events, bringing together renowned experts from around the world and the region to explore a range of legal and dispute resolution issues while promoting Hong Kong's legal and dispute resolution services to the international community.

In addition, DoJ has spared no effort in providing diversified training for young legal practitioners and professionals in areas such as legal services, dispute avoidance and resolution services, and international law through a series of programmes, exchange activities, professional publications etc. to enhance and enrich their professional knowledge and development. In respect of school education, two sets of legal education related dramas have been arranged for touring performance in all primary schools in Hong Kong this year under the "Rule of Law through Drama" project. As to public education, DoJ launched a series of lively animated short videos in early 2020, namely "Studio DoJ" (https://www.doj.gov.hk/en/community_engagement/studio_doj/index.html), to introduce legal concepts and knowledge about the rule of law to the general public in a light-hearted way. Efforts were also made on social media to publicise various online activities and step up the promotion of Hong Kong's legal and dispute resolution services. With regard to training and capacity building, the HKSAR Government introduced the Greater Bay Area (GBA) Youth Employment Scheme in the Policy Address 2020 and launched the GBA Legal Professional Examination in October 2020. DoJ has also co-organised exchange and training programmes with legal professional bodies, strengthened legal exchange and

training with the Mainland and organised capacity building and training courses relating to international law, mediation, arbitration and dispute resolution.

The details of some of the above initiatives are set out in LC Paper No. CB(4)517/20-21(03) of the Panel on Administration of Justice and Legal Services of the Legislative Council.

In the light of the COVID-19 pandemic, some of the projects organised by DoJ (including the Hong Kong Legal Week and its activities mentioned above) and/or co-organised by DoJ with international and regional bodies, originally scheduled for 2020, have either become online events or been postponed until 2021. For example, the first Hague Academy of International Law Advanced Course in Hong Kong on “Current Trends on International Commercial Disputes Settlement” was conducted as a webinar on 7 December 2020 before being held in Hong Kong from 8 to 12 November 2021.

DoJ will continue to make effective use of resources and step up its efforts in related work with a view to developing Hong Kong into an ideal regional and international hub for deal-making and dispute resolution, sharpening Hong Kong’s edge and raising our status in the provision of professional legal services in this region and beyond. We will also continue to review and monitor the progress and effectiveness of such work.

- End -

CONTROLLING OFFICER'S REPLY

SJ025

(Question Serial No. 3021)

Head: (92) Department of Justice

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

Programme: (-) Not Specified

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

Director of Bureau: Secretary for Justice

Question:

1. Does the Government know the total current value of the estate of the late Mrs Nina Wang, the total amount of fees charged by the administrators and relevant parties since 2012, and the amount appropriated from the estate for charitable purposes in each of the past 3 years?
2. How does the Secretary for Justice (SJ), as the protector of charities, monitor if the expenses for the estate are reasonable and necessary, so as to ensure that the estate will not be gnawed by exorbitant management fees and thus causing a significant reduction in its resources that may be used for charitable purposes?
3. Will SJ request the Foundation to expedite its handling of matters relating to the establishment of a supervisory managing organisation, so that the estate may expeditiously be used for charitable purposes, including helping members of the public affected by the epidemic?

Asked by: Hon LEUNG Mei-fun, Priscilla (LegCo internal reference no.: 33)

Reply:

1. & 2. In relation to the estate of the late Mrs Nina Wang, SJ provided a detailed oral response at the Legislative Council on 16 December last year to the relevant questions about the latest developments regarding the scheme of administration (the Scheme) and the work of the interim administrators, including the net asset value of the estate and the information on the charitable donations made by the Chinachem Group.

The Department of Justice (DoJ) has all along been paying close attention to the interim administrators' work in managing and preserving the estate, and taking such follow-up actions as may be appropriate.

The fees of the interim administrators have been prescribed by the Court in the Appointment Order and are subject to the Court's scrutiny. As the relevant

order was made at a hearing not open to public, DoJ is not in a position to disclose such information without the Court's order for disclosure. DoJ will continue to follow up as appropriate to ensure that the interim administrators' fees are maintained at a reasonable level.

3. DoJ has been actively following up the blueprint for the Scheme as laid down in the Court of Final Appeal's judgment of 18 May 2015, and has provided recommendations for the Scheme. DoJ has been in contact with the responsible persons of the Chinachem Charitable Foundation (the Foundation) to discuss the detailed arrangements of the Scheme, with a view to completing the relevant tasks as soon as possible.

DoJ made an application to the Court on 29 March 2019 in respect of the relevant matters of the Scheme in order to seek the Court's determination or directions. Yet it must be emphasised that apart from SJ being a necessary party to charity proceedings, the cooperation of all parties and their active follow-up with the Court's directions and orders are also essential for the relevant legal proceedings to be taken forward in a reasonable time. The Court has fixed a directions hearing for 26 May 2021. Given that the relevant legal proceedings have already commenced, it is inappropriate for us to publicly discuss any further details.

Except otherwise prescribed by law or ordered by the Court, charities operate autonomously under their own memorandum and articles of association, and decide the manner in which the public is to be informed about the relevant matters. While SJ has a role to protect charitable interests, SJ does not participate in a charity's decision and arrangement to make donations to others for charitable purposes, and has no power to direct any charity to make donations either.

Concerning the estate, even when the Court has approved the Scheme and appointed members to the supervisory managing organisation, SJ has no power to direct the Foundation or the Chinachem Group to make donations for charitable purposes, including providing assistance to members of the public affected by the epidemic. Nonetheless, DoJ will continue to actively follow up the legal proceedings underway and assist the Court in its early sanction of the setting up of the Scheme, in order to facilitate the trustee to make good use of the estate for charitable purposes in accordance with the Scheme and the wishes of the late Mrs Nina Wang.

- End -

CONTROLLING OFFICER'S REPLY

SJ026

(Question Serial No. 1272)

Head: (92) Department of Justice

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

Programme: (1) Prosecutions

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

Director of Bureau: Secretary for Justice

Question:

The standards of advocacy and preparation in criminal cases are under Matters Requiring Special Attention in 2021-22. Although conviction rates are not and should not be taken as performance indicators, prosecutorial work, if inadequately prepared, would affect conviction rates, result in wastage of judicial resources and impact the level of the rule of law in Hong Kong.

The standard of criminal prosecutions in 2019-20 was far from satisfactory. A succession of prosecutorial oversights on the part of the Department of Justice included low-level mistakes of getting the dates and years of hearings and defendants' names wrong, flaws in the conduct of prosecutions, sluggish preparation of documents which a magistrate had rebuked as "eternal procrastination until the last minute" and squandering court time. There were also cases of inadequate preparation where prosecutions were instituted without sufficient evidence and were subsequently withdrawn in court. Besides, the prosecution of cases relating to the anti-extradition law amendments incidents was slow in progress.

Please advise this Committee of:

- (1) the details of the measures to enhance the standard of criminal prosecutions, as well as the manpower and expenditure involved;
- (2) the latest progress of the prosecutions relating to the anti-extradition law amendments incidents.

Asked by: Hon LIAO Cheung-kong, Martin (LegCo internal reference no.: 70)

Reply:

- (1) In respect of the standards of advocacy and preparation, we seek to enhance the efficiency and professionalism of our in-house prosecutors in handling prosecutions through various means, including the following –

- (a) reviewing from time to time the volume of work and staff establishment of the Prosecutions Division (PD), and applying for additional resources to meet its daily operational needs according to the established mechanism, when appropriate;
- (b) refining the structure of PD so that each section is required to handle work related to the provision of legal advice and preparation for cases and to conduct appeals and reviews derived therefrom. Through this arrangement, prosecutors in every section can have exposure to different areas of work, which in turn helps hone and consolidate their advisory and advocacy knowledge and skills;
- (c) providing prosecutors with the opportunities to work in other legal divisions in order to gain experience in different areas of work, further their legal knowledge, broaden their horizons and enhance their overall ability to handle various matters or cases. Prosecutors will be appraised by different divisions, which is conducive to the fair assessment of their capabilities and the recognition of their potential;
- (d) ensuring that our in-house prosecutors are up to speed with cases involving important or significant legal principles or issues through PD's relevant notification via the existing mechanism and preparation of summaries of notable judgments for their reference;
- (e) the continued provision of local training programmes to our in-house prosecutors, including the regular 12-week Criminal Advocacy Course, seminars on different topics under the Continuing Legal Education Programme, and talks/seminars on criminal law delivered by other professionals;
- (f) resuming the arrangement for in-house prosecutors to attend overseas advocacy training courses offered by experienced judges and legal practitioners when the pandemic subsides;
- (g) the provision of guidance to prosecutors from time to time through the issue and updating of circulars and reference materials;
- (h) designating co-ordinators or specific units for handling particular types of cases (including cases relating to public order events, human exploitation, money laundering, cybercrime, those involving vulnerable witnesses, as well as matters concerning court costs of criminal cases) to allow for better development of expertise within the Division in such areas of laws, and hence more effective and efficient handling of these cases; and
- (i) the continued operation of the quick advisory system known as "FAST" to promptly deal with relatively simple and straightforward cases. Legal advice processed through the system is generally provided on the same day. FAST has proven to be extremely effective in ensuring the overall efficiency of the advisory function of the Division whilst, at the same time, reducing the workload of counsel from advisory sections to free them up for more advocacy work. It also serves as another important training ground for our in-house prosecutors, as counsel from teams other than the few advisory sections would have the opportunities to regularly handle such FAST cases

which help hone and consolidate their advisory skills and legal knowledge in respect of a broad spectrum of general criminal cases.

The staff costs of officers responsible for the above measures and other related expenses will be absorbed by existing resources of DoJ. The expenditure involved cannot be separately identified.

Apart from outlining the aim and areas of work of Programme (1) Prosecutions, the Controlling Officer's Report for the current financial year sets out the key performance measures for PD in the past 2 years and this year (i.e. 2021), including the relevant targets and indicators. In 2020, the aim of the programme was generally met. As the prosecution authority, we are committed to the objective of presenting appropriate cases to the court in a fair manner. Prosecutions are, in accordance with the guidelines set out in the Prosecution Code, pursued only if there is a reasonable prospect of conviction and that it is in the public interest to prosecute. Once it is decided that prosecution should be pursued, it is the duty of prosecutors to act in a fair and objective manner. The question of guilt or innocence is a matter for the court to decide, on the criminal law standard of proving "beyond reasonable doubt" (which is a higher threshold than that for deciding whether to commence prosecution). Therefore, conviction rates in criminal cases are not and should not be taken as performance indicators.

- (2) According to the information provided by the Security Bureau, the Police Force arrested a total of 10 242 persons between 9 June 2019 and 28 February 2021 in relation to the "anti-extradition law amendments" incidents, 2 521 of whom have undergone or are undergoing judicial proceedings, including about 720 charged with the offence of riot. The rest have been charged with offences such as unlawful assembly, arson, desecrating the National Flag, criminal damage, possession of offensive weapon, theft, wounding, assault occasioning actual bodily harm, placing things on a railway with intent to endanger passengers, etc., disorderly conduct in public place, obstruction of public places, common assault, assaulting police officer, stopping a vehicle on an expressway.

PD has a dedicated team of prosecutors for handling cases concerning "public order events" to ensure consistency in the handling approach. Since the "anti-extradition law amendments" incidents, there has been a significant number of "public order event" cases, and the prosecution work involved is extremely heavy. Despite the COVID-19 pandemic and the General Adjourned Period implemented by the Judiciary, prosecutors of the team have continued to work and strived to handle cases, providing detailed and comprehensive legal advice for law enforcement agencies in a timely manner.

As at 28 February 2021, of the 2 521 arrestees having undergone or undergoing judicial proceedings, 883 have to bear legal consequences (including 614 convicted, 261 bound over, 4 subject to a care or protection order and 4 punished in civil proceedings for contempt of court), the charges against another 50 have been withdrawn and another 186 have been acquitted after trial, while the rest are undergoing judicial proceedings.

- End -

CONTROLLING OFFICER'S REPLY

SJ027

(Question Serial No. 1273)

Head: (92) Department of Justice

Subhead (No. & title): (700) General non-recurrent

Programme: (-) Not Specified

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

Director of Bureau: Secretary for Justice

Question:

The approved commitment for the promotion of rule of law and Hong Kong's legal system is \$8,600,000 and the accumulated expenditure as at 31 March 2020 amounts to \$6,659,000.

Please advise this Committee of:

- (1) the arrangements and achievements in respect of the promotion of rule of law and Hong Kong's legal system in 2019-20.
- (2) whether new promotional measures have been adopted in the light of the COVID-19 pandemic. If yes, what are the measures?
- (3) why the estimate for such promotion in 2021-22 is not available. Is there any such promotion in 2020-21? If yes, what are the specific details? If not, what are the reasons?

Asked by: Hon LIAO Cheung-kong, Martin (LegCo internal reference no.: 71)

Reply:

(1) & (3)

One of the main objectives of "Vision 2030" is to enhance the understanding and practice of the rule of law amongst youth through promotion, education and capacity building, and to promote proper education on the rule of law. Various public education and promotional activities were fully rolled out in 2020, including the "Engagement" project targeting the general public, the "Empowerment" project targeting youths and the "Enrichment" project targeting professionals. As part of the "Empowerment" project, the Department of Justice (DoJ) launched a number of projects including "Rule of Law through Drama" to enhance primary students' understanding of the proper concept of the rule of law and cultivate their law-abiding spirit. The premiere performance attracted about 400 viewers including primary school principals and teachers as well as representatives of school sponsoring bodies.

DoJ has also spared no effort in providing diversified training for young legal practitioners and professionals in areas such as legal services, dispute avoidance and resolution services, and international law through a series of programmes, exchange activities, professional publications, etc. to enhance and enrich their professional knowledge and development. For more details on the above initiatives, please refer to LC Paper No. CB(4)517/20-21(03) of the Panel on Administration of Justice and Legal Services of the Legislative Council.

In addition, the opening of the Hong Kong Legal Week 2020 cum opening of the Hong Kong Legal Hub and the official launch of “Vision 2030 for Rule of Law”, held on 2 November, were widely covered by local TV channels and media, attracting over 48 000 viewers on the day. The Hong Kong Legal Week 2020 comprised a series of virtual events, bringing together renowned experts from around the world and the region to explore a range of legal and dispute resolution issues while promoting Hong Kong’s legal and dispute resolution services to the international community. Notably, the inaugural Rule of Law Congress themed “Towards 2030: A Decade of Action for Rule of Law” will be organised biennially with a view to strengthening and advancing the rule of law and access to justice in the region and beyond for inclusive and sustainable development.

Further, to celebrate the 30th anniversary of the promulgation of the Basic Law and to enhance the understanding of the Basic Law, DoJ hosted the Basic Law 30th Anniversary Legal Summit themed “Back to Basics” on 17 November 2020 at the former French Mission Building, which is part of the complex of the Legal Hub. The summit was the first of its kind hosted by DoJ. We were privileged to have the support of many renowned Mainland and Hong Kong legal professionals, experts and academics with expertise in the Constitution and the Basic Law to share their insights, which had greatly inspired the audience. Over 100 guests attended the summit in person. The morning session of the summit was broadcasted live on 4 local TV stations with live webcast of the entire summit, attracting a click rate of 80 000 and nearly 1 million viewers via online and TV channels. All speeches and discussions of the summit have been uploaded to the webpage of the Hong Kong Legal Hub (https://www.legalhub.gov.hk/events_detail.php?l=en&a=115#) for public viewing.

To enable more in-depth understanding of the insights of the speakers of the summit and to promote an accurate understanding of the Basic Law, and to facilitate further discussion and study of the Basic Law, DoJ plans to publish the proceedings of the Legal Summit in the second quarter of 2021 with all the addresses, speeches and discussions incorporated.

DoJ continues to promote the rule of law and Hong Kong’s legal system through various means. Item 514 “Promotion of rule of law and Hong Kong’s legal system” is a non-recurrent account under Subhead 700 “General non-recurrent account”. It was created in 1998-99 for the purposes of strengthening the understanding and recognition of the rule of law and the legal system of the Hong Kong Special Administrative Region (HKSAR), as well as assuring the public and people overseas of the HKSAR Government’s determination to maintain confidence in Hong Kong’s rule of law and existing legal system. In the early years, DoJ had spent the funding under the ambit of Item 514 on producing legal docudrama as well as educational videos and VCDs which promoted Hong Kong’s legal system, and on organising seminars and overseas promotional activities with the participation of the legal community. The balance under this item will be returned to the general revenue in accordance with the established procedure.

(2)

In the light of the COVID-19 pandemic, some of the projects organised by DoJ (including the Hong Kong Legal Week and its activities mentioned above) and/or co-organised by DoJ with international and regional bodies, originally scheduled for 2020, have either been organised as online events or postponed until 2021. For example, the first Hague Academy of International Law Advanced Course in Hong Kong on “Current Trends on International Commercial Disputes Settlement” was conducted as a webinar on 7 December 2020 before being held in Hong Kong from 8 to 12 November 2021. In early 2020, DoJ launched a series of lively animated short videos, namely “Studio DoJ” (https://www.doj.gov.hk/en/community_engagement/studio_doj/index.html), to introduce legal concepts and knowledge about the rule of law to the general public in a light-hearted way. Efforts were also made on social media to publicise various online activities and step up the promotion of Hong Kong’s legal and dispute resolution services.

Besides, as the year of 2020 marks the 40th anniversary of the conclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG), DoJ organised an online international conference entitled “Celebrating the 40th Anniversary of CISG: CISG as a Tool for Global Trade - Theory and Practice” with the United Nations Commission on International Trade Law (UNCITRAL) and the Asian Academy of International Law (AAIL) on 27 October 2020 to promote a rules-based trading system.

Furthermore, DoJ and AAIL organised an online talk entitled “Hong Kong Businesses and CISG: The ‘Must Knows’ from International Court Practice” on 30 October this year. In both events, leading international CISG experts discussed the latest developments of CISG and issues closely related to the legal and business sectors.

Meanwhile, the inter-sessional meeting of the UNCITRAL Working Group III (WG III), originally scheduled for November 2020 in Hong Kong, was also postponed to the second half of 2021 due to the pandemic situation. Nevertheless, to continue promoting the related work of WG III, a pre-inter-sessional meeting of WG III was held online for the first time together with UNCITRAL and AAIL on 9 November 2020. Representatives of member states of UNCITRAL and renowned international experts were invited to share their views and experience on various frontier issues of investment mediation at the meeting, which attracted participants from over 70 countries and regions.

- End -

CONTROLLING OFFICER'S REPLY

SJ028

(Question Serial No. 1274)

Head: (92) Department of Justice

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

Programme: (3) Constitutional and Policy Affairs

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

Director of Bureau: Secretary for Justice

Question:

In 2021-22, among the 5 major programmes of the Department of Justice, Constitutional and Policy Affairs will be the only programme with a reduced estimate subsequent to the transfer of Arbitration Unit to the Civil Division. However, constitutional and policy affairs are particularly important, especially when some people in the community still have an inadequate and biased understanding of “one country, two systems” despite the fact that Hong Kong has been returned to the Motherland for over 20 years. The matters requiring special attention in 2021-22 under this Programme include developing expertise in respect of legislative powers, procedures and practices in the context of the Basic Law.

Please advise this Committee of:

- (1) the estimated provision and manpower involved, the platform to be adopted for expertise development, and whether such expertise will be made known to the public;
- (2) the effectiveness of the promotion of Basic Law in 2020-21 and details of the promotion in 2021-22.

Asked by: Hon LIAO Cheung-kong, Martin (LegCo internal reference no.: 72)

Reply:

1.

The purview of the Constitutional and Policy Affairs Division (CPAD) includes providing relevant legal advice to Government bureaux and departments on the Rules of Procedure and practices of the Legislative Council. Such advice mainly covers whether any proposed Committee stage amendment to bills or amendment to items of subsidiary legislation is relevant to the subject matter of the legislative proposal and the subject matter of the provision to which it relates, and whether such amendment has the effect of charging any part of the revenue or other public moneys.

To further enhance professional standard and staff training, CPAD arranges for experienced staff members to provide guidance to junior colleagues in rendering legal advice on the

above matters. CPAD has also conducted workshops for colleagues to share experience and exchange ideas on relevant issues. Moreover, a Knowledge Management System has been established to provide colleagues with easier access to relevant internal information. Such expertise, internal training and administrative arrangements, which form part of the normal duties and functions of DoJ, are not disclosed. Since the relevant work is undertaken by colleagues among their other duties, the expenditure cannot be separately identified.

DoJ supports the “e-Resources for Rule of Law and Basic Law” (basiclawresources.info) produced by the Basic Law Foundation. The e-Resources website provides a series of teaching materials covering topics on the Constitution, the Basic Law and rule of law, including the political structure and distribution of power in Hong Kong under “one country, two systems” and the Basic Law. The teaching materials are designed for secondary students for flexible deployment by teachers in their teachings. The e-Resources website currently contains a number of teaching materials for secondary schools, and additional teaching materials on various topics will be made available on the platform in due course. In addition, monthly online training seminar will be held via the e-Resources website, with senior experts from the legal, academic and education sectors invited to discuss relevant topics on the rule of law, the Constitution and the Basic Law, to provide assistance to teachers in enhancing their understanding of the rule of law education. The e-Resources website is organised and managed by the Basic Law Foundation, in accordance with the terms and conditions under the Memorandum of Understanding signed with DoJ.

2.

2020-2021

Basic Law Education and Promotion

DoJ actively participates in the Basic Law education and promotion which includes the following: supporting the training course co-organised by the Endeavour Education Centre and the Education Bureau to provide training for teachers on topics such as the Constitution, the Basic Law and the National Security Law; supporting the “e-Resources for Rule of Law and Basic Law” (basiclawresources.info), established and produced by the Basic Law Foundation, in providing a series of teaching materials covering topics on the Constitution, the Basic Law and rule of law for schools and teachers for flexible deployment in teaching, and conducting monthly online training seminar to strengthen teachers’ understanding of the Basic Law; supporting the Rule of Law Workshop for Secondary School Students Pilot Scheme launched by the Hong Kong Policy Research Institute for promoting the understanding and proper recognition of some core concepts of the rule of law among secondary students through legal seminars and interactive group discussions; launching a series of animated short videos, namely “Studio DoJ”, to introduce legal concepts, “one country, two systems”, the Basic Law and rule of law to the general public in a lively and interesting way; holding talks at schools and community institutions under the “Meet the Community” programme to strengthen proper understanding of the legal system, rule of law and the Basic Law among the public and young people; and sending DoJ representatives to attend events as guest speakers from time to time. On 27 November last year, upon the invitation of the Education University of Hong Kong, a DoJ counsel took part in a video seminar on “The Basic Law and One Country, Two Systems” produced on the campus, the content of which included, among others, the genesis of “one country, two systems”, the drafting process and legislative purpose of the Basic Law, the Constitution

being the constitutional basis of the Basic Law, the constitutional status of HKSAR, and the rights and freedoms safeguarded by the Basic Law. The seminar is a component of the General Education Foundation Course for students in the first year.

Basic Law 30th Anniversary Legal Summit — “Back to Basics”

To celebrate the 30th anniversary of the promulgation of the Basic Law and to enhance understanding of the Basic Law, DoJ hosted the Basic Law 30th Anniversary Legal Summit themed “Back to Basics” on 17 November 2020 at the former French Mission Building which is part of the complex of the Legal Hub. Over 100 guests attended the summit in person. The morning session of the summit was broadcast live on 4 local television stations while the whole summit was webcast live, attracting a click rate of over 80 000.

Through the theme “Back to Basics”, DoJ hoped to revisit the background, purposes and drafting process of the Basic Law to ensure an accurate understanding of the fact that the Constitution is the legal basis of the Basic Law, and that the constitutional order of HKSAR was jointly established by the Constitution and the Basic Law. The summit also aimed at enhancing public understanding of the nature of the Basic Law which is, in essence, an “authorisation law”. As a local administrative region within a unitary state, all powers of HKSAR come from the Central Government.

To enable a more in-depth understanding of the insights of the speakers of the summit and to promote an accurate appreciation of the Basic Law, DoJ plans to publish the proceedings of the Legal Summit with all its addresses, speeches and discussions incorporated in the second quarter of 2021.

The Basic Law Bulletin

To enhance understanding of the Basic Law and relevant case law among civil servants and the general public, DoJ, the Civil Service Bureau (CSB) and the Constitutional and Mainland Affairs Bureau jointly publish regular issues of the Basic Law Bulletin. The latest issue was uploaded to DoJ’s website for public access last December.

Basic Law seminars

DoJ counsel have been conducting Basic Law seminars for the training of civil servants to enhance their understanding of the Basic Law, with particular emphasis on explaining in everyday language fundamental concepts such as the relationship between the Constitution and the Basic Law, “one country” being the premise of “two systems”, the political structure of HKSAR, and civil servants’ obligation to be dedicated to their duties. Despite the pandemic, DoJ organised 2 Basic Law seminars in collaboration with CSB in 2020 with details as follows:

| | Date | Speaker | Title | Organiser |
|----|------------------------|---------------------------------------|-------------------|-----------|
| 1. | 22 September 2020 p.m. | 1 Deputy Principal Government Counsel | Basic Law seminar | CSB |
| 2. | 29 October 2020 p.m. | 1 Senior Government Counsel | Basic Law seminar | CSB |

2022

Apart from holding regular Basic Law seminars with CSB, issuing the Basic Law Bulletin, and running other educational and promotional activities in relation to the Basic Law as usual, DoJ is preparing a compilation of court cases relating to Basic Law provisions together with significant discussions made during the drafting stage and other relevant materials for a complete and systematic understanding of the Basic Law among the public. The compilation is scheduled to be put to print in the second quarter of 2022.

- End -

CONTROLLING OFFICER'S REPLY

SJ029

(Question Serial No. 1276)

Head: (92) Department of Justice

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

Programme: (-) Not Specified

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

Director of Bureau: Secretary for Justice

Question:

As set out in the 2020 Policy Address, the Department of Justice (DoJ) is tasked to actively explore the development of the Hong Kong Legal Cloud to enhance the capability of the profession to harness modern technology in the provision of legal and dispute resolution services.

This year, the Government will actively explore the development of the Hong Kong Legal Cloud, in order to sharpen Hong Kong's edge and raise our status in the provision of professional legal services. On 11 February 2021, DoJ stated that it would provide around \$15.7 million (Hong Kong Legal Cloud Fund) for the development of the Hong Kong Legal Cloud by selected non-governmental organisations (NGOs) through a public-private partnership. Please advise this Committee of:

- (1) the details of the manpower and expenditure involved for developing the Legal Cloud through a public-private partnership;
- (2) the criteria for selecting NGOs for the development of the Hong Kong Legal Cloud, and the requirements on security, reliability, affordability, functionality and affordability.

Asked by: Hon LIAO Cheung-kong, Martin (LegCo internal reference no.: 76)

Reply:

- (1) The Hong Kong Legal Cloud Fund under the Anti-epidemic Fund does not fall within the scope of the Appropriation Bill nor the Estimates of Expenditure of the Government's General Revenue Account. Nonetheless, the information sought is provided below:

DoJ will provide an amount of around HK\$15.7 million (Hong Kong Legal Cloud Fund) for the development of Hong Kong Legal Cloud by selected non-profit-making non-governmental organisations (NGOs) through public-private partnership. In order to encourage the local legal and dispute resolution communities to subscribe to the Hong Kong Legal Cloud services, qualified subscribers in the local legal and dispute resolution sectors will be subsidised through the Hong Kong Legal Cloud Fund, which will, in turn, be used to

finance the setup cost, initial operational and promotion costs through disbursement of subscription fees to the selected listed provider(s), for up to 3 years. DoJ will use existing resources and manpower to take forward the relevant work mentioned above.

(2) The Hong Kong Legal Cloud is an advanced and user-friendly online facility situated in Hong Kong, with specific technical requirements on, among others, security, reliability, affordability, functionality and scalability, to provide safe, secure and affordable data storage services for the local legal and dispute resolution communities. Details of the technical requirements are available on DoJ's webpage at https://www.doj.gov.hk/tc/community_engagement/announcements/hk_legal_cloud.html.

NGOs interested in being considered for becoming listed provider(s) of Hong Kong Legal Cloud should submit related information and documents (including all necessary supporting information and documents demonstrating that its system could meet the requirements, and its ability to provide quality services to the local legal and dispute resolution sectors) to DoJ on or before 1 June 2021. DoJ and the selected service provider(s) of Hong Kong Legal Cloud will enter into a Memorandum of Understanding setting out the terms and conditions to ensure service quality by end of the third quarter of 2021.

- End -

CONTROLLING OFFICER'S REPLY

SJ030

(Question Serial No. 3208)

Head: (92) Department of Justice

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

Programme: (5) International Law

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

Director of Bureau: Secretary for Justice

Question:

Among the 5 major programmes of the Department of Justice, International Law sees the second largest increase in the estimated provision for 2021-22, rising by \$39.8 million overall to \$150 million, which is 36.1% higher than the revised estimate for last year. This is mainly due to the anticipated increase in other charges and general departmental expenses, as well as filling of vacancies.

Please advise this Committee of the following:

- (1) the details of other charges and general departmental expenses anticipated;
- (2) regarding the Treaties and Law Unit, the key performance measures include international agreements initialled, and 2 such agreements come under the estimate for 2021. What are the 2 agreements and the details of the estimated expenditure and manpower involved?
- (3) regarding the Mutual Legal Assistance Unit, as some countries have suspended their mutual legal assistance agreements with Hong Kong after 2019, please elaborate on the details of mutual legal assistance rendered by Hong Kong in 2019-20 with a breakdown by type and jurisdiction; and whether there are any cases of refusal to provide mutual legal assistance. If yes, what are the details?

Asked by: Hon LIAO Cheung-kong, Martin (LegCo internal reference no.: 73)

Reply:

(1) The 2020-21 Revised Estimates reflect underspending in 2020-21, largely due to the COVID-19 pandemic, and hence the noticeable difference between the 2021-22 Estimates and the 2020-21 Revised Estimates. The 2021-22 Estimates are drawn up on the assumption that the Department will essentially resume normal operation in the upcoming financial year. By comparing the 2021-22 Estimate for Programme (5) under Head 92 against the 2020-21 Original Estimate, there is an increase of 7.6% only. The increase in the estimated provision for the International Law Division (ILD) for 2021-22 is mainly due

to the anticipated increase in other charges and general departmental expenses for, inter alia, organising decision-making meetings of inter-governmental international organisations and events for nurturing local legal talent, capacity building and collaboration with international bodies.

(2) Counsel of ILD conduct negotiations on agreements on surrender of fugitive offenders, mutual legal assistance in criminal matters and transfer of sentenced persons with other countries on behalf of the Hong Kong Special Administrative Region (HKSAR). The 2 agreements initialled under the estimate for 2021 refer to agreements in these areas. In general, at least 3 ILD counsel take part in the negotiation of an agreement and the relevant preparatory and follow-up work. The estimated expenditure involved depends on the locations and modes of negotiation (e.g. video conferencing). As the work is undertaken by counsel among their other duties, the manpower and expenditure involved cannot be separately identified.

(3) On the instruction of the Central People's Government, the HKSAR Government suspended its agreements on mutual legal assistance in criminal matters with certain jurisdictions between mid 2020 and the end of that year. Details of the requests for mutual legal assistance in criminal matters made to and made by the HKSAR between 2019 and 2020 are as follows:

**Number of requests for mutual legal assistance in criminal matters
made to the HKSAR between 1 January 2019 and 31 December 2020**

| Continent | | |
|------------------|-----------------|------------|
| 1 | Europe | 445 |
| 2 | Asia | 167 |
| 3 | North America | 69 |
| 4 | Oceania | 9 |
| 5 | South America | 20 |
| 6 | Africa | 2 |
| 7 | Central America | 3 |
| Total | | 715 |

**Number of requests for mutual legal assistance in criminal matters
made by the HKSAR between 1 January 2019 and 31 December 2020**

| Continent | | |
|------------------|-----------------|-----------|
| 1 | Europe | 5 |
| 2 | Asia | 16 |
| 3 | North America | 6 |
| 4 | Oceania | 4 |
| 5 | South America | 0 |
| 6 | Africa | 0 |
| 7 | Central America | 0 |
| Total | | 31 |

The continents include the following jurisdictions

| | |
|---|---|
| 1 | Albania, Austria, Belarus, Belgium, the British Virgin Islands, Bulgaria, Cyprus, the Czech |
|---|---|

| | |
|---|---|
| | Republic, Denmark, Estonia, Finland, France, Germany, Gibraltar, Greece, Hungary, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, the Netherlands, Norway, Poland, Portugal, Romania, the Russian Federation, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Ukraine and the United Kingdom |
| 2 | Bahrain, Bangladesh, Georgia, India, Indonesia, Japan, Jordan, Kazakhstan, Kuwait, the Kyrgyz Republic, Malaysia, Mongolia, the Philippines, Saudi Arabia, Singapore, South Korea, Sri Lanka, Thailand, Turkey, the United Arab Emirates, Uzbekistan and Vietnam |
| 3 | Canada, the Cayman Islands, Mexico and the United States of America |
| 4 | Australia and New Zealand |
| 5 | Argentina, Brazil, Ecuador and Peru |
| 6 | Mauritania and South Africa |
| 7 | Costa Rica and Panama |

The HKSAR handles mutual legal assistance in criminal matters in accordance with the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) (the Ordinance). The types of assistance rendered by and provided to Hong Kong under the Ordinance in 2019 and 2020 include taking of oral evidence and production of things before a magistrate; examination of persons by means of live television link; seizure of material under court orders; enforcement of external confiscation orders; service of process; and other assistance not requiring coercive measures, such as provision of public documents filed with the Companies Registry and taking of voluntary witness statements.

Between 2019 and 2020, the Department of Justice did not refuse any request for mutual legal assistance in criminal matters made by other jurisdictions under the Ordinance.

- End -

CONTROLLING OFFICER'S REPLY

SJ031

(Question Serial No. 0189)

Head: (92) Department of Justice

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

Programme: (1) Prosecutions

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

Director of Bureau: Secretary for Justice

Question:

The estimated expenditure for 2021-22 under this Programme increases by approximately 32% to HK\$1.09 billion. In what major areas will the additional expenditure be incurred? What are the staff establishment and expenditure on emoluments involved? Regarding the enhancement of the standards of advocacy and preparation, would the Administration advise on the specific measures to be taken forward, if any? What are the staff establishment, estimated expenditure on emoluments and operating expenses involved? And does the Administration have any standards in place for assessment of their effectiveness? If yes, what will be the level of improvement compared to 2021-22?

Asked by: Hon NG Wing-ka, Jimmy (LegCo internal reference no.: 302)

Reply:

The 2020-21 Revised Estimates reflect underspending in 2020-21, largely due to the COVID-19 pandemic. During the year, in view of public health considerations, the Judiciary implemented the General Adjourned Period and handled only certain cases or urgent business, resulting in a corresponding reduction in the number of court days undertaken by Government Counsel and fiat counsel as well as the briefing-out costs and court costs required. Consequently the Revised Estimates for 2020-21 are significantly lower than the Original Estimates. Meanwhile, the 2021-22 Estimates are drawn up on the assumption that the courts and the Department will essentially resume normal operation in the upcoming financial year. In light of the foregoing and given that the estimated expenditure was worked out based on information available at the time of preparing the estimates and taking into account many factors including the number of cases involved, their complexity and progress, there is a noticeable difference between the 2021-22 Estimates and the 2020-21 Revised Estimates, hence an increase of about 32% in the Estimates for 2021-22. By comparing the 2021-22 Estimates for Programme (1) under Head 92 against the 2020-21 Original Estimates, there is an increase of around 12.3% (around \$120 million). In terms of the increase, briefing-out costs and court costs account for around \$51 million and \$58 million respectively.

In respect of the standards of advocacy and preparation, we seek to enhance the efficiency and professionalism of our in-house prosecutors in handling prosecutions through various means, including the following –

- (a) reviewing from time to time the volume of work and staff establishment of the Prosecutions Division (PD), and applying for additional resources to meet its daily operational needs according to the established mechanism, when appropriate;
- (b) refining the structure of PD so that each section is required to handle work related to the provision of legal advice and preparation for cases and to conduct appeals and reviews derived therefrom. Through this arrangement, prosecutors in every section can be exposed to different areas of work, which in turn helps hone and consolidate their advisory and advocacy knowledge and skills;
- (c) providing prosecutors with the opportunities to work in other legal divisions in order to gain experience in different areas of work, further their legal knowledge, broaden their horizons and enhance their overall ability to handle various matters or cases. Prosecutors will be appraised by different divisions, which is conducive to the fair assessment of their capabilities and the recognition of their potential;
- (d) ensuring that our in-house prosecutors are up to speed with cases involving important or significant legal principles or issues via PD's existing notification mechanism and preparation of summaries of notable judgments for their reference;
- (e) the continued provision of local training programmes to our in-house prosecutors, including the regular 12-week Criminal Advocacy Course, seminars on different topics under the Continuing Legal Education Programme, and talks/seminars on criminal law delivered by other professionals;
- (f) resuming the arrangement for in-house prosecutors to attend overseas advocacy training courses offered by experienced judges and legal practitioners when the pandemic subsides;
- (g) the provision of guidance to prosecutors from time to time through the issue and updating of circulars and reference materials;
- (h) designating co-ordinators or specific units for handling particular types of cases (including cases relating to public order events, human exploitation, money laundering, cybercrime, those involving vulnerable witnesses, as well as matters concerning court costs of criminal cases) to allow for better development of expertise within the Division in such areas of laws, and hence more effective and efficient handling of these cases; and
- (i) the continued operation of the quick advisory system known as "FAST" to promptly deal with relatively simple and straightforward cases. Legal advice processed through the system is generally provided on the same day. FAST has proven to be extremely effective in ensuring the overall efficiency of the advisory function of the Division whilst, at the same time, reducing the workload of counsel from advisory sections to free them up for more advocacy work. It also serves as another important

training ground for our in-house prosecutors, as counsel from teams other than the few advisory sections would have the opportunities to regularly handle such FAST cases which help hone and consolidate their advisory skills and legal knowledge in respect of a broad spectrum of general criminal cases.

The staff costs of officers responsible for the above measures and other related expenses will be absorbed by existing resources of the Department of Justice. The expenditure involved cannot be separately identified.

Apart from outlining the aim and areas of work of Programme (1) Prosecutions, the Controlling Officer's Report for the current financial year sets out the key performance measures for PD in the past 2 years and this year (i.e. 2021), including the relevant targets and indicators. Comparing 2020 and 2019, we can see that the aim of the programme was generally met for both years. As the prosecution authority, we are committed to the objective of presenting appropriate cases to the court in a fair manner. Prosecutions are, in accordance with the guidelines set out in the Prosecution Code, pursued only if there is a reasonable prospect of conviction and that it is in the public interest to prosecute. Once it is decided that prosecution should be pursued, it is the duty of prosecutors to act in a fair and objective manner. The question of guilt or innocence is a matter for the court to decide, on the criminal law standard of proving "beyond reasonable doubt" (which is a higher threshold than that for deciding whether to commence prosecution). Therefore, conviction rates in criminal cases are not and should not be taken as performance indicators.

- End -

CONTROLLING OFFICER'S REPLY

SJ032

(Question Serial No. 0195)

Head: (92) Department of Justice

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

Programme: (2) Civil

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

Director of Bureau: Secretary for Justice

Question:

The Department of Justice will introduce the Young Professional Overseas Enrichment Programme to sponsor young lawyers and dispute resolution practitioners to participate in overseas international conferences worldwide related to law, mediation or arbitration, encouraging and supporting them to exchange knowledge and experiences with counterparts from other jurisdictions. In this regard, please advise on the details of the programme, including the number of sponsored participants, the content of activities, the estimated expenditure and establishment involved.

Asked by: Hon NG Wing-ka, Jimmy (LegCo internal reference no.: 303)

Reply:

In order to enhance young professionals' legal knowledge and to broaden their networks with global legal professionals, DoJ will sponsor suitable young professionals to participate in overseas international conferences related to law, mediation or arbitration. Subsequent to attending the conferences, the sponsored participants will be required to submit relevant reports and documents to DoJ. It is hoped that the sponsored participants, upon their return to Hong Kong, could contribute the knowledge or skills they have acquired and promote exchanges in society. Owing to public health concerns and travel and entry restrictions imposed by various jurisdictions, many international conferences have been either canceled or postponed until further notice. In light of these unpredictable changes, details of the programme are being revised. More information on the programme will be available after the global pandemic eases and international travel resumes. The programme is coordinated and managed by the Inclusive Dispute Avoidance and Resolution Office of DoJ. As the Office is also responsible for other duties, the manpower/expenditure involved in this programme cannot be separately identified.

- End -

CONTROLLING OFFICER'S REPLY

SJ033

(Question Serial No. 0196)

Head: (92) Department of Justice

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

Programme: (2) Civil

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

Director of Bureau: Secretary for Justice

Question:

Regarding the efforts to strive for the presence of international dispute resolution institutions in Hong Kong, it is proposed in the 2020-21 Estimates to explore the possibility for the Asian-African Legal Consultative Organization (AALCO) to establish a regional centre for international commercial arbitration, and the same is also mentioned under "Matters Requiring Special Attention" in the 2021-22 Estimates. Please advise on the progress of encouraging international institutions to set up offices in Hong Kong. Apart from AALCO, does the Administration have any plans to explore the establishment of other international dispute resolution institutions in Hong Kong? If yes, what are the details? If not, what are the reasons?

Asked by: Hon NG Wing-ka, Jimmy (LegCo internal reference no.: 304)

Reply:

The Department of Justice (DoJ) has been actively striving for the establishment of branches and offices of reputable international legal and dispute resolution institutions in Hong Kong to consolidate Hong Kong's status 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. Amongst others, with the support of the Central People's Government, DoJ is exploring with the Asian-African Legal Consultative Organization (AALCO) the proposal of establishing a regional centre for international commercial arbitration in Hong Kong. The relevant negotiations are now underway. Apart from AALCO, we are also actively striving to attract other internationally-renowned legal institutions to establish their presence in Hong Kong. Besides the Regional Office of the Hague Conference on Private International Law which has already been set up in Hong Kong, we are exploring with the International Institute for the Unification of Private Law the possibility of establishing a presence in Hong Kong.

Furthermore, in accordance with the Memorandum of Understanding signed with the United Nations Commission on International Trade Law (UNCITRAL), DoJ established the DoJ Project Office for Collaboration with UNCITRAL (the Office) in the Hong Kong Legal Hub on 2 November 2020. With the support of the Office, the Inclusive Global Legal

Innovation Platform (iGLIP) was set up to facilitate studies on online dispute resolution and explore cooperation with UNCITRAL in this aspect. The first online meeting of iGLIP was successfully held in Hong Kong on 18 March this year in collaboration with UNCITRAL.

Apart from the above, DoJ has also successfully secured the hosting of the 59th Annual Session of AALCO in Hong Kong. The Annual Session, originally scheduled to be held at the end of 2020 but postponed due to the COVID-19 pandemic, is tentatively re-scheduled for the second half of 2021.

- End -

CONTROLLING OFFICER'S REPLY

SJ034

(Question Serial No. 0298)

Head: (92) Department of Justice

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

Programme: (-) Not Specified

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

Director of Bureau: Secretary for Justice

Question:

In recent years, the Government has been committed to supporting the development of an online dispute resolution (ODR) platform by non-governmental organisations to enhance the development of LawTech in Hong Kong and consolidate Hong Kong's position as an international dispute resolution services centre. What are the details of the Administration's launch of other ODR platforms in the coming year? What is the progress of the development of the Asia-Pacific Economic Cooperation's ODR platform? Will additional resources continue to be made available in terms of staffing provision and estimated expenditure? If yes, what are the details? Moreover, will the Administration allocate resources to publicity and promotion in the coming year? If yes, what are the related work plans and estimated expenditure? If no, what are the reasons? So far, how many cases have been filed with the COVID-19 ODR Scheme, and how many of which are being mediated, have been successfully mediated, and have failed in mediation?

Asked by: Hon NG Wing-ka, Jimmy (LegCo internal reference no.: 208)

Reply:

The COVID-19 Online Dispute Resolution (ODR) Scheme under the Anti-epidemic Fund does not fall within the scope of the Appropriation Bill nor the Estimates of Expenditure of the Government's General Revenue Account. Nonetheless, the information sought is provided below:

The HKSAR Government has actively supported the development of an ODR and deal making platform by non-governmental organisation, with a view to facilitating the provision of efficient and cost-effective ODR and deal making services in Hong Kong and further consolidating Hong Kong's status as an international dispute resolution services centre.

Following the onset of the COVID-19 pandemic, in anticipation of an upsurge of disputes arising from the pandemic, the HKSAR Government announced the establishment of the COVID-19 ODR Scheme in April 2020 and commissioned eBRAM International Online Dispute Resolution Centre Limited (eBRAM Centre) as the service provider of the Scheme

to provide speedy, reliable and cost-effective ODR services for the public and micro, small and medium-sized enterprises (MSMEs) impacted by the pandemic to resolve low-value disputes relating to the COVID-19 pandemic. eBRAM Centre officially launched the COVID-19 ODR Scheme and its online platform on 29 June 2020. According to the information provided by eBRAM Centre, as at 3 March 2021, a total of 13 cases had been received and accepted, of which 2 cases were settled successfully, 1 case had attempted mediation but parties were unable to reach settlement and 1 case was undergoing mediation.

The Department of Justice (DoJ) is actively engaged in the work of the Friends of the Chair on Strengthening Economic and Legal Infrastructure under the APEC Economic Committee and has been taking the lead in developing the APEC Collaborative Framework on ODR for MSMEs (APEC Collaborative Framework). The Commissioner of IDAR Office of DoJ has been serving as the Chair of the APEC Economic Committee since September 2019 and has been actively promoting the strengthening of economic and legal infrastructure and encouraging more members to opt into the APEC Collaborative Framework. Hong Kong, China opted into APEC Collaborative Framework in April 2020. DoJ will continue to actively lead the work of the APEC Economic Committee in enforcing and implementing the APEC Collaborative Framework and to participate in related capacity building workshops or policy discussions.

Furthermore, Hong Kong, China signed a memorandum of understanding with the APEC Secretariat on 5 March 2021 to establish a sub-fund which will provide funding for capacity building work to assist APEC members to strengthen their economic and legal infrastructure with a view to fostering economic development in the region.

Building on the foundation of the COVID-19 ODR Platform, eBRAM Centre is actively developing an ODR platform (APEC ODR Platform) and its accompanying procedural rules which are compatible with the requirements of the APEC Collaborative Framework. Apart from ODR services (including negotiation, mediation and arbitration), the APEC ODR Platform will incorporate simultaneous translation/interpretation services for major languages commonly used among the APEC economies. The representative of eBRAM Centre has also been taking part in discussions pertaining to the APEC Collaborative Framework under the APEC Economic Committee, including the abovementioned policy discussions on the implementation of the APEC Collaborative Framework, in order to understand and follow up with the implementation progress. DoJ is committed to supporting the bid of eBRAM Centre to become one of the ODR service providers for APEC economies under the APEC Collaborative Framework, which if successful will represent a big step towards enhancing Hong Kong's LawTech development and consolidating Hong Kong's position as an international dispute resolution services centre. Looking ahead, eBRAM Centre will also actively explore the launch of various ODR platforms to cater for other ODR schemes and rules in the future.

DoJ will use existing resources and manpower to take forward the development of Hong Kong's ODR services as abovementioned, including relevant publicity and promotional work.

- End -

CONTROLLING OFFICER'S REPLY

SJ035

(Question Serial No. 0392)

Head: (92) Department of Justice

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

Programme: (-) Not Specified

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

Director of Bureau: Secretary for Justice

Question:

It is mentioned in paragraph 45 of the Budget Speech that the Government will actively explore the development of the Hong Kong Legal Cloud, in order to sharpen Hong Kong's edge and raise our status in the provision of professional legal services. Would the Administration advise on the estimated expenditure for the relevant study and the expected commissioning date of the Hong Kong Legal Cloud?

Asked by: Hon NG Wing-ka, Jimmy (LegCo internal reference no.: 157)

Reply:

The Hong Kong Legal Cloud Fund under the Anti-epidemic Fund does not fall within the scope of the Appropriation Bill nor the Estimates of Expenditure of the Government's General Revenue Account. Nonetheless, the information sought is provided below:

The Hong Kong Legal Cloud is an advanced and user-friendly online facility situated in Hong Kong, with specific requirements on, among others, security, reliability, affordability, functionality and scalability, to provide safe, secure and affordable data storage services for the local legal and dispute resolution communities. The Department of Justice (DoJ) will provide an amount of around HK\$15.7 million (Hong Kong Legal Cloud Fund) for the development of the Hong Kong Legal Cloud by selected non-profit-making non-governmental organisations (NGOs) through public-private partnership. In order to encourage the local legal and dispute resolution communities to subscribe to the Hong Kong Legal Cloud services, qualified subscribers in the local legal and dispute resolution sectors will be subsidised through the Hong Kong Legal Cloud Fund, which will, in turn, be used to finance the setup cost, initial operational and promotion costs through disbursement of subscription fees to the selected listed provider(s), for up to 3 years. DoJ will use existing resources and manpower to take forward the relevant work mentioned above.

DoJ issued an announcement and a press release on 11 February, inviting local non-profit-making NGOs to develop the Hong Kong Legal Cloud and encouraging non-profit-making NGO(s) interested in providing services that meet the necessary conditions to submit relevant information and documents by 1 June 2021 for consideration

to become listed service provider(s) of the Hong Kong Legal Cloud. DoJ and the selected service provider(s) meeting all the relevant requirements and conditions will then enter into a Memorandum of Understanding setting out the terms and conditions to ensure service quality by end of the third quarter of 2021. Subject to progress, it is expected that the Hong Kong Legal Cloud can be launched by the end of the year.

- End -

CONTROLLING OFFICER'S REPLY

SJ036

(Question Serial No. 2429)

Head: (92) Department of Justice

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

Programme: (4) Law Drafting

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

Director of Bureau: Secretary for Justice

Question:

What were the numbers of certificates issued by the Law Draftsman in the past 5 years stating that she was satisfied that a bill proposed by a Legislative Council (LegCo) member conformed to the requirements of Rule 50 (Form of Bills) of the LegCo Rules of Procedure and the general form of Hong Kong legislation? What was the average time required for issuing such a certificate?

Asked by: Hon OR Chong-shing, Wilson (LegCo internal reference no.: 66)

Reply:

In the past 5 years from 2016 to 2020, 42 certificates were issued by the Law Draftsman stating that she was satisfied that a private bill proposed by a LegCo member conformed to the requirements of Rule 50 (Form of Bills) of the LegCo Rules of Procedure and the general form of Hong Kong legislation. Upon receipt of a bill, the Law Drafting Division examines its form and, if there is a need for revisions, makes suggestions to the member concerned and re-examines the revised bill. Only after all suggested revisions have been dealt with will a certificate be issued by the Law Draftsman. For the said 42 bills, the process (from receiving a bill to issuing a certificate) on average took 112 days.

- End -

CONTROLLING OFFICER'S REPLY**SJ037****(Question Serial No. 2443)**Head: (92) Department of JusticeSubhead (No. & title): (-) Not SpecifiedProgramme: (3) Constitutional and Policy AffairsControlling Officer: Director of Administration and Development (Gracie Foo)Director of Bureau: Secretary for JusticeQuestion:

In "Matters Requiring Special Attention in 2021-22" under Programme (3) Constitutional and Policy Affairs, it is mentioned that the Department of Justice will "develop expertise in respect of legislative powers, procedures and practices in the context of the Basic Law". Would the Government inform this Committee of the following:

- (a) What does "expertise" refer to? What specific measures or methods will the Administration propose to use to achieve this programme target?
- (b) To achieve the above target, will it be necessary to timely revise or update *A Companion to the history, rules and practices of the Legislative Council of the Hong Kong Special Administrative Region* compiled by the Legislative Council?

Asked by: Hon OR Chong-shing, Wilson (LegCo internal reference no.: 82)Reply:

(a) The purview of the Constitutional and Policy Affairs Division (CPAD) includes providing relevant legal advice to Government bureaux and departments on the Rules of Procedure ("RoP") and practices of the Legislative Council ("LegCo"). Such advice mainly covers whether any proposed Committee stage amendment to bills or amendment to items of subsidiary legislation is relevant to the subject matter of the legislative proposal and the subject matter of the provision to which it relates, and whether such amendment has the effect of charging any part of the revenue or other public moneys.

To further enhance professional standard and staff training, CPAD will arrange for experienced staff members to provide guidance to junior colleagues in rendering legal advice on the above matters. CPAD has also conducted workshops for colleagues to share experience and exchange ideas on relevant issues. Moreover, a Knowledge Management System has been established to enable colleagues to have easier access to relevant internal information. Such internal training and administrative arrangements form part of the normal duties and functions of the Department of Justice, and do not involve additional manpower or expenditure.

(b) *A Companion to the history, rules and practices of the Legislative Council of the Hong Kong Special Administrative Region* (“the Companion”) was prepared and printed by The Legislative Council Commission (“the Commission”) and laid on the Table of the LegCo on 18 June 2014. The Companion has also been uploaded to the LegCo website for public reference. The Commission may wish to assess whether the Companion is to be updated at a suitable juncture to reflect the recent development of LegCo business, including changes to RoP, since its publication.

- End -

CONTROLLING OFFICER'S REPLY

SJ038

(Question Serial No. 0688)

Head: (92) Department of Justice

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

Programme: (4) Law Drafting

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

Director of Bureau: Secretary for Justice

Question:

Under Matters Requiring Special Attention in 2021-22, the Administration mentions that it will develop and enhance mutual understanding of the legal systems and professional practices in the Hong Kong Special Administrative Region and the Mainland. What are the specific details, and the establishment and expenditure involved?

Asked by: Hon QUAT Elizabeth (LegCo internal reference no.: 26)

Reply:

In 2021-22, the Department of Justice (DoJ) will continue to arrange visits and training programmes in Hong Kong for Mainland officials and also to organise seminars and other promotional activities in the Mainland, in order to enhance mutual understanding of the legal systems and professional practices in the HKSAR and the Mainland. The specific details are as follows:

- DoJ sponsors a maximum of 20 Mainland officials each year to attend the master's programmes in common law in Hong Kong to deepen their understanding of the common law system and the legal system of Hong Kong;
- DoJ has concluded Legal Services Co-operation Agreements with Justice Departments/Bureaux of 7 Mainland provinces and municipalities and regularly arranges for officials of Mainland Justice Departments/Bureaux to attend short-term training in Hong Kong;
- DoJ and the High People's Court of Guangdong Province have signed the "Framework Arrangement on Exchange and Mutual Learning in Legal Aspects", agreeing to promote and facilitate courts in Guangdong Province and relevant legal bodies in Hong Kong to put in place projects to further legal exchange and collaboration. DoJ will explore with the relevant authorities in respect of the organisation of exchange activities under the Framework Arrangement in 2021-22, such as the 2nd "Guangdong-Hong Kong-Macao Greater Bay Area (GBA) Judicial Case Seminar";

- DoJ plans to co-organise the 6th Hong Kong Legal Services Forum in Chengdu, Sichuan with the Hong Kong Trade Development Council. This is DoJ's flagship event in the Mainland for promoting Hong Kong's legal and dispute resolution services; and
- DoJ plans to organise, in collaboration with Mainland authorities (including the Supreme People's Court), practical training courses on Mainland law for those candidates having passed the Greater Bay Area Legal Professional Examination so as to better prepare them for legal practice in the 9 Mainland municipalities in the Greater Bay Area.

DoJ organises training courses regularly to enhance officers' knowledge and understanding of our country's latest development, including its legal and judicial systems, socio-economic conditions and development direction. The content of training is reviewed and updated in a timely manner to ensure that participants are provided with the most suitable training materials. In mid-October 2020, DoJ co-organised with Tsinghua University for the first time a seminar course entitled "The Fundamental Principles of Chinese Law", followed by a second run in late March 2021. The two classes were conducted on-line in view of COVID-19. When the pandemic subsides, we will arrange visits to various government organs and other site visits in the Mainland for some of the course participants to gain first-hand knowledge of our country's latest development and current situation. The programme is organised with the support of the Hong Kong and Macao Affairs Office of the State Council. We hope to organise more such courses in the future to better familiarise Hong Kong lawyers (including those in private practice) with the Mainland's judicial system and our country's latest developments.

The establishment and estimated annual expenditure on emoluments of the China Law Unit under the Constitutional Affairs Sub-Division of the Constitutional and Policy Affairs Division for 2021-22 are tabulated below:

| China Law Unit | |
|---|---|
| Establishment for 2021-22 | Estimated annual expenditure on emoluments for 2021-22 (notional annual mid-point salary) |
| 1 Deputy Principal Government Counsel, 2 Senior Government Counsel (SGC), 3 Government Counsel (GC), 1 Law Clerk (LC), 1 Personal Secretary (PS) I and 2 PSs II | \$10,029,300 |

The establishment and estimated annual expenditure on emoluments of the Inclusive Dispute Avoidance and Resolution (IDAR) Office under the Secretary for Justice's Office for 2021-22, in relation to its involvement in the above work, are tabulated below:

| IDAR Office | |
|---------------------------|---|
| Establishment for 2021-22 | Estimated annual expenditure on emoluments for 2021-22 (notional annual mid-point salary) |
| | |

| | |
|--|-------------|
| 1 Principal Government Counsel, 2 SGC, 1 GC, 1 PS I, 1 LC and 1 Assistant Clerical Officer | \$7,951,380 |
|--|-------------|

Note: As the above officers are also responsible for other duties, the manpower/expenditure actually involved in the related work cannot be separately identified.

- End -

CONTROLLING OFFICER'S REPLY

SJ039

(Question Serial No. 1203)

Head: (92) Department of Justice

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

Programme: (-) Not Specified

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

Director of Bureau: Secretary for Justice

Question:

It has been reported that the Executive Committee of the Chinachem Group (ECCG), which is under the direction of the interim administrators of the estate of Mrs Nina Wang, recently relieved the duties of one of the members of the trustee on grounds that the person in question had allegedly involved in false investment projects on the Mainland and had allegedly divulged papers on ECCG making “abnormal termination payment” to the former chief executive officer of the Group.

In a meeting of the Legislative Council, I once urged the Secretary for Justice (SJ) to start working on fulfilling the last wish of Mrs Wang as soon as possible by deploying the over \$100 billion entrusted to the Chinachem Charitable Foundation for anti-epidemic purposes, thus reducing the chance of mismanagement. Would SJ inform this Committee of:

- 1) the latest progress in respect of the supervisory proposal for Mrs Wang's estate;
- 2) whether the Department of Justice will be able to draw up the proposal for the proper supervision of Mrs Wang's charitable estate in the financial year 2021-22;
- 3) when Mrs Wang's charitable estate of over \$100 billion can be expected to benefit members of the Hong Kong public, of whom many are now in dire straits in the wake of the epidemic?

Asked by: Hon TSE Wai-chun, Paul (LegCo internal reference no.: 14)

Reply:

- 1) & 2) The Department of Justice (DoJ) has been actively following up the blueprint for the scheme of administration (the Scheme) as laid down in the Court of Final Appeal's judgment of 18 May 2015, and has provided recommendations for the Scheme. DoJ has been in contact with the responsible persons of the Chinachem Charitable Foundation (the Foundation) to discuss the detailed arrangements of the Scheme, with a view to completing the relevant tasks as soon as possible.

DoJ made an application to the Court on 29 March 2019 in respect of the relevant matters of the Scheme in order to seek the Court's determination or directions. Yet it must be emphasised that apart from SJ being a necessary party to charity proceedings, the cooperation of all parties and their active follow-up with the Court's directions and orders are also essential for the relevant legal proceedings to be taken forward in a reasonable time.

The Court held the first directions hearing on 13 June 2019, during which it laid down a timetable for the filing of evidence after hearing submissions by the legal representatives of the parties concerned. The Foundation, being one of the parties to the proceedings, was directed to file its affirmation by 31 October 2019. As a result of the Foundation's failure to file the relevant affirmation after a few extensions of deadline, DoJ made an application to the Court on 6 May 2020, requesting the Foundation to file its affirmation. At another hearing on 26 May 2020, the Court ordered that unless the Foundation could file an affirmation within 56 days, it would be debarred from filing evidence so that the proceedings could continue to progress. The Foundation eventually filed its affirmation on 17 July 2020. The interim administrators filed their relevant affirmations on 7 December 2020 after a few extensions of deadline. Meanwhile, the Foundation, which had been required to file its affirmation(s) in reply by 1 February 2021, once again applied for an extension of deadline and eventually filed its affirmations in reply on 16 March 2021.

At present, the next step is for DoJ to file its affirmation(s) in reply. Upon the completion of evidence, the Court will hold another directions hearing on 26 May 2021. Given that the relevant legal proceedings have already commenced, it is inappropriate for us to publicly discuss any further details.

DoJ is aware that certain member(s) of the Foundation has/have been relieved from duties in the ECCG, and will continue to monitor the situation closely. It is not appropriate to make any comment at this stage. Generally speaking, if any misappropriation of charitable assets by an administrator or trustee is found, DoJ being the protector of charities can apply to the Court for appropriate relief (including changing the relevant personnel if necessary).

Currently, the administration of the estate of the late Mrs Nina Wang is vested with the interim administrators appointed by the Court. DoJ has also filed a caveat with the Probate Registry to preserve the status quo of the estate pending the Scheme to be set up and sanctioned by the Court. DoJ will continue to actively pursue legal proceedings in relation to the Scheme to ensure its early preparation and implementation, and to handle the estate in accordance with the wishes of the late Mrs Nina Wang. DoJ will also continue to actively follow up the detailed arrangements for the implementation of the will, including handling the legal proceedings underway and continuing to closely monitor the management and preservation of the estate with a view to protecting and safeguarding the relevant charitable interests.

- 3) Except otherwise prescribed by law or ordered by the Court, charities operate autonomously under their own memorandum and articles of association, and decide the manner in which the public is to be informed about the relevant matters. While SJ has a role to protect charitable interests, SJ does not participate in a charity's decision and arrangement to make donations to others for charitable purposes, and has no power to direct any charity to make donations either.

Concerning the estate, even when the Court has approved the Scheme and appointed members to the supervisory managing organisation, SJ has no power to direct the Foundation or the Chinachem Group to make donations for charitable purposes, including providing assistance to members of the public affected by the epidemic. Nonetheless, DoJ will continue to actively follow up the legal proceedings underway and assist the Court in its early sanction of the setting up of the Scheme, in order to facilitate the trustee to make good use of the estate for charitable purposes in accordance with the Scheme and the wishes of the late Mrs Nina Wang.

- End -

CONTROLLING OFFICER'S REPLY

SJ040

(Question Serial No. 1451)

Head: (92) Department of Justice

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

Programme: (2) Civil

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

Director of Bureau: Secretary for Justice

Question:

Regarding the establishment and implementation of a mediation platform in the Guangdong-Hong Kong-Macao Greater Bay Area, what are the specific details and latest progress? When will the platform be officially launched at the earliest? How many local lawyers and legal practitioners can participate in and benefit from the platform?

Asked by: Hon YUNG Hoi-yan (LegCo internal reference no.: 32)

Reply:

The Department of Justice (DoJ) has been working closely with the legal professional bodies and the dispute resolution sector to promote Hong Kong as a regional centre for international legal and dispute resolution services. In furtherance of legal co-operation within the Guangdong-Hong Kong-Macao Greater Bay Area (GBA), the Guangdong-Hong Kong-Macao Bay Area Legal Departments Joint Conference mechanism (Joint Conference) was established in September 2019 among DoJ, the Department of Justice of Guangdong Province and the Secretariat for Administration and Justice of the Government of the Macao Special Administrative Region for regular exchanges on various legal issues of the GBA and related collaboration with a view to jointly promoting legal development in the GBA.

At the first Joint Conference in September 2019, the legal departments of the three governments of Guangdong, Hong Kong and Macao proposed to establish a mediation platform in the Guangdong-Hong Kong-Macao GBA (GBA Mediation Platform). As the legal systems in the Mainland, Hong Kong and Macao differ, it is noted that some non-governmental mediation institutions in the GBA (e.g. the Mainland-Hong Kong Joint Mediation Center, the Guangdong, Hong Kong and Macao Arbitration and Mediation Alliance) have promulgated their own mediation rules and panels of mediators, etc. To further coordinate and promote the use of mediation within the GBA, the GBA Mediation Platform will be an authoritative platform for high-level exchange and co-operation among the legal departments of the three governments of Guangdong, Hong Kong and Macao, through which the mediation standards and principles applicable to the GBA will be laid down for reference by GBA's mediation institutions and their mediators. Nonetheless, in

order to maintain its neutrality, the GBA Mediation Platform will not serve as a provider of mediation or mediation referral service nor a standards implementation agency.

The proposal to set up the GBA Mediation Platform was officially endorsed at the second Joint Conference in December 2020. DoJ is actively studying the implementation details with the Department of Justice of Guangdong Province and the Secretariat for Administration and Justice of the Government of the Macao Special Administrative Region. As the timetable for the introduction of the various standards is not available yet, the number of people who can benefit from the Platform would only be known when the Platform has been launched. The legal departments of the three governments of Guangdong, Hong Kong and Macao are working on the speedy promulgation of the various standards and other related work.

- End -

CONTROLLING OFFICER'S REPLY

SJ041

(Question Serial No. 1473)

Head: (92) Department of Justice

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

Programme: (-) Not Specified

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

Director of Bureau: Secretary for Justice

Question:

It is mentioned in paragraph 70 of the Budget Speech that our country has signed cooperation agreements with about 170 countries and international organisations regarding the Belt and Road (B&R) Initiative. The Government will continue to provide financing services to B&R infrastructure projects through leveraging Hong Kong's function as an international financial centre, encourage Hong Kong enterprises and professional services sectors to develop business in the overseas Economic and Trade Co-operation Zones set up by our country, and establish connections with Mainland enterprises and industry associations for jointly exploring new markets, thereby consolidating Hong Kong's role as a prime functional platform and key node for the B&R Initiative. Would the Administration inform this Committee of the following:

1. Pursuant to the constitutional safeguards laid down in the Basic Law, Hong Kong has a well-established legal system and rule of law tradition. Our legal services are sophisticated. With the support of our country, Hong Kong can develop into an international legal and dispute resolution services centre in the region. Does the Administration have any new policies and measures to develop Hong Kong's legal services for further promoting and enhancing the B&R development? If yes, what are the details? If no, what are the reasons?

Asked by: Hon YUNG Hoi-yan (LegCo internal reference no.: 14)

Reply:

As the B&R Initiative involves cross-border infrastructure projects and commercial activities, it is anticipated that there will be a huge demand for cross-jurisdictional legal professional services. The Guangdong-Hong Kong-Macao Greater Bay Area (GBA) has the unique strength of "one country, two systems and three jurisdictions". The "Outline Development Plan for the Guangdong-Hong Kong-Macao Greater Bay Area" (Outline Development Plan) clearly states, among others, its support for Hong Kong to develop as an international legal and dispute resolution services centre in the Asia-Pacific region and a service centre for resolving investment and commercial disputes relating to B&R projects. The Department of Justice (DoJ) has been taking forward its work in accordance with the

guiding directions as set out in the Outline Development Plan, as well as taking part in the legal development of the GBA by leveraging the advantages of Hong Kong's legal system and legal professional services, thereby further enhancing Hong Kong's position as a legal and dispute resolution services centre. DoJ is also committed to strengthening Hong Kong's status as a regional capacity building centre so as to fortify its role and highlight its contribution under the B&R Initiative.

New policies and measures taken by DoJ to develop Hong Kong's legal professional services to further promote and consolidate the B&R development are set out below:

Considering the application of the United Nations Convention on Contracts for the International Sale of Goods to Hong Kong

DoJ supports the promotion of a rule-based trading system, which is essential for providing certainty in international trade to facilitate cross-border commercial activities along the B&R countries. Adopted in 1980, the United Nations Convention on Contracts for the International Sale of Goods (CISG), one of the important legal instruments in this respect, provides uniform rules to govern contracts for international sales of goods. As the year of 2020 marks the 40th anniversary of the conclusion of CISG, DoJ organised an online international conference entitled "Celebrating the 40th Anniversary of CISG: CISG as a Tool for Global Trade – Theory and Practice" with the United Nations Commission on International Trade Law (UNCITRAL) and the Asian Academy of International Law (AAIL) to celebrate this special occasion on 27 October 2020. Furthermore, DoJ and AAIL organised an online talk entitled "Hong Kong Businesses and CISG: The 'Must Knows' from International Court Practice" on 30 October 2020. In both events, leading international CISG experts discussed the latest developments of CISG and issues closely related to the legal and business sectors. These seminars helped promote more extensive use of CISG, thereby facilitating rule-based international trade. DoJ also issued on 2 March 2020 a public consultation paper titled "Proposed Application of the United Nations Convention on Contracts for the International Sale of Goods to the Hong Kong Special Administrative Region". The consultation period ended on 30 September 2020. DoJ has finished consolidating the views received and briefed the Panel on Administration of Justice and Legal Services on 22 March 2021.

Developing LawTech and Online Dispute Resolution Services

In recent years, DoJ has provided additional resources for the development of LawTech, keeping in line with the global trend in using technologies to provide legal services. In the 2018 Policy Address, the Special Administrative Region (SAR) Government gave policy support to the development of an online platform for arbitration and mediation by a non-governmental organisation to facilitate the provision of efficient and cost-effective online dispute resolution (ODR) services in Hong Kong. Funding was also allocated for the development of this project. In April 2020, the SAR Government announced the establishment of the COVID-19 Online Dispute Resolution Scheme (COVID-19 ODR Scheme) and funding support under the Anti-epidemic Fund was allocated for the development, initial set-up and first-year operation of an ODR platform under the COVID-19 ODR Scheme. Being the only ODR service provider in Hong Kong of wide representation from major legal professional bodies and has the support of the information technology sector, eBRAM International Online Dispute Resolution Centre Limited

(eBRAM Centre) was commissioned as the service provider of the COVID-19 ODR Scheme, and officially launched the scheme and its online platform on 29 June 2020. The Finance Committee of the Legislative Council approved in January this year the provision of one-off funding support of \$100 million to eBRAM Centre for the continuous development and enhancement of its ODR and deal-making platform. With the progressive implementation of various national development projects, it is anticipated that there will be a rapid increase in demand for cross-border dispute resolution services. eBRAM Centre's online platform would enable the provision of efficient, cost-effective and secure cross-border one-stop online deal-making and dispute resolution services for parties involved in commercial and investment disputes in B&R countries and within the GBA.

Setting up the Hong Kong Legal Hub

To showcase the emphasis and recognition Hong Kong places on the rule of law and law-related services and to consolidate and enhance Hong Kong's status as a centre for international legal, deal-making and dispute resolution services in the Asia-Pacific region, DoJ set up the Hong Kong Legal Hub in 2020 which attracted over 20 reputable local, regional and international law-related organisations (LROs) to set up their offices there. The Hong Kong Legal Hub, officially opened on 2 November 2020, underscores the confidence of international organisations in Hong Kong's rule of law and legal system. It also provides an effective platform to facilitate exchanges and collaboration between LROs, which will be conducive to the further development of Hong Kong's legal professional expertise and services in different areas.

Stepping up promotion in the Mainland and overseas, and enhancing global and regional cooperation

To further elevate Hong Kong's position as an international legal and dispute resolution services centre in the Asia Pacific region, and to step up our promotional efforts in the Mainland and overseas, DoJ, under the auspices of the Mainland authorities and in collaboration with various local, regional or international institutions and organisations has been organising, supporting and participating in on a regular basis a number of important international legal conferences and training cum capacity building activities. The relevant work involved includes:

(a) Major international conferences and capacity building activities

- Since 2019, DoJ has organised the annual Hong Kong Legal Week, which serves to promote Hong Kong's legal and dispute resolution services and facilitate exchanges and collaboration with other jurisdictions through a series of important international legal events held in Hong Kong. The Hong Kong Legal Week 2020 was held virtually from 2 to 6 November last year, during which renowned experts and scholars from home and abroad were invited to explore, among others, legal, mediation and arbitration issues, with a view to enhancing local and international awareness of related issues with a series of flagship events.
- With the support of the Central Government, DoJ has successfully secured the hosting of decision-making meetings and important summits of international organisations in Hong Kong. Examples include the 3rd UNCITRAL Asia Pacific Judicial Summit

co-organised with UNCITRAL and AAIL in November 2019, and the UNCITRAL Working Group III (WG III) Virtual Pre-Intersessional Meeting co-organised with UNCITRAL and AAIL for the first time on 9 November 2020, etc. In view of the pandemic situation, the 59th Annual Session of the Asian-African Legal Consultative Organization and the inter-sessional meeting of WG III of the UNCITRAL, originally scheduled for 2020 in Hong Kong, were tentatively postponed to the second half of this year.

- In the area of capacity building, DoJ has also co-organised a number of training courses with international, regional and local organisations. For instance, the “Investment Law and Investor-State Mediator Training” has been organised regularly by DoJ in collaboration with the International Centre for Settlement of Investment Disputes (ICSID) and AAIL from 2018 onwards. In addition, DoJ has reached an agreement with the Hague Academy of International Law, one of the world’s leading academic institutes on international law, on the organisation of regular capacity building courses in Hong Kong in collaboration with AAIL starting from 2020. The first Hague Academy of International Law Advanced Course in Hong Kong on “Current Trends on International Commercial Dispute Settlement” will be held in Hong Kong from 8 to 12 November 2021. The courses would provide high-quality training for legal professionals in Hong Kong and the neighbouring regions and further raise Hong Kong’s international profile.

(b) Conclusion of memoranda of cooperation and secondment arrangements

- DoJ remains in close exchanges and cooperation with other jurisdictions and a number of international organisations. In 2019, DoJ signed an arrangement of cooperation respectively with the Ministry of Justice (MoJ) of Japan, the MoJ of Korea and the Office of the Judiciary of Thailand to strengthen collaboration on aspects of law and promote international exchanges and collaboration under the B&R Initiative. DoJ will continue to explore and pursue the conclusion of cooperation arrangements with other overseas jurisdictions.
- On 4 November 2019, DoJ signed a Memorandum of Understanding (MoU) with UNCITRAL to enhance exchanges and cooperation in respect of international trade law and dispute resolution.
- On 2 November 2020, the DoJ Project Office for Collaboration with UNCITRAL was established in the Hong Kong Legal Hub to explore and take forward the collaborative opportunities and projects with UNCITRAL under the said MoU. The first project of the Project Office will be related to online dispute resolution.
- Furthermore, pursuant to an agreement concluded between the Central Government and the Hague Conference on Private International Law (HCCH), the Hong Kong SAR Government signed a MoU with HCCH on 22 December 2020, putting in place a standing arrangement with HCCH for seconding Hong Kong legal professionals in both the public and private sectors to the Permanent Bureau of HCCH at The Hague, the Netherlands. Meanwhile, DoJ is actively engaged in close liaison with UNCITRAL and the International Institute for the Unification of Private Law (UNIDROIT) with a view to offering secondment arrangements to local legal

professionals (including lawyers from both public and private sectors). These secondments will provide valuable opportunities for nurturing our legal talent in diverse areas of international law.

(c) The development and promotional activities of Hong Kong’s legal professional services in the Mainland

- Since June 2020, the minimum capital injection ratio of 30% by Hong Kong partner firms in the partnership associations set up between Hong Kong and Mainland law firms in the Mainland has been removed. Partnership associations with legal talent from both places can provide one-stop cross-jurisdictional legal professional services to Mainland enterprises.
- Hong Kong legal practitioners can provide legal services regarding specific areas of Mainland civil and commercial matters upon passing a special GBA Legal Professional Examination and obtaining practice qualification in the nine Mainland municipalities in the GBA. Hong Kong solicitors and barristers who possess practice qualifications in both the nine Mainland municipalities in the GBA and Hong Kong are familiar with the legal systems of both places. They can provide high-end legal services to enterprises in the GBA or even in the entire Mainland that are “going global” to complement the national B&R development.
- The “Regulations of the Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone of the Shenzhen Special Economic Zone” (Regulations) were amended and approved last August. The Regulations allow Hong Kong enterprises (including WOKEs, Wholly Owned Hong Kong Enterprises set up by Hong Kong investors in the Mainland) registered in the Qianhai Cooperation Zone to choose Hong Kong law as the applicable law for their civil and commercial contracts. This early and pilot implementation measure is a major breakthrough as it means that these Hong Kong enterprises registered in Qianhai may choose Hong Kong law (or other laws) as the applicable law when they enter into civil and commercial contracts despite the absence of foreign-related elements. DoJ is actively seeking the support of the Central Government in extending the measure to Shenzhen and the entire GBA, and allowing Hong Kong enterprises in the GBA to choose Hong Kong as the seat of arbitration in respect of contractual or other disputes despite the absence of foreign-related elements. By allowing Hong Kong enterprises in the GBA “to adopt Hong Kong law and choose for arbitration to be seated in Hong Kong”, such a move will help build a top-notch, market-oriented, law-based and internationalised business environment, further enhancing Hong Kong’s status as an international legal, deal-making and dispute resolution services centre in the Asia-Pacific region.
- To strengthen legal cooperation within the GBA, a Guangdong-Hong Kong-Macao Bay Area Legal Departments Joint Conference (Joint Conference) was jointly established in September 2019 by DoJ, the Department of Justice of Guangdong Province and the Secretariat for Administration and Justice of the Macao Special Administrative Region for regular exchanges on various legal and related collaborative issues with a view to jointly promoting legal development in the GBA. At the first Joint Conference held in September 2019, the legal departments under the governments of the 3 places proposed establishing a GBA Mediation Platform. The

proposal was formally endorsed at the second Joint Conference held in December 2020. The GBA Mediation Platform, an authoritative platform for high-level exchanges and cooperation among the 3 legal departments, was established to promote mediation. It aims at laying down the applicable mediation standards and principles for reference of mediation institutions and mediators in the GBA, and promoting the use of mediation in the GBA. The 3 places are actively studying the relevant implementation details.

- DoJ and the Supreme People’s Court signed the Supplemental Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the Hong Kong Special Administrative Region (Supplemental Arrangement) on 27 November 2020 to enhance the existing mechanism under the Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the Hong Kong Special Administrative Region. The Arbitration Ordinance (Cap.609) has to be amended in order to fully implement the Supplemental Arrangement. The relevant bill was passed by the Legislative Council on 17 March 2021. The full implementation of the Supplemental Arrangement will help clarify and further refine the enforcement arrangement of arbitral awards between the Mainland and HKSAR, thereby consolidating Hong Kong’s edge under “one country, two systems”. This will also be conducive to the development of Hong Kong’s legal and dispute resolution services, and further enhance Hong Kong’s status as an international legal hub for legal, deal-making and dispute resolution services in the region and beyond, and under the B&R Initiative.
- To facilitate the export of Hong Kong’s legal services to B&R countries, DoJ has secured the support of the Ministry of Commerce (MOFCOM) and the State-owned Assets Supervision and Administration Commission of the State Council (SASAC) for establishing a permanent tripartite communication platform for Mainland enterprises and the Hong Kong legal profession. Such platform would serve as a communication channel between Mainland enterprises and the Hong Kong legal profession to connect Mainland enterprises with Hong Kong legal experts in various areas, and through regular exchange of experience and knowledge, optimise the business and investment environment of both places. The first seminar on the legal challenges and strategies under the B&R Initiative was held in Beijing on 26 November 2019. It was attended by 17 representatives from 11 Mainland enterprises, comprising 9 state-owned enterprises and 2 private enterprises, and 8 legal experts from Hong Kong. DoJ is now actively preparing to hold the second seminar with the MOFCOM and the SASAC, while engaging in active discussions on entering into a related memorandum of cooperation.
- DoJ frequently co-organises promotional events with other government departments and professional institutions to promote Hong Kong’s legal and dispute resolution services locally, in the Mainland and overseas. For example, DoJ regularly co-organises with the Hong Kong Trade Development Council (HKTDC) the Belt and Road Summit and the panel discussion of the Business of Intellectual Property Asia Forum, as well as co-hosts webinars with the Hong Kong Economic and Trade Offices and Invest Hong Kong.

- In 2021-22, DoJ plans to co-organise with HKTDC the 6th Hong Kong Legal Services Forum in Chengdu, Sichuan. This is DoJ's flagship event to be held in the Mainland for promoting Hong Kong's legal and dispute resolution services.

- End -

CONTROLLING OFFICER'S REPLY

SJ042

(Question Serial No. 1584)

Head: (92) Department of Justice

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

Programme: (3) Constitutional and Policy Affairs

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

Director of Bureau: Secretary for Justice

Question:

The Government stated in the Brief Description under Programme (3): Constitutional and Policy Affairs that the work of the Department of Justice (DoJ) includes providing legal advice on the Basic Law and assisting the promotion of knowledge in it. Would the Government inform this Committee of:

1. the policies, measures and activities of DoJ on promoting knowledge of the Basic Law in the year? If so, what are the details? If not, what are the reasons?
2. the policies, measures and activities of DoJ on promoting knowledge and implementation of the Constitution and the National Security Law for safeguarding national security and sovereignty in the year? If so, what are the details? If not, what are the reasons?

Asked by: Hon YUNG Hoi-yan (LegCo internal reference no.: 56)

Reply:

Basic Law Education and Promotion

DoJ has been actively participating in Basic Law education and promotion which includes the following: supporting the training course co-organised by the Endeavour Education Centre and the Education Bureau to provide training for teachers on topics such as the Constitution, the Basic Law and the National Security Law; supporting the “e-Resources for Rule of Law and Basic Law” (basiclawresources.info), established and produced by the Basic Law Foundation, in providing a series of teaching materials covering topics on the Constitution, the Basic Law and rule of law for schools and teachers for flexible deployment in teaching, and conducting monthly online training seminar to strengthen teachers’ understanding of the Basic Law; supporting the Rule of Law Workshop for Secondary School Students Pilot Scheme launched by the Hong Kong Policy Research Institute for promoting the understanding and proper recognition of some core concepts of the rule of law among secondary school students through legal seminars and interactive group discussions; launching a series of animated short videos, namely “Studio DoJ”, to introduce legal concepts, “one country, two systems”, the Basic Law and rule of law to the general

public in a lively and interesting way; holding talks at schools and community institutions under the “Meet the Community” programme to strengthen proper understanding of the legal system, rule of law and the Basic Law among the public and young people; and sending DoJ representatives to attend events as guest speakers from time to time. On 27 November last year, upon the invitation of the Education University of Hong Kong (EdUHK), a DoJ counsel took part in a video seminar on “The Basic Law and One Country, Two Systems” produced on the campus, the content of which included, among others, the genesis of “one country, two systems”, the drafting process and legislative purpose of the Basic Law, the Constitution being the constitutional basis of the Basic Law, the constitutional status of the Hong Kong Special Administrative Region (HKSAR), and the rights and freedoms safeguarded by the Basic Law. The seminar is a component of the General Education Foundation Course for students in the first year.

Basic Law 30th Anniversary Legal Summit — “Back to Basics”

To celebrate the 30th anniversary of the promulgation of the Basic Law and to enhance understanding of the Basic Law, DoJ hosted the Basic Law 30th Anniversary Legal Summit themed “Back to Basics” on 17 November 2020 at the former French Mission Building which is part of the complex of the Legal Hub. The summit was the first of its kind hosted by DoJ. We were privileged to have the support of so many renowned Mainland and Hong Kong legal professionals, experts and academics with expertise in the Constitution and the Basic Law to share their insights, which had greatly inspired the audience. Over 100 guests attended the summit in person. The morning session of the summit was broadcast live on 4 local television stations while the whole summit was webcast live, attracting a click rate of over 80 000. All speeches and discussions of the summit have been uploaded to the webpage of Hong Kong Legal Hub (https://www.legalhub.gov.hk/events_detail.php?l=en&a=115#) for public viewing.

Through the theme “Back to Basics”, DoJ hoped to revisit the background, purposes and drafting process of the Basic Law to ensure an accurate understanding of the fact that the Constitution is the legal basis of the Basic Law, and that the constitutional order of HKSAR was jointly established by the Constitution and the Basic Law. The summit also aimed at enhancing public understanding of the nature of the Basic Law which is, in essence, an “authorisation law”. As a local administrative region within a unitary state, all powers of HKSAR come from the Central Government.

To enable a more in-depth understanding of the insights of the speakers of the summit and to promote an accurate appreciation, discussion and study of the Basic Law, DoJ plans to publish the proceedings of the Legal Summit with all its addresses, speeches and discussions incorporated in the second quarter of 2021.

The Basic Law Bulletin

To enhance understanding of the Basic Law and relevant case law among civil servants and the general public, DoJ, the Civil Service Bureau (CSB) and the Constitutional and Mainland Affairs Bureau jointly publish regular issues of the Basic Law Bulletin. The latest issue was uploaded to DoJ’s website for public access last December.

In that issue of the Basic Law Bulletin, there is, among others, a signed article by the Secretary for Justice, Ms Teresa Cheng, SC, entitled “Celebrating the 30th Anniversary of the Promulgation of the Basic Law — Back to Basics”. The article reflects on the

background, purpose and vision of the drafting of the Basic Law, calling to mind our country’s original intention whilst proposing and developing the innovative policy of “one country, two systems”, and elucidating that the Constitution is the constitutional basis of the Basic Law and that the Constitution and the Basic Law together form the constitutional order of HKSAR. The article reiterates that our country is a unitary state with sovereignty resting with the national government. It clearly points out that only by reading and interpreting the Constitution and the Basic Law together can we foster an accurate understanding of the rights and obligations conferred by the Basic Law, including the constitutional obligation of HKSAR to safeguard national security. The article also introduces the context in which the NPCSC formulated the Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (National Security Law).

The expenses for publication of the Basic Law Bulletin and the conduct of Basic Law seminars for civil servants are absorbed by other relevant bureaux. As regards the expenditure for producing the video seminar on “The Basic Law and One Country, Two Systems” upon the invitation of the EdUHK, it will be taken up by EdUHK itself.

Basic Law seminars

DoJ counsel have been conducting Basic Law seminars for the training of civil servants to enhance their understanding of the Basic Law, with particular emphasis on explaining in everyday language fundamental concepts such as the relationship between the Constitution and the Basic Law, “one country” being the premise of “two systems”, the political structure of HKSAR, and civil servants’ obligation to be dedicated to their duties. Despite the pandemic, DoJ organised 2 Basic Law seminars in collaboration with CSB in 2020 with details as follows:

| | Date | Speaker | Title | Organiser |
|----|------------------------|---------------------------------------|-------------------|-----------|
| 1. | 22 September 2020 p.m. | 1 Deputy Principal Government Counsel | Basic Law seminar | CSB |
| 2. | 29 October 2020 p.m. | 1 Senior Government Counsel | Basic Law seminar | CSB |

National Security Law

Since the adoption of the Hong Kong National Security Law and its promulgation for implementation in HKSAR on 30 June 2020, the HKSAR Government has been introducing the Hong Kong National Security Law to various sectors and responding to concerns raised through different channels and means (including publishing pamphlets, issuing press releases, placing newspapers advertisements, and officials taking part in interviews on television, radio, webinars and other media, etc.), as well as through the economic and trade offices. Moreover, the Government has been enhancing Hong Kong people’s understanding of national development and national security through education in schools and different means. In this regard, the Government will roll out a series of promotional and educational activities on this year’s National Security Education Day on 15 April. In the days ahead, the HKSAR Government will continue to strengthen publicity and education, so as to enhance Hong Kong people’s understanding of national security and law-abiding awareness, and also deepen the understanding of the international community on the Hong Kong National Security Law and its positive messages.

Besides, the Hong Kong National Security Law is a national law listed in Annex III to the Basic Law, and links closely with the Constitution and the Basic Law. The Government will make good use of the platform of the Basic Law Promotion Steering Committee (BLPSC) chaired by the Chief Secretary for Administration, and coordinate with the BLPSC members the formulation of strategies and plans for promoting the Constitution, the Basic Law and the Hong Kong National Security Law.

- End -

CONTROLLING OFFICER'S REPLY

SJ043

(Question Serial No. 3087)

Head: (92) Department of Justice

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

Programme: (1) Prosecutions

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

Director of Bureau: Secretary for Justice

Question:

In respect of enhancing the standards of advocacy and preparation in criminal cases, what measures did the Prosecutions Division of the Department of Justice (DoJ) take in 2020-21? What are the details and effectiveness of such measures? Is DoJ content with the standards of advocacy and preparation in criminal cases? What new measures are to be expected in 2021-22? What are the details, including the manpower and expenditure involved and the implementation timetable, of such measures?

Asked by: Hon YUNG Hoi-yan (LegCo internal reference no.: 31)

Reply:

In respect of the standards of advocacy and preparation, we seek to enhance the efficiency and professionalism of our in-house prosecutors in handling prosecutions through various means, including the following –

- (a) reviewing from time to time the volume of work and staff establishment of the Prosecutions Division (PD), and applying for additional resources to meet its daily operational needs according to the established mechanism, when appropriate;
- (b) the continued provision of local training programmes to our in-house prosecutors, including the regular 12-week Criminal Advocacy Course, seminars on different topics under the Continuing Legal Education Programme, and talks/seminars on criminal law delivered by other professionals;
- (c) resuming the arrangement for in-house prosecutors to attend overseas advocacy training courses offered by experienced judges and legal practitioners when the pandemic subsides;
- (d) the provision of guidance to prosecutors from time to time through the issue and updating of circulars and reference materials;

- (e) designating co-ordinators or specific units for handling particular types of cases (including cases relating to public order events, human exploitation, money laundering, cybercrime, those involving vulnerable witnesses, as well as matters concerning court costs of criminal cases) to allow for better development of expertise within the Division in such areas of laws, and hence more effective and efficient handling of these cases; and
- (f) the continued operation of the quick advisory system known as “FAST” to promptly deal with relatively simple and straightforward cases. Legal advice processed through the system is generally provided on the same day. FAST has proven to be extremely effective in ensuring the overall efficiency of the advisory function of the Division whilst, at the same time, reducing the workload of counsel from advisory sections to free them up for more advocacy work. It also serves as another important training ground for our in-house prosecutors, as counsel from teams other than the few advisory sections would have the opportunities to regularly handle such FAST cases which help hone and consolidate their advisory skills and legal knowledge in respect of a broad spectrum of general criminal cases.

The staff costs of officers responsible for the above measures and other related expenses will be absorbed by existing resources of DoJ. The expenditure involved cannot be separately identified.

Apart from outlining the aim and areas of work of Programme (1) Prosecutions, the Controlling Officer’s Report for the current financial year sets out the key performance measures for PD in the past 2 years and this year (i.e. 2021), including the relevant targets and indicators. In 2020, the aim of the programme was generally met. As the prosecution authority, we are committed to the objective of presenting appropriate cases to the court in a fair manner. Prosecutions are, in accordance with the guidelines set out in the Prosecution Code, pursued only if there is a reasonable prospect of conviction and that it is in the public interest to prosecute. Once it is decided that prosecution should be pursued, it is the duty of prosecutors to act in a fair and objective manner. The question of guilt or innocence is a matter for the court to decide, on the criminal law standard of proving “beyond reasonable doubt” (which is a higher threshold than that for deciding whether to commence prosecution). Therefore, conviction rates in criminal cases are not and should not be taken as performance indicators.

- End -