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### Replies to initial written questions raised by Finance Committee Members in examining the Estimates of Expenditure 2016-17

**Director of Bureau : Secretary for Justice**

**Session No. : 2**

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**CONTROLLING OFFICER'S REPLY**

**SJ001**

**(Question Serial No. 1858)**

Head: (92) Department of Justice

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

Programme: (3) Legal Policy

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

To follow up on the Court of Final Appeal case of *W v Registrar of Marriages*, the Department of Justice (“DoJ”) set up earlier the Inter-departmental Working Group on Gender Recognition (“IWG”) to consider the legislation and incidental administrative measures required for protecting the rights of transsexual persons in Hong Kong in all legal contexts, and to make recommendations for reform as appropriate. In this connection, would the Government inform this Committee:

- (1) What were the manpower and expenditure involved for the IWG last year?
- (2) What are the estimated manpower and expenditure for the IWG in the coming year?
- (3) How many experts or professionals were consulted and invited for assistance by the DoJ? What were their status and background? Were there any transgenders among them? If yes, who were invited? If not, what were the reasons?
- (4) What were the research projects conducted by the IWG?
- (5) What is the work progress of the IWG to date? Which topics have been dealt with? And what is the work direction envisaged for the coming year?

Asked by: Hon CHAN Chi-chuen (Member Question No. 11)

Reply:

- (1) and (2) The existing one Senior Government Counsel post and one Government Counsel post, which were created in 2014-15 (for 2 years), will be extended for 2 years starting from 2016-17 to provide ongoing legal support to the IWG chaired by the Secretary for Justice. The estimated annual staff cost of the above posts is around \$2.1 million in 2015-16 and around \$2.2 million in 2016-17. For other officers providing support to the IWG, their work in this

regard is undertaken among their other duties, and the staff costs, as well as other related expenses, cannot be separately identified.

- (3) In addition to the thirteen formal meetings held, the IWG has held nine informal meetings to-date to consult a range of individuals and organisations, including doctors, psychiatrists, academic experts and transgender people (including those who have undergone full sex reassignment surgery). The IWG will continue to consult widely in the course of its work before finalising its recommendations to the Government.
- (4) and (5) The IWG is reviewing issues relating to transsexual persons in Hong Kong, including the condition known as gender identity disorder or gender dysphoria. It is also conducting a review of the legislation, schemes and case law in other jurisdictions and the standards of international bodies, with a view to making recommendations to the Government on possible legislation that may be necessary to address the issues faced by transsexual persons.

The scope of the IWG's study includes both recognition and post-recognition issues. On recognition issues, the IWG is reviewing such issues as the various options for a gender recognition scheme, the relevant qualification criteria and the application procedure. As for post-recognition issues, the IWG is reviewing all the existing legislative provisions and administrative measures in Hong Kong which may be affected by legal gender recognition, so that any required legislative or procedural reform can be followed up by the Government.

In 2016-17, the IWG will continue its study of recognition issues and will then extend the scope to post-recognition issues. The IWG is currently focusing on the completion of a consultation paper to seek the views of the public on recognition issues (which is the first major part of the study). It will endeavour to publish the paper as early as possible this year.

- End -

**CONTROLLING OFFICER'S REPLY****SJ002****(Question Serial No. 5368)**Head: (92) Department of JusticeSubhead (No. & title): (000) Operational expensesProgramme: (-) Not SpecifiedControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

Would the Department of Justice provide details of the studies of consultancy firms or research institutions commissioned by the Department in the past 3 years and the estimated expenditures on them by using the table below?

Time of study	Study item	Purpose of study	Scope covered	Research Institution	Manpower	Expenditure
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Asked by: Hon CHAN Chi-chuen (Member Question No. 126)Reply:

The information sought is provided as follows –

Year 2013-14

Nil

Year 2014-15

Time of study	Study item	Purpose of study	Scope covered	Research Institution	Manpower	Expenditure \$,000
Four months from December 2014 to March 2015	Legal research and comparative study in the areas of law concerning apology legislation	To facilitate the consideration of the need to introduce an apology legislation in Hong Kong so as to enhance the prospect of amicable settlement of disputes in civil	Areas of law concerning apology legislation	The University of Western Australia	1	48

Time of study	Study item	Purpose of study	Scope covered	Research Institution	Manpower	Expenditure \$,000
		and non-criminal proceedings				
30 July 2014 to date	The strengths, weaknesses, opportunities and challenges for Hong Kong in relation to its status as an international arbitration hub, particularly in the face of stiffening regional and international competition	Commissioned in collaboration with the Hong Kong Trade Development Council, the study will assist the long-term policy planning and strategic development in this area, and in turn enhance Hong Kong's position as a leading international arbitration centre in the Asia Pacific region	The study covers a number of aspects of the arbitration industry, including our legal and institutional infrastructure for arbitration (and how this compares to others in the region and internationally), the strengths and challenges within each of our major arbitration service areas, and the scope of and potential in existing and emerging geographical markets. The study will also include an analysis of the direct and indirect benefits which international arbitration brings to Hong Kong.	KPMG	Staff of KPMG	\$2,150 (estimate only)

Year 2015-16

Nil

- End -

**CONTROLLING OFFICER'S REPLY****SJ003****(Question Serial No. 5370)**Head: (92) Department of JusticeSubhead (No. & title): (001) SalariesProgramme: (-) Not SpecifiedControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

What are the estimated emoluments and allowances of the Secretary for Justice and his Administrative Assistant for 2016-17?

Asked by: Hon CHAN Chi-chuen (Member Question No. 128)Reply:

The estimated emoluments and allowances of the Secretary for Justice and his Administrative Assistant for 2016-17 are set out below -

	Emolument (\$ million)	Allowance (\$ million)
Secretary for Justice	3.70	0.22
Administrative Assistant to Secretary for Justice	1.97	Allowances for civil servant employees are provided under Head 46- General Expenses of the Civil Service. There is no separate provision for individual posts.

- End -



**CONTROLLING OFFICER'S REPLY****SJ004****(Question Serial No. 5478)**Head: (92) Department of JusticeSubhead (No. & title): (-) Not SpecifiedProgramme: (-) Not SpecifiedControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

Please list in the table below expenditure details of the duty visits made by the Secretary for Justice in the past 3 years, including the date of visit, place of visit, number of entourage members, purpose of visit, expenses on hotel accommodation, air tickets and meals, and total expenditure for each visit. Please list the amounts of sponsorships received and names of the sponsors (if any).

Date of visit	Place of visit	Number of entourage members	Purpose of visit	Hotel accommodation expenses	Air ticket expenses	Meal expenses	Total expenditure

Asked by: Hon CHAN Chi-chuen (Member Question No. 237)Reply:

Relevant information on the overseas duty visits of the Secretary for Justice in the past 3 years (2013-14, 2014-15 and 2015-16) is as follows -

Date of visit	Place of visit	Size of entourage	Purpose of visit	Hotel accommodation expenses	Air ticket expenses	Other expenses	Total expenditure#
2013-14 (10 times)	Singapore, Netherlands (Hague), UK (London), Korea (Seoul), Vietnam (Ho Chi Minh City), Cambodia (Phnom Penh), Beijing, Xiamen, Tianjin*, Macau*	2	To lead delegation to promote Hong Kong as a centre for international legal and dispute resolution services in the Asia Pacific region, strengthen mutual relationship, attend meetings and events (e.g. 120 <sup>th</sup>	About \$94,000	About \$592,000	About \$142,000	About \$828,000

			anniversary of the Hague Conference on Private International Law, Seminar on Hong Kong Legal and Arbitration Services, Asia Pacific Regional Arbitration Group Conference, Congress of the International Association of Lawyers, International Conference on International Arbitration)				
2014-15 (10 times)	UK (London), Sri Lanka (Colombo)*, India (New Delhi), Beijing, Qingdao, Macau*	1 - 2	To lead delegation to promote Hong Kong as a centre for international legal and dispute resolution services in the Asia Pacific region, strengthen mutual relationship, attend meetings and events (e.g. Hong Kong Legal Services Forum, London Law Expo 2014, Signing Ceremony of the Host Country Agreement and related Memorandum of Administrative Arrangements with the Permanent Court of Arbitration, Conference of Asian Attorneys General, Asia Pacific International Mediation Summit, seminar on regional judicial cooperation)	About \$84,000	About \$311,000	About \$72,000	About \$467,000
2015-16 (12 times)	USA (New York, Washington DC), Indonesia (Jakarta), Beijing, Shanghai, Shenzhen, Macau*	0-3	To lead delegation to promote Hong Kong as a centre for international legal and dispute resolution services in the Asia Pacific region, strengthen mutual relationship, attend meetings and events (e.g. Hague Conventions conference, Launching ceremony of the Shanghai Office of the Hong Kong	About \$180,000	About \$430,000	About \$168,000	About \$778,000

			International Arbitration Centre, Seminars on legal and dispute resolution services, Opening and graduation ceremony of a Mainland summer internship programme for Hong Kong law students)				
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**Remarks:**

# Total expenditure includes charges for accommodation and passage, subsistence allowance for duty outside Hong Kong and sundry expenses (if applicable).

\* Sponsorship of hotel accommodation and/or in-town transportation were offered by the hosting governments/organisations. The actual value of sponsorship received is not available.

- End -

**CONTROLLING OFFICER'S REPLY**

**SJ005**

**(Question Serial No. 5548)**

Head: (92) Department of Justice

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

Programme: (5) International Law

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

The Department of Justice of Hong Kong and the Law Reform Bureau (法改局) of Macao had various discussions on the arrangements for the surrender of fugitive offenders, as well as the details and specific provisions for the mutual legal assistance in criminal matters earlier on. It is known that some fundamental consensus has been reached between the 2 sides. In this connection, please set out in a table the time, place, participating officers from both sides and matters covered in each discussion. How many items on which consensus regarding the arrangements for the surrender of fugitive offenders has been reached between the 2 sides, and what areas do they cover?

Will the surrender arrangements cover fugitive offenders involved in political or economic crimes? And will civil or criminal cases be covered?

When does the Government expect to start the next stage of work for the surrender of fugitive offenders, and to announce and implement the arrangements?

What are legal basis for the arrangements? With what kind of power permitted by the Basic Law are the 2 sides making the surrender arrangements?

Asked by: Hon CHAN Chi-chuen (Member Question No. 36)

Reply:

By Article 95 of the Basic Law, the Hong Kong Special Administrative Region may, through consultations and in accordance with law, maintain juridical relations with the judicial organs of other parts of the country, and they may render assistance to each other. The Governments of the Hong Kong Special Administrative Region (HKSAR) and the Macau Special Administrative Region (Macau SAR) have had various discussions on matters relating to the surrender of fugitive offenders and mutual legal assistance in criminal matters.

The Secretary for Justice made duty visits to the Macau SAR for seven times since he took up the post. Among the visits, he had met with the Secretary for Administration and Justice of the Macau SAR for four times to discuss matters of mutual interest.

Given the differences in the legal systems between the two places, the two Governments are still working to sort out all relevant issues as well as to formulate texts of the arrangements which will be acceptable to both sides and can be implemented. There is no set timetable for the conclusion of the arrangements. The HKSAR Government will ensure that the arrangements will on the one hand achieve juridical co-operation between the two places, and on the other hand, be consistent with the provisions of the Basic Law of the HKSAR (including those concerning human rights) and such other legal obligations as may be relevant. In the HKSAR, the arrangements, after being signed, will have to go through a legislative process before they can be implemented.

- End -

**CONTROLLING OFFICER'S REPLY****SJ006****(Question Serial No. 1094)**Head: (92) Department of JusticeSubhead (No. & title): (-) Not SpecifiedProgramme: (1) ProsecutionsControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

In respect of Programme (1) Prosecutions, would the Government inform this Committee of the operational expenses for 2016-17, and the establishment and estimated annual expenditure on the emoluments involved? What is the annual expenditure involved on the emoluments of the Government Counsel? What are the estimated expenses for the hire of legal services and related professional fees for 2016-17?

Asked by: Hon Albert CHAN Wai-yip (Member Question No. 5)Reply:

The estimated establishment in respect of Programme (1) Prosecutions as at 31 March 2017 is 595, as set out below -

<b>Grades</b>	<b>Establishment</b>
Government Counsel	136
Para-legal	136
Executive, Clerical and Secretarial	323
<b>Total</b>	<b>595</b>

The estimated expenditure of the Programme for 2016-17 is \$900.3 million, out of which, the estimated personal emoluments involved are about \$336.9 million (including \$181.1 million for Government Counsel) while the estimated expenses for the hire of legal services and related professional fees is \$181 million.

- End -

**CONTROLLING OFFICER'S REPLY**

**SJ007**

**(Question Serial No. 1095)**

Head: (92) Department of Justice

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

Programme: (1) Prosecutions

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Under this Programme, the Government states that the estimate for this Programme for 2016-17 is \$218.4 million higher than that for 2015-16 and is partly due to the anticipated increase in court costs. Would the Government inform this Committee of:

- (1) the reasons for the anticipated increase in court costs and whether the increase in court costs is related to the handling of the large number of criminal prosecutions involved in the Occupy Central movement and the clashes in Mong Kok?
- (2) the estimated court costs of this Programme for 2016-17 and its increase over that for 2015-16?

Asked by: Hon Albert CHAN Wai-yip (Member Question No. 6)

Reply:

The estimated expenditure for court costs in respect of the Prosecutions Division (PD) for 2016-17 is \$333 million, which is \$183 million (or 122%) higher than the revised estimate for 2015-16 (\$150 million).

The annual expenditure for court costs varies from year to year, depending on the number of cases involved, their complexity and development. It is not appropriate for us to disclose information on the kind and number of cases that we have taken into account in calculating the anticipated court costs expenditure, as this may prejudice our position in on-going proceedings (e.g. by disclosing directly or indirectly our assessment of matters concerning those cases). It should be noted that as the estimate was worked out on information available at the time of preparing the estimates, the actual expenditure incurred in 2016-17 would ultimately depend on the subsequent development and outcome of the cases concerned (which are not entirely within our control).

- End -

**CONTROLLING OFFICER'S REPLY**

**SJ008**

**(Question Serial No. 1096)**

Head: (92) Department of Justice

Subhead (No. & title): (001) Salaries

Programme: (1) Prosecutions

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Would the Government inform this Committee of the estimated expenditure on the emolument of the Director of Public Prosecutions for 2016-17?

Asked by: Hon Albert CHAN Wai-yip (Member Question No. 8)

Reply:

The notional annual mid-point salary (NAMS) of the Director of Public Prosecutions post is \$2,831,400.

- End -



**CONTROLLING OFFICER'S REPLY**

**SJ009**

**(Question Serial No. 2895)**

Head: (92) Department of Justice

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

Programme: (3) Legal Policy

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

In respect of this Programme, would the Government inform this Committee of:

- (1) the operational expenses, the establishment and estimated annual expenditure on the emoluments involved for 2015-16?
- (2) the establishment and estimated annual expenditure on the emoluments involved for the provision of legal advice on the implementation of the Basic Law and the development of our new constitutional order in 2015-16?
- (3) the establishment and estimated annual expenditure on the emoluments involved for the promotion of the use of arbitration in 2015-16?

Asked by: Hon Albert CHAN Wai-yip (Member Question No. 31)

Reply:

- (1) The estimated establishment for Programme (3) Legal Policy as at 31 March 2016 is as follows -

Grades	Establishment
Government Counsel	45
Para-legal	8
Executive, Clerical and Secretarial	47
Total	100

The estimated expenditure of the Programme for 2015-16 is \$112 million, of which \$81.3 million is for personal emoluments.

- (2) The provision of legal advice on the implementation of the Basic Law and for the development of the new constitutional order are mainly handled by the Basic Law Unit (BLU) and the Constitutional Development and Elections Unit (CDEU) of the Legal Policy Division respectively, among their other work. The number of relevant staff and

the annual staff costs for 2015-16 are as follows :

Grades	BLU	CEDU
Government Counsel	6	3
Para-legal	1	-
Secretarial/ Clerical	3	1
Total number of staff	10	4
Total estimated annual expenditure on the emoluments in 2015-16	\$8,824,800	\$4,661,760

Other staff also tender advice on these two areas among their other advisory duties and the expenditure cannot be separately identified.

- (3) One Senior Government Counsel post was created in 2014-15 for handling the work relating to the promotion of the use of arbitration as well as providing support to the work of the Advisory Committee on Promotion of Arbitration. The estimated annual emoluments for the post are \$1.2 million in 2015-16. Other staff also provide support to the work relating to the promotion of the use of arbitration among their other duties and the expenditure cannot be separately identified.

- End -

**CONTROLLING OFFICER'S REPLY**

**SJ010**

**(Question Serial No. 3957)**

Head: (92) Department of Justice

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

Programme: (1) Prosecutions

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Please provide a detailed breakdown of the following information and the nationality and male to female ratio involved for the past 5 years:

- 1) Criminal proceedings related to sexual violence:
  - 1.1) The number of successful prosecutions with a breakdown by penalty (e.g. length of sentence, service orders and orders of binding over issued, etc.).
  - 1.2) The number of unsuccessful prosecutions and the reasons.
- 2) The number of criminal proceedings related to sexual violence where prosecutions were not pursued and the reasons.
- 3) The number of criminal proceedings related to sexual violence where the victims withdrew support for the prosecution.
- 4) The number of criminal proceedings related to sexual violence with the further charge of “attempting to pervert the course of public justice”.
- 5) The respective numbers of criminal proceedings related to sexual violence which involved assault, inflicting an injury or threatening to injure.
- 6) The number of criminal proceedings related to sexual violence which involved deaths with a breakdown by male to female ratio, age and nationality of the deceased.
- 7) The number of civil proceedings related to sexual harassment:
  - 7.1) The number of successful prosecutions and claims.
  - 7.2) The number of unsuccessful prosecutions and the reasons.

Asked by: Dr Hon Fernando CHEUNG Chiu-hung (Member Question No. 745)

Reply:

Information available are provided below -

(1)

The number of prosecutions and convictions under section 118\* (Rape) of the Crimes Ordinance (Cap. 200) are listed as follows -

	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
Not convicted	36	28	44	26
Convicted	28	20	18	17
Total	64	48	62	43

\*Remarks - Not including rape (extraterritorial) cases.

The number of prosecutions and convictions under section 122<sup>#</sup> (Indecent assault) of the Crimes Ordinance (Cap. 200) are listed as follows -

	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
Not convicted	158	178	194	145
Convicted	425	441	376	328
Total	583	619	570	473

#Remarks - Not including indecent assault (extraterritorial) cases.

The Government does not maintain statistics on nationality, male to female ratio, penalty or reasons for unsuccessful prosecution.

(2) to (6) The Government does not maintain requested information on criminal proceedings related to sexual violence.

(7) As the Department of Justice is not generally involved in those civil litigation cases involving sexual harassment between members of the public, we are not able to provide the required statistics.

- End -

**CONTROLLING OFFICER'S REPLY**

**SJ011**

**(Question Serial No. 3958)**

Head: (92) Department of Justice

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

Programme: (1) Prosecutions

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Please provide a detailed breakdown of the following information and the nationality and male to female ratio involved for the past 5 years:

- 1) Criminal proceedings related to domestic violence:
  - 1.1) The number of successful prosecutions with a breakdown by penalty (e.g. length of sentence, service orders and orders of binding over issued, etc.).
  - 1.2) The number of unsuccessful prosecutions and the reasons.
- 2) The number of criminal proceedings related to domestic violence where prosecutions were not pursued and the reasons.
- 3) The number of criminal proceedings related to domestic violence where the victims withdrew support for the prosecution.
- 4) The number of criminal proceedings related to domestic violence with the further charge of “attempting to pervert the course of public justice”.
- 5) The respective numbers of criminal proceedings related to domestic violence which involved assault, inflicting an injury or threatening to injure.
- 6) The number of criminal proceedings related to domestic violence which involved deaths with a breakdown by male to female ratio, age and nationality of the deceased.
- 7) The number of criminal proceedings related to domestic conflicts/disputes:
  - 7.1) The number of successful prosecutions with a breakdown by penalty (e.g. length of sentence, service orders and orders of binding over issued, etc.); the number of unsuccessful prosecutions and the reasons.

Asked by: Dr Hon Fernando CHEUNG Chiu-hung (Member Question No. 748)

Reply:

Information available is provided below -

(1), (2) & (7)

The number of domestic violence / domestic conflicts or disputes cases with a breakdown by prosecution result and year of arrest are as follows-

Prosecution Result	Year of Arrest				
	2011	2012	2013	2014	2015
Unsuccessful Prosecutions@	513	394	392	361	275
Total number of Conviction	236	177	165	163	192
Immediate imprisonment*	62	53	36	40	44
Probation Order	30	25	11	25	28
Community Service Order	19	13	17	10	17
Suspended Imprisonment	60	32	64	55	68
Bound-over / Conditional Discharge	3	5	1	0	0
Others#	62	49	36	33	35
Total	749	571	557	524	467

@Remarks - Including those prosecutions not further taken forward.

\*Remarks - Not including life imprisonment.

#Remarks - Including life imprisonment.

The number of domestic violence / domestic conflicts or disputes cases with the male to female ratio to persons convicted and year of arrest are as follows-

Gender	Year of Arrest				
	2011	2012	2013	2014	2015*
Male	199 (84.3%)	157 (88.7%)	144 (87.3%)	142 (87.1%)	180 (93.8%)
Female	37 (15.7%)	20 (11.3%)	21 (12.7%)	21 (12.9%)	12 (6.3%)
Total	236 (100%)	177 (100%)	165 (100%)	163 (100%)	192 (100%)

\*Remarks - Percentages may not add up to 100% due to rounding.

The number of convicted domestic violence / domestic conflicts or disputes cases involving immediate imprisonment sentenced (but not including life imprisonment) with a breakdown by the duration of imprisonment and year of arrest are as follows-

Duration of Imprisonment	Year of Arrest				
	2011	2012	2013	2014	2015
Six months or less	46	48	32	37	41
Over six months to one year	5	2	0	1	2
Over one year	11	3	4	2	1
Total	62	53	36	40	44

The Government does not maintain statistics on nationality and reasons for unsuccessful prosecution or prosecution not pursued.

(3) & (4) The Government does not maintain information on criminal proceedings related to domestic violence where the victims withdrew support for the prosecution or where the further charge of “attempting to pervert the course of public justice” was involved.

(5) The number of criminal cases reported to the Police related to domestic violence which involved wounding / serious assault, criminal intimidation and other criminal cases from 2012 to 2014 are as follows-

<b>Domestic Violence (Crime) cases</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
Wounding / serious assault	1 145	1 101	948
Criminal intimidation	515	443	419
Other criminal cases*	342	326	302
Total	2 002	1 870	1 669

\* Remarks - Other criminal cases include murder / manslaughter, rape, indecent assault, criminal damage and possession of offensive weapon, etc.

(6) The number of criminal cases reported to the Police related to domestic violence which involved murder / manslaughter from 2012 to 2014 are as follows-

	2012	2013	2014
Murder / manslaughter Total	9	8	5

The Government does not maintain statistics on male to female ratio, age and nationality of the deceased.

- End -

**CONTROLLING OFFICER'S REPLY**

**SJ012**

**(Question Serial No. 3959)**

Head: (92) Department of Justice

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

Programme: (1) Prosecutions

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Please provide a detailed breakdown of the following information and the nationality involved for the past 5 years:

- 1) Criminal proceedings related to transgender persons :
  - 1.1) The number of successful prosecutions with a breakdown by penalty (e.g. length of sentence, service orders and orders of binding over issued, etc.).
  - 1.2) The number of unsuccessful prosecutions and the reasons.
- 2) The number of criminal proceedings related to transgender persons where prosecutions were not pursued and the reasons.
- 3) The number of criminal proceedings related to transgender persons where the victims withdrew support for the prosecution.
- 4) The number of criminal proceedings related to transgender persons with the further charge of “attempting to pervert the course of public justice”.
- 5) The respective numbers of criminal proceedings related to transgender persons which involved assault, inflicting an injury or threatening to injure.
- 6) The number of criminal proceedings related to transgender persons which involved deaths with a breakdown by age and nationality of the deceased.
- 7) The number of civil proceedings related to transgender persons:
  - 7.1) The number of successful prosecutions and claims.
  - 7.2) The number of unsuccessful prosecutions and the reasons.

Asked by: Dr Hon Fernando CHEUNG Chiu-hung (Member Question No. 749)



Reply:

As the prosecution authority, our objective is to see that appropriate cases are presented fairly to the court. The gender of parties involved in a criminal case is taken into account in the handling of the case if but only if that is of direct relevance to the merit of the case and hence our prosecutorial decision.

Similarly, as the department responsible for representing the Government in courts in civil cases, the gender of individuals involved in a civil case is taken into account in the handling of the case if but only if that is of direct relevance to the subject matter and hence how the case is handled.

We do not keep statistics on cases related to transgendered persons.

- End -

**CONTROLLING OFFICER'S REPLY**

**SJ013**

**(Question Serial No. 3974)**

Head: (92) Department of Justice

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

Programme: (1) Prosecutions

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Please provide a detailed breakdown of the following information and the nationality and male to female ratio involved for the past 5 years:

- 1) Criminal proceedings related to foreign domestic helpers:
  - 1.1) The number of successful prosecutions with a breakdown by penalty (e.g. length of sentence, service orders and orders of binding over issued, etc.).
  - 1.2) The number of unsuccessful prosecutions and the reasons.
- 2) The number of criminal proceedings related to foreign domestic helpers where prosecutions were not pursued and the reasons.
- 3) The number of criminal proceedings related to foreign domestic helpers where the victims withdrew support for the prosecution.
- 4) The number of criminal proceedings related to foreign domestic helpers with the further charge of “attempting to pervert the course of public justice”.
- 5) The respective numbers of criminal proceedings related to foreign domestic helpers which involved assault, inflicting an injury or threatening to injure.
- 6) The number of criminal proceedings related to foreign domestic helpers which involved deaths with a breakdown by male to female ratio, age and nationality of the deceased.
- 7) The number of civil proceedings related to foreign domestic helpers:
  - 7.1) The number of successful prosecutions and claims.
  - 7.2) The number of unsuccessful prosecutions and the reasons.

Asked by: Dr Hon Fernando CHEUNG Chiu-hung (Member Question No. 779)

Reply:

The information sought is provided as follows-

The Government does not maintain figures of cases involving the abuse of foreign domestic helpers. We can, however, provide in the table below the number of reports of “wounding and serious assault” received by the Police involving attack of domestic helpers by employers from 2011 to 2014, and the number of such cases detected.

Year	Number of reports of “wounding and serious assault” received by the Police involving attack of domestic helpers by employers	Number of detected cases
2011	56	46
2012	40	35
2013	37	31
2014	38	31

The Government does not maintain information on the outcome of such cases.

- End -

**CONTROLLING OFFICER'S REPLY**

**SJ014**

**(Question Serial No. 3975)**

Head: (92) Department of Justice

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

Programme: (1) Prosecutions  
(2) Civil

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Please provide a detailed breakdown of the following information for the past 5 years:  
In respect of services for male batterers, what was the designated funding for such services?  
What was the work involved? What is the designated funding for the coming year? How  
many cases were involved and how many were there in which the batterers were mandated  
by the court to receive such services?

Asked by: Dr Hon Fernando CHEUNG Chiu-hung (Member Question No. 781)

Reply:

The function of the Department of Justice is, inter alia, to represent the Government in  
courts. The provision of services for batterers does not fall within our purview. We are  
also not aware of criminal cases or civil cases handled by the Department in which batterers  
were mandated by the court to join a Batterer Intervention/Treatment Programme.

- End -

**CONTROLLING OFFICER'S REPLY****SJ015****(Question Serial No. 6755)**Head: (92) Department of JusticeSubhead (No. & title): (000) Operational expensesProgramme: (-) Not SpecifiedControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

Please list the monthly salaries, allowances and other expenses of the Secretary for Justice, Mr Rimsky Yuen, SC, in the past 5 years, the monthly pension he will receive on retirement and the total expenditure on his pension.

Asked by: Dr Hon Fernando CHEUNG Chiu-hung (Member Question No. 348)Reply:

The monthly salaries and non-accountable entertainment allowance of Mr Rimsky Yuen, SC since he assumed office as Secretary for Justice in July 2012 are set out below.

	Cash Remuneration (per month)	Non-accountable entertainment allowance (per month)
July 2012 to March 2013	\$291,985	\$16,000
April 2013 to March 2014	\$291,985	\$16,658
April 2014 to March 2015	\$291,985 (\$308,585 wef February 2015)	\$17,375
April 2015 to March 2016	\$308,585	\$18,142

The terms of employment and conditions of service for Politically-Appointed Officers serving the fourth term of the Hong Kong Special Administrative Region Government, including the Secretary for Justice, do not attract any pension benefits. Apart from the mandatory provident fund contribution made by the Government, the Secretary for Justice and other Politically-Appointed Officers are not entitled to a monthly pension on retirement.

- End -

**CONTROLLING OFFICER'S REPLY**

**SJ016**

**(Question Serial No. 7164)**

Head: (92) Department of Justice

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

Programme: (1) Prosecutions

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

- (1) Please list the number of applications for injunctions related to domestic violence and sexual violence in the last 5 years as well as the average time taken to handle these applications.
- (2) Please list the number of applications for custody orders in emergency cases related to domestic violence and sexual violence in the last 5 years as well as the average time taken to handle these applications.
- (3) Please list the number of applications for habeas corpus related to domestic violence and sexual violence in the last 5 years as well as the average time taken to handle these applications.

Asked by: Dr Hon Fernando CHEUNG Chiu-hung (Member Question No. 747)

Reply:

The Department of Justice is not generally involved in applications by the individuals concerned for injunctions involving domestic violence or sexual violence, or applications for custody orders in emergency cases involving domestic violence or sexual violence. Injunction applications are generally made by the parties concerned, while applications for custody orders may be made by the parties concerned or by the Social Welfare Department or the Police as the case may be. We are therefore not able to provide the relevant statistics. We also do not maintain statistics on applications for habeas corpus related to domestic violence and sexual violence.

- End -

**CONTROLLING OFFICER'S REPLY****SJ017****(Question Serial No. 5584)**Head: (92) Department of JusticeSubhead (No. & title): (-) Not SpecifiedProgramme: (1) ProsecutionsControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

- (1) What were the statistics for domestic violence cases between 2011 and 2015? Please provide the following information:

	2011	2012	2013	2014	2015
Prosecution not instituted					
Bound over					
Prosecution instituted					

- (2) Please list the 5 main reasons for “prosecution not instituted”.

- (3) How many domestic violence cases there were in which the bound-over offenders reoffended and what were the means of disposal?

	2011	2012	2013	2014	2015
No action taken					
Bound over duration extended					
Prosecution instituted					

Asked by: Hon CHEUNG Kwok-che (Member Question No. 759)Reply:

The information available is provided as follows -

Number of domestic violence cases between 2011 and 2015 are listed in the table below.

	2011	2012	2013	2014	2015
Bound over / conditional discharge	3	5	1	0	0
Prosecution instituted	749	571	557	524	467



The Government does not maintain information on domestic violence cases where prosecution was not instituted or domestic violence cases in which the bound over offenders reoffended.

In handling these cases, prosecutors are required at all time to apply The Prosecution Code which contains a section on “Domestic Violence Cases”, and more specifically to the published guidelines regarding the policy for prosecuting cases involving domestic violence. Prosecutors will consider -

- whether there is sufficient evidence to justify the institution of proceedings on the basis that it affords a reasonable prospect of conviction; and
- whether the public interest requires a prosecution to be pursued. Generally speaking, the public interest will require that a prosecution be brought in a case of domestic violence if the victim is willing to give evidence.

Possible reasons (none of them necessarily overriding and the exact weight to be attached will depend on the facts of each case) for not instituting or continuing with a prosecution in cases involving domestic violence include -

- the victim is the only witness who can testify to the commission of the offence but he/she is not willing to give evidence in court, and there is otherwise insufficient admissible evidence to prove the case in court to the required standard;
- the nature of the case is relatively minor, taking into account matters including the degree of violence used, the extent of the injury, if any, caused, etc.;
- the accused has no history of spousal or other forms of violence such that the risk to the victim’s safety can credibly be assessed as ‘low’;
- the victim freely withdraws support for prosecution and the overall circumstances do not justify compelling the victim to testify, or warrant not proceeding with the case; and
- the accused is motivated to change (as evidenced, for example, by participation in counselling sessions).

- End -

**CONTROLLING OFFICER'S REPLY****SJ018****(Question Serial No. 5601)**Head: (92) Department of JusticeSubhead (No. & title): (-) Not SpecifiedProgramme: (1) ProsecutionsControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

Please inform this Committee of the statistics for domestic violence cases involving ethnic minorities between 2013 and 2015 as well as the number of use of court interpretation service as below:

	2013	2014	2015
Prosecution not instituted			
Bound over			
Prosecution instituted			
Number of use of court interpretation service			

Asked by: Hon CHEUNG Kwok-che (Member Question No. 764)Reply:

The information available is provided as follows -

The Government does not generally maintain figures of domestic violence cases involving ethnic minorities. We can however provide in the table below the numbers for domestic violence cases between 2013 and 2015.

	2013	2014	2015
Bound over / conditional discharge	1	0	0
Prosecution instituted	557	524	467

- End -

**CONTROLLING OFFICER'S REPLY**

**SJ019**

**(Question Serial No. 1180)**

Head: (92) Department of Justice

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

Programme: (1) Prosecutions

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Please provide the following information in respect of prosecutions work:

- (a) The establishment, actual manpower and expenditure of the Prosecutions Division in 2015-16; and
- (b) The number of cases conducted by Government Counsel and by counsel instructed to prosecute at different levels of courts in 2015-16.

Asked by: Hon Albert HO Chun-yan (Member Question No. 32)

Reply:

(a) The establishment and strength of the Prosecutions Division **as at 1 March 2016** are as follows -

<b>Grades</b>	<b>Establishment</b>	<b>Strength</b>
Government Counsel	135	130
Para-legal	135	109
Executive, Clerical and Secretarial	216	210
Total	486	449

The estimated expenditure of the Prosecutions Division for 2015-16 is \$607 million.

(b) The number of cases conducted by Government Counsel and by Counsel instructed to prosecute at different levels of court in 2015-16\* -

No. of cases conducted		2015-16*	
		Government Counsel	Counsel instructed to prosecute
Appeal Court	Court of Final Appeal	44	6
	Court of Appeal	400	22
	Magistracy Appeal	643	7
Court of First Instance		332	222
District Court		459	515
Magistracy		180	791
Death Inquest		13	1
<b>Total</b>		<b>2 071</b>	<b>1 564</b>

\*latest figures up to 31 January 2016

- End -

**CONTROLLING OFFICER'S REPLY**

**SJ020**

**(Question Serial No. 1261)**

Head: (92) Department of Justice

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

Programme: (4) Law Drafting

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

In a reply (Reply Serial No. SJ021) to this Committee last year (2016-2017) on the translation of legislation, the Government indicated that a pilot scheme was being introduced to make improvements in this area. Please inform this Committee:

(a) whether the Government has evaluated the effectiveness of the pilot scheme? If it is found to be effective, when will the Government launch the scheme in full as a policy? If not, what other improvement options does the Government have? and

(b) which bills were drafted under this scheme? Which of them were still challenged by Councillors for their expressions and wording when introduced to the bills committees of the Legislative Council for scrutiny?

Asked by: Hon Cyd HO Sau-lan (Member Question No. 9)

Reply

- (a) We are still running the pilot scheme and we will review the effectiveness of the scheme when it is concluded.
- (b) Up to now, four legislative items have been studied under the scheme, namely -
  - (i) Companies (Winding Up and Miscellaneous Provisions) (Amendment) Bill 2015 (6 clauses);
  - (ii) Inland Revenue (Amendment) (No. 3) Bill 2015;
  - (iii) Promotion of Recycling and Proper Disposal (Product Container) (Amendment) Bill 2015; and
  - (iv) Air Pollution Control (Ocean Going Vessels) (Fuel at Berth) Regulation.

During the scrutiny in the Legislative Council (LegCo), we are not aware of challenges made by LegCo Members or LegCo Legal Advisers to the Chinese text of any of these four legislative items.

We intend to conclude the pilot scheme after having 10 pieces of legislation vetted under the scheme. We will then review the effectiveness of the scheme and decide on a way forward.

- End -

**CONTROLLING OFFICER'S REPLY****SJ021****(Question Serial No. 1262)**Head: (92) Department of JusticeSubhead (No. & title): (-) Not SpecifiedProgramme: (3) Legal PolicyControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

In regard to the growing cross-boundary co-operation between Hong Kong and the Mainland in recent years, please provide relevant information on Hong Kong/Mainland cross-boundary projects or programmes in which your bureau and the departments under your purview have been involved.

(a) For Hong Kong/Mainland cross-boundary projects or programmes, please provide information for 2014-15 and 2015-16 as per the following table:

Project/ Programme	Details, objective and whether it is related to the Framework Agreement on Hong Kong/Guangdong Co-operation (the Framework Agreement) or the National 13th Five-year Plan	Expenditure involved	Mainland official(s) and department(s)/ organisation(s) involved	Has any agreement been signed and whether it has been made public? If not, what are the reasons?	Progress (% completed, commencement date, target completion date)	Have the details, objectives, amount involved or impact on the public, society, culture and ecology been released to the public? If so, through what channel(s) and what were the manpower and expenditure involved? If not, what are the reasons?	Has any public consultation on the cross-boundary project been conducted in Hong Kong?	Details of the legislative amendments or policy changes involved in the project/ programme



(b) Has provision been earmarked for Hong Kong/Mainland cross-boundary projects or programmes in this year (2016-17)? If yes, please provide information in respect of Hong Kong/Mainland cross-boundary projects or programmes for 2016-17 as per the following table:

Project/ Programme	Details, objective and whether it is related to the Framework Agreement on Hong Kong/Guangdong Co-operation (the Framework Agreement) or the National 13th Five-year Plan	Expenditure involved	Mainland official(s) and department(s)/ organisation(s) involved	Has any agreement been signed and whether it has been made public? If not, what are the reasons?	Progress (% completed, commencement date, target completion date)	Have the details, objectives, amount involved or impact on the public, society, culture and ecology been released to the public? If so, through what channel(s) and what were the manpower and expenditure involved? If not, what are the reasons?	Will any public consultation on the cross-boundary project be conducted in Hong Kong?	Details of the legislative amendments or policy changes involved in the project/ programme

(c) Apart from the projects or programmes listed above, are there any other modes of Hong Kong/Mainland cross-boundary cooperation? If so, in what modes are they taken forward? What were the manpower and expenditure involved last year? How much financial and manpower resources has been earmarked in the 2016-17 Estimates?

Asked by: Hon Cyd HO Sau-lan (Member Question No. 10)

Reply:

The information sought is provided as follows –

(a)

Project / Programme	Details, objective and whether it is related to the Framework Agreement on Hong Kong / Guangdong Co-operation (the Framework Agreement) or the National 13 <sup>th</sup> Five-year Plan	Expenditure involved	Mainland official(s) and department(s)/ organisation(s) involved	Has any agreement been signed and whether it has been made public? If not, what are the reasons?	Progress (% completed, commencement date, target completion date)	Have the details, objectives, amount involved or impact on the public, society, culture and ecology been released to the public? If so, through what channel(s) and what were the manpower and expenditure involved? If not, what are the reasons?	Has any public consultation on the cross-boundary project been conducted in Hong Kong?	Details of the legislative amendments or policy changes involved in the project/ programme
Enhance Legal Co-operation with Guangdong	Pursuant to the Framework Agreement on Hong Kong/ Guangdong Co-operation, we have reinforced the existing communication mechanism in legal matters with Guangdong. This has covered exchange of legal information as well as conducting meetings and / or seminars to discuss specific legal issues.	The staff cost and other related expenses have been and will continue to be absorbed from within the available resources of the Department and the expenditure for this specific programme cannot be separately identified.	The Legislative Affairs Office and the Justice Department of the Guangdong Province, depending on the subject matter concerned.	N/A	The programme commenced in 2010 and is expected to continue for some time.	The Agreement and related initiative were presented to the Legislative Council Panel on Administration of Justice and Legal Services (AJLS) in October 2010. It was also mentioned in the Department's Policy Initiatives provided to the AJLS Panel in the past years, including the 2016 Policy Initiatives. The staff costs and other related expenses were absorbed from within the available resources of the Department and the expenditure in this regard cannot be separately identified.	N/A	Apart from the cooperative initiatives contained in the Agreement, the programme does not involve a change of law or policy of the Government.
Co-operation between Shenzhen and Hong	The Co-operative Arrangement on Legal	Same as above	Shenzhen Municipal Government	The Co-operative Arrangement on Legal	The co-operation is expected to continue for	The Co-operative Arrangement was signed at	N/A	Same as above

Project / Programme	Details, objective and whether it is related to the Framework Agreement on Hong Kong / Guangdong Co-operation (the Framework Agreement) or the National 13 <sup>th</sup> Five-year Plan	Expenditure involved	Mainland official(s) and department(s)/ organisation(s) involved	Has any agreement been signed and whether it has been made public? If not, what are the reasons?	Progress (% completed, commencement date, target completion date)	Have the details, objectives, amount involved or impact on the public, society, culture and ecology been released to the public? If so, through what channel(s) and what were the manpower and expenditure involved? If not, what are the reasons?	Has any public consultation on the cross-boundary project been conducted in Hong Kong?	Details of the legislative amendments or policy changes involved in the project/ programme
Kong	Matters was signed between the Department and the Shenzhen Municipal Government on 25 November 2011. The main purpose was to establish a mechanism to promote legal co-operation between the two governments.			Matters was signed between the Department and the Shenzhen Municipal Government on 25 November 2011. The Department informed the AJLS Panel of the signing of the Arrangement and its main purpose in late November 2011. Main details of the Co-operative Arrangement are also available on the Department's website.	some time.	the HK/Shenzhen Co-operation meeting on 25 November 2011. The matter was covered in the press release on the meeting issued by the Government. The AJLS Panel was also informed of the signing of the Arrangement and its main purpose in late November 2011. The staff costs and other related expenses were absorbed from within the available resources of the Department and the expenditure in this regard cannot be separately identified.		

(b) As indicated in (a) above, we expect the relevant programmes to continue in 2016-17. In addition, we shall continue to keep in view cross-boundary projects or programmes that may be pursued to enhance Hong Kong's position as a leading centre for international legal and dispute resolution services in the Asia Pacific region, particularly in the context of the Belt and Road Initiative and the National 13<sup>th</sup> 5-year Plan.

(c) Department of Justice (DoJ) has been conducting the following Hong Kong/Mainland cross-boundary projects or programmes which aim to enhance legal co-operation in the following areas:

DoJ regularly promotes legal co-operation between Hong Kong and the Mainland. For example, we have been monitoring the implementation of the reciprocal arrangement signed with the Supreme People's Court to facilitate reciprocal enforcement of judgments in certain civil or commercial matters as well as the arrangement on mutual enforcement of arbitral awards. Moreover, the Department is exploring with the Supreme People's Court on expanding the scope of mutual legal assistance in civil or commercial matters between Hong Kong and the Mainland. The Department will conduct the relevant studies and public consultation on the relevant issues under its purview and brief the AJLS Panel on the work in due course, with a view that further arrangements on mutual legal assistance, to be put in place on the basis of the Basic Law, can meet the practical needs of both Hong Kong and the Mainland and can more effectively safeguard the rights of relevant parties in accordance with applicable laws.

The Department has received and exchanged information with a number of delegations from the Mainland on matters of mutual interests. The Department has also worked with the relevant professional bodies and institutions as well as the relevant Mainland authorities on ways to take forward the provision of Hong Kong's international legal and dispute resolution services in the Mainland. The main objectives pursued include: the extension of the pilot areas (previously covering only Qianhai, Nansha and Hengqin) to the three cities of Shenzhen, Guangzhou and Zhuhai, where Hong Kong and Mainland law firms may operate in association in the form of partnership; promoting the use of Hong Kong law as the applicable law in commercial contracts concluded by enterprises conducting business in the Mainland, such as in new development areas like Qianhai in Shenzhen (except in obviously inappropriate situations, such as the sale and purchase of real estate in the Mainland); designating Hong Kong as the seat of arbitration should disputes arise; and allowing Hong Kong arbitration bodies to establish offices in the Mainland.

The Department has been actively promoting Hong Kong's international legal and dispute resolution services in the Mainland in the context of the Belt and Road Initiative. We have been working in collaboration with the relevant Economic and Trade Offices of the Hong Kong Special Administrative Region Government in the Mainland as well as the legal and dispute resolution services sectors of Hong Kong in organising and participating in promotional events in various Mainland cities. These seminars were well received by the Mainland legal and business sectors. Two more visits, one for Wuhan in April 2016 and the other for Kunming in June 2016, have been planned. The Department will also co-organise with Hong Kong's legal and arbitration institutions the 4th (biennial) Legal Services Forum in Nanjing (tentative) in the 4th quarter of 2016.

The staff costs and other related expenses for such programmes have been and will be absorbed from within the available resources of the Department and the estimated expenditure for this specific area of activity cannot be separately identified.

- End -

**CONTROLLING OFFICER'S REPLY****SJ022****(Question Serial No. 1263)**Head: (92) Department of JusticeSubhead (No. & title): (-) Not SpecifiedProgramme: (-) Not SpecifiedControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

Please give details of the duty visits of the Secretary for Justice for the past year by setting out the following information for each trip in chronological order: (a) purpose and place; (b) titles of local officials met; (c) number of Hong Kong officials in entourage and their post titles; (d) length of the trip; as well as (e) total expenses involved; and (i) transportation expenses (air tickets and local transportation); (ii) accommodation expenses; (iii) meal expenses; (iv) banquet or entertainment expenses; and (v) gift expenses.

Date	(a)	(b)	(c)	(d)	(e)	(i)	(ii)	(iii)	(iv)	(v)

Asked by: Hon Cyd HO Sau-lan (Member Question No. 11)Reply:

Relevant information on the overseas duty visits of the Secretary for Justice in the past year (2015-16) is as follows -

Date of visit <sup>Note 1</sup>	Place of visit	Size of entourage <sup>Note 2</sup>	Purpose of visit	Hotel accommodation expenses	Transportation expenses	Other expenses	Total Expenditure <sup>Note 3</sup>
2015-16 (12 times)	USA (New York, Washington DC), Indonesia (Jakarta), Beijing, Shanghai, Shenzhen, Macau	0-3	To lead delegation to promote Hong Kong as a centre for international legal and dispute resolution services in the Asia Pacific region, strengthen mutual relationship, attend meetings	About \$180,000	About \$430,000	About \$168,000	About \$778,000

			and events with relevant officials and representatives from legal / dispute resolution / business sectors (e.g. Hague Conventions conference, Launching ceremony of the Shanghai Office of the Hong Kong International Arbitration Centre, Seminars on legal and dispute resolution services, Opening and graduation ceremony of a Mainland summer internship programme for Hong Kong law students)				
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**Remarks:**

- Note 1 Except for visits to multiple cities or outside Asia, the duty visits were day trips or short trips of four days or less.
- Note 2 The entourage usually comprised Administrative Assistant and/or Press Secretary to the Secretary for Justice.
- Note 3 Total expenditure includes charges for accommodation and passage, subsistence allowance for duty outside Hong Kong and sundry expenses (if applicable).

No expenses for overseas official entertainment were incurred in 2015-16.

In line with Government's green policy, public officers should as far as possible refrain from bestowing gifts/souvenirs to others during the conduct of official activities. According to the existing guidelines, where bestowal of gifts/souvenirs is necessary or unavoidable due to operational, protocol or other reasons, the gift/souvenir items should not be lavish or extravagant and the number should be kept to a minimum. Also, the exchange of gifts/souvenirs should only be made from organisation to organisation. We do not specifically maintain separate accounts for gift and souvenir expenses.

- End -





**CONTROLLING OFFICER'S REPLY****SJ023****(Question Serial No. 1264)**Head: (92) Department of JusticeSubhead (No. & title): (234) Court costsProgramme: (1) ProsecutionsControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

- (1) What were the numbers of cases in which the Government applied for a review of decisions over the past 5 years?
- (2) Regarding the cases for which application is made for a review of decisions, what were the reasons for the Government's decision to seek a review for each of them?
- (3) As regards the cases in which the Government applied for a review of decisions, what were the respective numbers of cases with the sentences upheld, enhanced or reduced by the court?

Asked by: Hon Cyd HO Sau-lan (Member Question No. 12)Reply:

The Secretary for Justice may apply to the court in appropriate cases for the review of a sentence on the basis that it has proceeded on an error of law or of principle or that it is manifestly inadequate or excessive. The number of cases in which the Government applied for a review of sentence [under section 81A of the Criminal Procedure Ordinance, Cap. 221] over the past 5 years and their results (whether sentences were upheld, enhanced or reduced by the court) are set out below -

	Year				
	2011	2012	2013	2014	2015
<b>Upheld</b>	3	1	-	-	-
<b>Enhanced</b>	8	5	3	6	1
<b>Reduced</b>	-	-	-	-	-
<b>Others</b>	-	1 (application withdrawn)	1 (sentence quashed; hence no further	-	-

			action)		
<b>Total number of “review of sentence” applications made</b>	11	7	4	6	1

- End -

**CONTROLLING OFFICER'S REPLY**

**SJ024**

**(Question Serial No. 2803)**

Head: (92) Department of Justice

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

Programme: (3) Legal Policy

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Regarding the item of “promoting Hong Kong as a regional hub for international legal and dispute resolution services” mentioned in paragraphs 15 and 18, would the Department inform this Committee of the following:

- (1) the specific objective of this policy, the current progress as well as the effectiveness to-date;
- (2) the revised estimated expenditures or estimated expenditures for the implementation of this policy for the financial years of 2015-16 and 2016-17, as well as the reasons for any changes in the estimates; and
- (3) the plans of the Department in capitalising on the Belt and Road Initiative by further promoting Hong Kong as a regional hub of international legal and dispute resolution services in the Mainland and countries along the “Belt and Road”.

Asked by: Hon Mrs Regina IP LAU Suk-yee (Member Question No. 38)

Reply:

In support of our policy objective of promoting Hong Kong as a regional hub for international legal and dispute resolution services, the Department of Justice (DoJ) has been working closely with the legal professional bodies and the dispute resolution sectors to enhance our promotional efforts in the Mainland and around the world, particularly in emerging economies in the Asia Pacific region. In this connection, we are taking forward the following *specific on-going initiatives on promotion of Hong Kong's international legal and arbitration services* -

- (a) *Enhancing co-operation with the Mainland authorities, as well as the legal and dispute resolution sectors in Hong Kong to facilitate the provision of international legal and dispute resolution services in the Mainland by Hong Kong professionals*

- DoJ will continue to advocate for the appointment of more Hong Kong arbitrators to the panel of arbitrators of Mainland's arbitration institutions.
- It is also relevant to note that the Hong Kong International Arbitration Centre reached an important milestone in November 2015 by being the first international arbitration institution to set up a representative office in the Mainland. The representative office is located within the China (Shanghai) Pilot Free Trade Zone.

***(b) Following up on a study conducted in conjunction with the Hong Kong Trade Development Council on the development of arbitration in Hong Kong and the challenges and opportunities faced by Hong Kong as a centre for international arbitration in the Asia Pacific region***

- A consultancy study was launched in 2014 on enhancing Hong Kong's position as a leading international arbitration centre in the Asia Pacific region. This study considers the strengths, weaknesses, opportunities and challenges for Hong Kong in relation to its status as an international arbitration hub, particularly in the face of stiffening regional and international competition.
- The study covers a number of aspects of the arbitration industry, including our legal and institutional infrastructure for arbitration and how this compares to others in the region and internationally, the strengths and challenges within each of our major arbitration service areas, and the scope and potential in existing and emerging geographical markets. The study will also include an analysis of the direct and indirect benefits which international arbitration brings to Hong Kong. We expect that the results of the study will be available within this year and that the findings and recommendations from the study will assist the long-term policy planning and strategic development in this area.

***(c) Enhancing the promotion of international legal and dispute resolution services of Hong Kong among emerging economies in the Asia Pacific region***

- In September 2015, DoJ led a delegation of representatives from the Hong Kong Bar Association, the Law Society of Hong Kong and various arbitral institutions in Hong Kong on a promotional trip to Jakarta, Indonesia to promote Hong Kong's international legal and dispute resolution services. As in our previous promotional trips to Vietnam, Cambodia and Myanmar in 2014, a seminar was held in Jakarta to promote Hong Kong's international legal and dispute resolution services, during which the delegation had fruitful exchanges with Indonesian legal and arbitration counterparts as well as business leaders there.
- In February 2016, DoJ led another delegation comprising representatives from the legal and arbitral institutions in Hong Kong on a promotional visit to Lima, Peru. The visits were well received by the relevant Peruvian government authorities, legal, arbitral and business organisations which all welcomed mutual exchange and cooperation with Hong Kong in the provision of international legal and dispute resolution services. We

also conducted a workshop entitled “Dispute resolution – the key to efficient settlement of business disputes” in collaboration with the United Nations Commission on International Trade Law (UNCITRAL) on 26 February 2016 during the Asia Pacific Economic Cooperation (APEC) First Senior Officials’ Meeting held in Lima. A major purpose of the workshop is to share experience with other APEC economies on the use of dispute resolution and the implementation of the UNCITRAL Model Law on International Commercial Arbitration (2006 version) in Hong Kong. In that context, we highlighted the strengths of Hong Kong as a leading centre for international legal and dispute resolution services in the Asia Pacific region.

- We are currently making plans for promotional trips to other emerging economies in the Asia Pacific (such as Thailand) and beyond in 2016.
- (d) Building a favourable environment and infrastructure so as to facilitate legal and dispute resolution institutions (especially world-class institutions) to develop services or establish in Hong Kong, including the provision of such institutions with certain office space in the West Wing of the former Central Government Offices and the former French Mission Building***
- DoJ will take over the West Wing of the former Central Government Offices as well as the former French Mission Building after completion of necessary procedures and provide certain space in the West Wing and the whole of the former French Mission Building for use by law-related organisations, after carrying out the necessary renovation. Pre-construction preparation works are being carried out for the two renovation projects, and the West Wing project will be submitted to the Legislative Council (LegCo) for funding approval in the second quarter of 2016.

In 2016, the ***further promotion of Hong Kong as a regional hub of international legal and dispute resolution services in the Mainland and countries along the Belt and Road under the Belt and Road Initiative*** will be one of the **key new initiatives** for the promotion of Hong Kong’s international legal and arbitration services.

The DoJ has been actively promoting Hong Kong’s international legal and dispute resolution services in the Mainland in the context of the Belt and Road Initiative. We have been working in collaboration with the relevant Economic and Trade Offices of the Hong Kong Special Administrative Region (HKSAR) Government in the Mainland as well as the legal and dispute resolution services sectors of Hong Kong in organising and participating in promotional events.

Seminars were held in Beijing and Shanghai (August 2015) and Guiyang and Xi’an (February 2016) to promote Hong Kong’s international legal and dispute resolution services in this context, and two more visits, one for Wuhan in April 2016 and the other for Kunming in June 2016, have been planned. These seminars were well received by the Mainland legal and business sectors. DoJ will also co-organise with Hong Kong’s legal and arbitration institutions the 4th (biennial) Legal Services Forum in Nanjing (tentative) in the 4th quarter of 2016.

We are also taking active steps to reinforce Hong Kong's status as an ideal neutral venue for dispute resolution in the Asia Pacific region, providing efficient and reliable dispute resolution services (including arbitration and mediation) for commercial and investment disputes involving Mainland parties and other economies along the Belt and Road. Efforts are therefore being made by DoJ and the Financial Services and the Treasury Bureau to explore with the Asian Infrastructure Investment Bank on the possible arrangements for Hong Kong to be one of the resolution centres for contractual and commercial disputes specified in AIIB's standard contracts so that Hong Kong's chances as a chosen seat of arbitration by the concerned business partners can be enhanced.

Subject to the LegCo's approval of the proposed creation of a DL2 post in the Legal Policy Division (LPD) of the DoJ, a dedicated team will be set up in the LPD to, among other arbitration-related work, plan and organise regular promotional activities in the form of roadshows, conferences, seminars and forums to promote Hong Kong's international legal and arbitration services in places to be identified among the some 60 overseas countries along the Belt and Road. Consideration will also be given to reinforcing Hong Kong's role in the provision of international legal and dispute resolution-related training/capacity building opportunities for professionals and government officials from the Asia Pacific region and/or the Belt and Road countries.

**Another new initiative** for the promotion of Hong Kong's international legal and arbitration services to be pursued in 2016 is to study the desirability of amending the relevant legislation (including the Arbitration Ordinance, Cap. 609) with a view to attracting more parties to resolve their intellectual property (IP) disputes by arbitration in Hong Kong.

In December 2015, DoJ launched a consultation exercise on a legislative proposal to make clear that disputes over IP rights are capable of resolution by arbitration, and that it would not be contrary to public policy to enforce an arbitral award solely because the award is in respect of a dispute or matter which relates to IP rights. Taking into account the result of the consultation ended in January 2016, and subject to the progress of the preparatory tasks, DoJ intends to introduce a bill to implement the proposal in 2016 by amending the Arbitration Ordinance. Such amendments will be helpful in attracting more parties to resolve their IP disputes by arbitration in Hong Kong and facilitate the enforcement of IP-related awards by Hong Kong courts.

In terms of **resources**, the work of promoting Hong Kong as a regional hub of international legal and dispute resolution services is undertaken by the Legal Policy (General) Section of the LPD amongst its other work, including providing advice to Government bureaux and departments on matters raising questions of legal policy, various types of petitions and statutory appeals as well as matters with Mainland law implications. The expenditure involved cannot be separately identified. That said, an additional annual allocation of \$4.05 million has been provided under the Legal Policy Programme in the 2016-17 estimated expenditure for the emoluments of the the additional staff for the new dedicated team mentioned above.

- End -

**CONTROLLING OFFICER'S REPLY**

**SJ025**

**(Question Serial No. 2603)**

Head: (92) Department of Justice

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

Programme: (1) Prosecutions

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

How many Court Prosecutors are qualified holders of practising certificate in law as at 29 February 2016? What is the percentage over the total number of Court Prosecutors?

Asked by: Hon Dennis KWOK (Member Question No. 44)

Reply:

Whilst no Court Prosecutor (CP) is current holder of practising certificate, as at 29 February 2016, six CPs are fully legally qualified (who have already served pupillage or undergone solicitor traineeship) and they are eligible to apply for practising certificates. Moreover, two CPs have been called to Bar and five CPs have completed Postgraduate Certificate in Laws programme, and these seven CPs who, subject to satisfaction of other qualifications (like pupillage or solicitor traineeship), will also be eligible to apply for practising certificates. These 13 CPs account for 17% of serving CPs.

- End -

**CONTROLLING OFFICER'S REPLY**

**SJ026**

**(Question Serial No. 2604)**

Head: (92) Department of Justice

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

Programme: (1) Prosecutions

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

The number of court days undertaken by Court Prosecutors in Magistrates' Court in 2015 was less than that in 2014 by over 500 days, whereas the number of court days undertaken by Counsel instructed to prosecute in Magistrates' Court in place of Court Prosecutors has increased by nearly 500 days in 2015 as compared with that in 2014. Would the Government inform this Committee of the reasons for instructing Counsel to prosecute in Magistrates' Court in place of Court Prosecutors?

Asked by: Hon Dennis KWOK (Member Question No. 45)

Reply:

Under existing arrangement, Court Prosecutors (CPs) handle part of the prosecutions in the Magistrates' Courts, including those which are relatively straightforward. When necessary, fiat counsel are also instructed to prosecute in Magistrates' Court in place of Court Prosecutors to cope with the caseload and/or to handle cases which are relatively more complex.

The number of court days in the Magistrates' Court in 2015 (15 059) remains at roughly the same level as that in 2014 (15 096). The number of court days undertaken by CPs at the Magistrates' Court level in 2015 (9 474) decreased by 5.1% when compared to 2014 (9 987) while those undertaken by fiat counsel increased by 9.3% (from 5 109 in 2014 to 5 585 in 2015). However, the change is not significant and the bulk of the cases in the Magistrates' Courts (over 60%) are still handled by CP.

- End -



**CONTROLLING OFFICER'S REPLY**

**SJ027**

**(Question Serial No. 3045)**

Head: (92) Department of Justice

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

Programme: (3) Legal Policy

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Would the Government please advise on the number and rank of officers in the Department of Justice participating in the study on the “co-location” arrangements?

Asked by: Hon Dennis KWOK (Member Question No. 46)

Reply:

The Department of Justice advises Government bureaux and departments on legal issues as required from time to time, including those arising from projects under their purview. The co-location arrangement (which will have to be consistent with the Basic Law and the ‘One Country, Two Systems’ principle) of the Guangzhou-Shenzhen-Hong Kong Express Rail Link project is one such example. Such advice has been and will be, from time to time, tendered among other advisory duties of the Department and a breakdown of the staffing resources involved cannot be separately provided. That said, given the importance of the intended “co-location” arrangement, the Department will endeavour to make available sufficient human resources to deal with the related issues.

- End -

**CONTROLLING OFFICER'S REPLY**

**SJ028**

**(Question Serial No. 3046)**

Head: (92) Department of Justice

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

Programme: (3) Legal Policy

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Did the Government seek legal advice on the “co-location” arrangements from outside lawyers and/or legal academics? If yes, how many lawyers and/or legal academics were involved? What was the expenditure incurred?

Asked by: Hon Dennis KWOK (Member Question No. 47)

Reply:

The Government has sought legal advice from experts outside the Department of Justice on issues arising from the proposed “co-location” arrangements (which will have to be consistent with the Basic Law and the ‘One Country, Two Systems’ principle), incurring a total of \$264,000 from the briefing out vote.

- End -

**CONTROLLING OFFICER'S REPLY**

**SJ029**

**(Question Serial No. 3147)**

Head: (92) Department of Justice

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

Programme: (3) Legal Policy

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Did officers of the Department of Justice have contacts with Mainland officials over the “co-location” arrangements between 1 January 2015 and 29 February 2016? If yes, how many contacts were made and what ranks did the Mainland officials hold? If not, what are the reasons?

Asked by: Hon Dennis KWOK (Member Question No. 48)

Reply:

The Department of Justice advises Government bureaux and departments on legal issues as required from time to time, including those arising from projects under their purview. The intended co-location arrangement in respect of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (XRL) project is one such example.

As has been reiterated by the Government on various occasions, the arrangements and details of the implementation of the co-location arrangement (which will have to be consistent with the Basic Law and the ‘One Country Two Systems’ principle) are still under study and discussion between the Hong Kong Special Administrative Region (HKSAR) Government and the relevant Mainland authorities. The Transport and Housing Bureau, the Department of Justice, the Security Bureau, and the Constitutional and Mainland Affairs Bureau are conducting studies of possible co-location arrangement of the XRL project jointly and actively, and are also discussing the issues with relevant Mainland authorities, including meeting with relevant officials of the Hong Kong and Macao Affairs Office of the State Council. Between 1 January 2015 and 29 February 2016, representatives of the Department of Justice, together with the Secretary for Transport and Housing, made three duty visits to attend meetings with relevant Mainland authorities to exchange views on legal issues relating to the co-location arrangement. The HKSAR Government will provide such information as it is in a position so to do to the public and the Legislative Council.

- End -

**CONTROLLING OFFICER'S REPLY****SJ030****(Question Serial No. 4900)**

Head: (92) Department of Justice

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

Programme: (2) Civil

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

According to the Civil Programme of the Department of Justice in the Estimates for this year, the Civil Division will advise on the legal aspects of non-refoulement claims made under the unified screening mechanism and related issues during 2016-17. Please inform this Committee of the estimated expenditure and establishment involved in providing such legal advice. To which government departments will such advice be provided? What is the scope of the advice? Will it cover the feasibility of withdrawing from the United Nations Convention against Torture?

Asked by: Hon Dennis KWOK (Member Question No. 54)

Reply:

The Civil Division of the Department of Justice is responsible for advising and representing Government bureaux and departments in a wide range of legal issues in civil matters. To meet the heavy demand for legal support (both advisory and litigation) arising from the surge in the number of non-refoulement claims received by the Immigration Department, the Civil Division has set up a dedicated team of counsel and supporting staff to provide legal services arising from these claims and in other immigration-related matters to primarily the Immigration Department and the Security Bureau, and other departments if required. The legal services provided cover a wide spectrum of advisory and litigation work in individual cases and court proceedings and also legal issues from a wider perspective (including the comprehensive review of the overall strategy in handling non-refoulement claims recently being undertaken by the Government) relating to screening under the Unified Screening Mechanism and other related issues. The Department also advises the Government (i.e. Constitutional and Mainland Affairs Bureau and Security Bureau) on matters relating to the United Nations Convention against Torture, including the application of the Convention the Hong Kong Special Administrative Region (HKSAR) and the implementation of its provisions in the HKSAR. In 2016-17, the number of posts in the dedicated team will increase to 31, involving an estimated annual staff cost of \$34.2 million. The other expenditure involved in handling matters relating to non-refoulement claims is part of the Department's general departmental expenses and a separate breakdown is not available. Lastly, as the Secretary for Security previously stated, the Government has no plan to assess the suggestion of cessation of

application of the Convention against Torture.

- End -

**CONTROLLING OFFICER'S REPLY****SJ031****(Question Serial No. 4901)**Head: (92) Department of JusticeSubhead (No. & title): (000) Operational expensesProgramme: (4) Law DraftingControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

It is stated in this year's Estimates for the Department of Justice that the number of pages of Committee Stage Amendments (CSAs) proposed by the Legislative Council (LegCo) members as prepared by the Law Drafting Division (LDD) has decreased substantially from 1115/1116 pages to 670 pages. Please inform this Committee of the reasons for the substantial decrease in pages and provide the data in the table below.

	2014	2015
Number of requests for legal advice received by the LDD		
Number of requests for legal advice refused by the LDD		
Number of items of legal advice provided by the LDD		

Asked by: Hon Dennis KWOK (Member Question No. 55)Reply:

The role of the Law Drafting Division in relation to Committee Stage Amendments (CSAs) for the LegCo Members is limited to vetting the format of the CSAs. The role does not extend to providing legal advice.

The indicators in question reflect the number of pages of Members' CSAs that were actually proposed by Members at Council Meetings of the LegCo. We are not aware of any request for vetting the format of CSAs that was not met.

- End -



**CONTROLLING OFFICER'S REPLY****SJ032****(Question Serial No. 4902)**Head: (92) Department of JusticeSubhead (No. & title): (000) Operational ExpensesProgramme: (1) ProsecutionsControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

Regarding the substantial increase to \$900.3 million in the estimated provision for Prosecutions for 2016-2017 over those of less than \$700 million for 2014-2015 and 2015-2016 as noted in the financial provision in the Estimates of the Department of Justice this year, please advise the Committee of the reasons for such a substantial increase by providing breakdowns in the table below:

	2014-2015	2015-2016	2016-2017
Expenditure on Government Counsel grade establishment			
Expenditure on instructing Counsel to prosecute at all court levels			
Total number of criminal cases			
Total number of criminal cases related to social movements (including the Occupy Central Movement, the incident on the first day of the Lunar New Year, etc.)			

Asked by: Hon Dennis KWOK (Member Question No. 56)Reply:

Information available is provided below –

	2014-2015	2015-2016	2016-2017
Expenditure on Government Counsel grade establishment	\$159.8M	\$169.3M	\$181.1M

Expenditure on instructing Counsel to prosecute at all court levels	\$156.1M	\$111.1M (as at February 2016)	\$181M (estimate)
Total number of criminal cases <sup>(Note 1)</sup>	174,132 in 2014	154,655 in 2015	Not available

Note 1 : figures are kept by calendar year

According to the Police, during the illegal “Occupy Movement” in 2014, 955 persons were arrested by the Police for various alleged offences, and another 48 persons were arrested after the illegal occupation incident. As at 29 February this year, a total of 216 persons have undergone, are undergoing or will undergo judicial proceedings. Amongst them, 186 persons have gone through the judicial process and 116 of them have to bear legal consequences, including 74 who were convicted and 42 who were bound over upon conclusion of court proceedings.

On the other hand, a total of 262 and 71 persons were prosecuted for alleged illegal acts related to public order events in 2014 and 2015 respectively.

Regarding the incident involving violence in the early hours of 9 February this year in Mong Kok, as at 20 March, the Police have arrested in total 78 persons and prosecuted 49 of them for riot (one person therefrom was additionally charged for arson) and one person for unlawful assembly.

The increase in provision for Programme (1) : Prosecutions when comparing the estimate for 2016-17 and the actual expenditure in 2014-15 is mainly due to the following reasons : the filling of vacancies, net creation of nine posts to meet operational needs, increase in the provision for court costs arising from some mega cases that may require payment in 2016-17, as well as the increase in briefing out expenses to cater for the anticipated increase in standard briefing out rate.

The details of the nine posts created / to be created are as set out below –

<b>Post(s)</b>	<b>Nature of Duties</b>	<b>NAMS*</b>
One Clerical Assistant (created in 2015-16)	Strengthen clerical support for the increase in volume of work in the Prosecutions Division	\$181,740
One Government Counsel (to be created in 2016-17)	Strengthening legal support for handling cases related to proceeds of crime	\$931,800
One Senior Government Counsel (to be created in 2016-17)	Strengthening legal support for handling cases related to Public Order Events and cybercrime	\$1,309,080
Six Clerical Assistant (to be created in 2016-17)	Catering for the manpower need of prosecution work in the Magistracies	\$190,140 x 6 = \$1,140,840
One Confidential Assistant (to be created in 2016-17)	Strengthening support for the Confidential Registry	\$291,360
<b>Offset by deletion of <u>one</u> time-limited SGC post which will lapse on 1.4.2016.</b>		

\*NAMS means notional annual mid-point salary

As for the anticipated increase in standard briefing out rate, currently, we adopt the same fee scale as that of the Legal Aid Department for criminal legal aid fees as prescribed in the Legal Aid in Criminal Cases Rules (Cap. 221D) under the Criminal Procedure Ordinance (Cap. 221), as well as that for the duty lawyer fees under the duty lawyer scheme, as appropriate, when engaging lawyers in private practice on a standard briefing-out basis to prosecute criminal cases on fiat. This will ensure that neither the defence nor the prosecution would have unfair advantage in competing for the same pool of lawyers, thus ensuring parity between the defendants and the prosecution.

Having regard to the outcome of the 2014 biennial review of the fees mentioned above as well as the review of criminal legal aid fees, both spearheaded by the Home Affairs Bureau, and adopting the “equality of arms” approach mentioned above, we plan to correspondingly adjust the standard briefing-out rates to tie in with the relevant adjustments to duty lawyer fees (to increase by 7.7% in line with the movement of the Consumer Price Index (CPI) (C) for the reference period under the biennial review, which is applicable to the briefing-out of cases at the magistracy level in place of Court Prosecutors) as well as the proposed increase in relevant criminal legal aid fees (by 50%, applicable to the standard briefing-out rates at all other levels). The current rate of and proposed revisions to different levels of standard prosecution fees are set out in the table at **Annex**. The revisions will be effected at the same time when revised scales of criminal legal aid fees and duty lawyer fees are implemented.

It should be pointed out that while relevant to some extent, the number of criminal cases generally is not a determining factor as to the workload, and hence the expenditure requirement, of the Prosecutions Division. As a matter of fact, what is more relevant is the

complexity and duration of the cases handled. As regards the expenditure for court costs and briefing-out, it varies from year to year, depending on the number of cases involved, their complexity and development of the cases, and the actual expenditure in this regard would ultimately depend on the actual development and outcome of the cases concerned (which are not entirely within the control of the Government or DoJ).

**Current and Proposed Standard Briefing Out Rate for Criminal Prosecution  
Cases of Department of Justice**  
(Adjustment in accordance with the increase in  
criminal legal aid fees and duty lawyer fees)

Fee item	Department/ Service	Current maximum fee (\$)	Proposed maximum fee (\$)
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**1. Magistrates' Courts**

(a) Counsel or solicitor acting as advocate in committal proceedings  
*(The prosecution fees of DoJ adopts the same fee scale as that of criminal legal aid fees after adjustment)*

(i)	Brief <sup>i</sup>	Legal Aid Department (LAD)/ Department of Justice (DOJ)	9,800	14,700
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(ii)	Refresher <sup>ii</sup>	LAD/DOJ	4,890 per day	7,340 per day
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*(The prosecution fees of DoJ are adjusted upward by 50% according to the increase in criminal legal aid fees)*

(iii)	Conference	DOJ	790 per hour	1,180 per hour
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(iv)	Pre-trial Review (per review)	DOJ	1,360	2,040
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(b) Counsel or solicitor acting as advocate in preliminary inquiry

(i)	Brief <sup>i</sup>	LAD	9,800	14,700
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(ii)	Refresher <sup>ii</sup>	LAD	4,900 per day	7,350 per day
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(c) Instructing solicitor in committal proceedings (including preliminary inquiry)

- |      |                         |     |                  |                  |
|------|-------------------------|-----|------------------|------------------|
| (i)  | Brief <sup>i</sup>      | LAD | 2,640            | 3,300            |
| (ii) | Refresher <sup>ii</sup> | LAD | 2,170<br>per day | 2,710<br>per day |
- (d) Counsel or solicitor acting as advocate in place of court prosecutor in committal proceedings  
*(The prosecution fees of DoJ for the engagement of counsel or solicitor to act as advocate in place of court prosecutor in committal proceedings are adjusted upward by about 7.7% according to the increase in duty lawyer fees)*
- |     |       |     |                                       |                                       |
|-----|-------|-----|---------------------------------------|---------------------------------------|
| (i) | Brief | DOJ | 6,520<br>per day<br>3,250<br>half day | 7,020<br>per day<br>3,490<br>half day |
|-----|-------|-----|---------------------------------------|---------------------------------------|
- (e) Counsel or solicitor acting as advocate in committal proceedings (Newly qualified lawyers)  
*(The prosecution fees of DoJ for the engagement of counsel or solicitor to act as advocate in place of court prosecutor in committal proceedings are adjusted upward by about 7.7% according to the increase in duty lawyer fees)*
- |      |  |     |   |   |
|------|--|-----|---|---|
| (i)  | Brief (For 2 weeks engagement)                   | DOJ | 43,720                                    | 47,080                                    |
| (ii) | Brief after 2 weeks engagement (Part-heard case) | DOJ | 6,520<br>per day<br><br>3,250<br>half day | 7,020<br>per day<br><br>3,490<br>half day |
- (f) Counsel or solicitor acting as advocate in committal proceedings (Newly qualified monolingual lawyers)  
*(The prosecution fees of DoJ for the engagement of counsel or solicitor to act as advocate in place of court prosecutor in committal proceedings are adjusted upward by about 7.7% according to the increase in duty lawyer fees)*
- |     |       |     |                           |                           |
|-----|-------|-----|---------------------------|---------------------------|
| (i) | Brief | DOJ | 6,520<br>per day<br>3,250 | 7,020<br>per day<br>3,490 |
|-----|-------|-----|---------------------------|---------------------------|

half day      half day

## 2. District Court (DC)

### (a) Counsel

(i)	Preparation <sup>iii</sup>	LAD	8,160	12,240
(ii)	Additional preparation	LAD	4,210 per 4-hour unit	6,320 per 4-hour unit

***(The prosecution fees of DoJ adopts the same fee scale as that of criminal legal aid fees after adjustment)***

(iii)	Court hearing	LAD/DOJ	8,160 per day	12,240 per day
(iv)	Conference	LAD/DOJ	1,040 per hour	1,560 per hour

***(The prosecution fees of DoJ are adjusted upward by 50% according to the increase in criminal legal aid fees)***

(v)	Brief <sup>i</sup>	DOJ	16,320	24,480
(vi)	Pre-trial Review (per review)	DOJ	2,050	3,070
(vii)	Mention	DOJ	1,360	2,040
(viii)	Plea	DOJ	1,360	2,040
(ix)	Sentence	DOJ	1,360	2,040
(x)	Plea & Sentence	DOJ	2,050	3,070

### (b) Instructing solicitor

(i)	Reading	LAD	670 per hour	840 per hour
(ii)	Preparation	LAD	2,740 per 4-hour unit	3,430 per 4-hour unit
(iii)	Court hearing	LAD	5,490 per day	6,860 per day

(iv)	Conference	LAD	670 per hour	840 per hour
(c) <u>Solicitor acting as both advocate and instructing solicitor</u>				
(i)	Preparation <sup>iii</sup>	LAD	10,095	14,130
(ii)	Additional preparation	LAD	5,030 per 4-hour unit	7,040 per 4-hour unit
(iii)	First day Court hearing	LAD	10,095 per day	14,130 per day
(iv)	Refresher <sup>iv</sup>	LAD	11,190 per day	15,670 per day
(d) <u>Attendance at DC (other than for the trial, plea or sentence)</u>				
		LAD	At a rate that appears to the Director of Legal Aid (DLA) to be reasonable and proper	At a rate that appears to DLA to be reasonable and proper

### 3. Court of First Instance (CFI)

#### (a) Counsel

(i)	Preparation <sup>iii</sup>	LAD	12,260	18,390
(ii)	Additional preparation	LAD	5,140 per 4-hour unit	7,710 per 4-hour unit

**(The prosecution fees of DoJ adopts the same fee scale as that of criminal legal aid fees after adjustment)**

(iii)	Court hearing	LAD/DOJ	12,260 per day	18,390 per day
(iv)	Conference	LAD/DOJ	1,270 per hour	1,910 per hour



*(The prosecution fees of DoJ are adjusted upward by 50% according to the increase in criminal legal aid fees)*

(v)	Brief <sup>i</sup>	DOJ	24,520	36,780
(vi)	Pre-trial Review (per review)	DOJ	2,420	3,630
(vii)	Mention	DOJ	3,670	5,500
(viii)	Plea	DOJ	3,670	5,500
(ix)	Sentence	DOJ	3,670	5,500
(x)	Plea & Sentence	DOJ	4,360	6,540

(b) Solicitor advocate with higher rights of audience (HRA) acting as both advocate and instructing solicitor

(i)	Preparation <sup>iii</sup>	LAD	-	21,240
(ii)	Additional preparation	LAD	-	8,600 per 4-hour unit
(iii)	First day Court hearing	LAD	-	21,240 per day
(iv)	Refresher <sup>iv</sup>	LAD	-	23,540 per day

(c) Instructing solicitor

(i)	Reading	LAD	800 per hour	1,000 per hour
(ii)	Preparation	LAD	3,230 per 4-hour unit	4,040 per 4-hour unit
(iii)	Court hearing	LAD	6,480 per day	8,100 per day
(iv)	Conference	LAD	800 per hour	1,000 per hour

(d) Attendance at CFI (other than for the trial, plea or sentence)

LAD	At a rate that appears to DLA to be reasonable and proper	At a rate that appears to DLA to be reasonable and proper
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#### 4. Appeals from a magistrate to CFI

Rates for counsel and solicitors (including new rates for solicitor advocates with HRA) are the same as those applicable to proceedings in CFI as set out in (3) above.

#### 5. Appeals to the Court of Appeal (CA)

##### (a) Counsel (appeals from magistrates<sup>v</sup> or CFI)

(i)	Preparation <sup>iii</sup>	LAD	16,350	24,530
(ii)	Additional preparation	LAD	5,140 per 4-hour unit	7,710 per 4-hour unit

***(The prosecution fees of DoJ are adjusted upward by 50% according to the increase in criminal legal aid fees)***

(iii)	Brief <sup>i</sup>	DOJ	32,700	49,050
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***(The prosecution fees of DoJ adopts the same fee scale as that of criminal legal aid fees after adjustment)***

(iv)	Court hearing	LAD/DOJ	16,350 per day	24,530 per day
(v)	Conference	LAD/DOJ	1,270 per hour	1,910 per hour

##### (b) Counsel (appeals from DC)

(i)	Preparation <sup>iii</sup>	LAD	13,070	19,610
(ii)	Additional preparation	LAD	5,140 per 4-hour unit	7,710 per 4-hour unit

***(The prosecution fees of DoJ are adjusted upward by 50% according to the increase in criminal legal aid fees)***

(iii)	Brief <sup>i</sup>	DOJ	26,140	39,210
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***(The prosecution fees of DoJ adopts the same fee scale as that of criminal legal aid fees after adjustment)***

(iv)	Court hearing	LAD/DOJ	13,070 per day	19,610 per day
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(v)	Conference	LAD/DOJ	1,270 per hour	1,910 per hour
(c) <u>Solicitor advocate with HRA acting as both advocate and instructing solicitor (appeals from magistrates<sup>v</sup> or CFI)</u>				
(i)	Preparation <sup>iii</sup>	LAD	-	28,320
(ii)	Additional preparation	LAD	-	8,600 per 4-hour unit
(iii)	First day Court hearing	LAD	-	28,320 per day
(iv)	Refresher <sup>iv</sup>	LAD	-	31,400 per day
(d) <u>Solicitor advocate with HRA acting as both advocate and instructing solicitor (appeals from DC)</u>				
(i)	Preparation <sup>iii</sup>	LAD	-	22,640
(ii)	Additional preparation	LAD	-	8,600 per 4-hour unit
(iii)	First day Court hearing	LAD	-	22,640 per day
(iv)	Refresher <sup>iv</sup>	LAD	-	25,100 per day
(e) <u>Instructing solicitor</u>				
(i)	Reading	LAD	1,090 per hour	1,360 per hour
(ii)	Preparation	LAD	4,390 per 4-hour unit	5,490 per 4-hour unit
(iii)	Court hearing	LAD	8,780 per day	10,980 per day
(iv)	Conference	LAD	1,090 per hour	1,360 per hour

(f) Attendance at CA (other than for the appeal hearing)

LAD	At a rate that appears to DLA to be reasonable and proper	At a rate that appears to DLA to be reasonable and proper
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(g) Counsel or solicitor settling notice of appeal<sup>vi</sup>

LAD	3,240	4,860
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**6. Appeals (or applications for leave to appeal) to the Court of Final Appeal**

<u>Counsel and solicitor</u>	LAD	Fees that appear to DLA to be reasonable and proper	Fees that appear to DLA to be reasonable and proper
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**7. Proceedings in DC or CFI or appeals**

<u>Senior Counsel</u>	LAD	Fees at an hourly rate that appears to DLA to be reasonable and proper	Fees at an hourly rate that appears to DLA to be reasonable and proper
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- i Covering preparation (regardless of duration) and the first day of attendance in Court.
- ii For additional day(s) of attendance in Court subsequent to the first day as covered under the Brief fee.
- iii Covering the first eight hours of preparation.
- iv For additional day(s) of attendance in Court subsequent to the first day of Court hearing.
- v In respect of an appeal, or any point in an appeal, reserved to be argued before CA under section 118 of the Magistrates Ordinance (Cap. 227).
- vi That is, for preparing the notice of appeal for filing with the Court.

## CONTROLLING OFFICER'S REPLY

SJ033

## (Question Serial No. 4908)

Head: (92) Department of Justice

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

Programme: (3) Legal Policy

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Regarding the ongoing efforts of the Secretary for Justice's Office and the Legal Policy Division to promote the use of arbitration in Hong Kong and to promote Hong Kong as a regional centre for legal and dispute resolution services, please inform this Committee of the estimates, the establishment and the measures to be taken under this item.

Asked by: Hon Dennis KWOK (Member Question No. 63)

Reply:

The Department of Justice (DoJ) has been working closely with the legal professional bodies and the dispute resolution sectors to ***promote the use of arbitration in Hong Kong as well as Hong Kong as a regional hub of international legal and dispute resolution services*** in the Mainland and around the world, particularly in emerging economies in the Asia Pacific region. In this connection, we are taking forward the following ***on-going measures-***

***(a) Enhancing co-operation with the Mainland authorities, as well as the legal and dispute resolution sectors in Hong Kong to facilitate the provision of international legal and dispute resolution services in the Mainland by Hong Kong professionals***

- DoJ will continue to advocate for the appointment of more Hong Kong arbitrators to the panel of arbitrators of Mainland's arbitration institutions.
- It is also relevant to note that the Hong Kong International Arbitration Centre reached an important milestone in November 2015 by being the first international arbitration institution to set up a representative office in the Mainland. The representative office is located within the China (Shanghai) Pilot Free Trade Zone.

***(b) Following up on a study conducted in conjunction with the Hong Kong Trade***

***Development Council on the development of arbitration in Hong Kong and the challenges and opportunities faced by Hong Kong as a centre for international arbitration in the Asia Pacific region.***

- A consultancy study was launched in 2014 on enhancing Hong Kong's position as a leading international arbitration centre in the Asia Pacific region. This study considers the strengths, weaknesses, opportunities and challenges for Hong Kong in relation to its status as an international arbitration hub, particularly in the face of stiffening regional and international competition.
- The study covers a number of aspects of the arbitration industry, including our legal and institutional infrastructure for arbitration and how this compares to others in the region and internationally, the strengths and challenges within each of our major arbitration service areas, and the scope and potential in existing and emerging geographical markets. The study will also include an analysis of the direct and indirect benefits which international arbitration brings to Hong Kong. We expect that the results of the study will be available within this year and that the findings and recommendations from the study will assist the long-term policy planning and strategic development in this area.

***(c) Enhancing the promotion of international legal and dispute resolution services of Hong Kong among emerging economies in the Asia Pacific region***

- In September 2015, DoJ led a delegation of representatives from the Hong Kong Bar Association, the Law Society of Hong Kong and various arbitral institutions in Hong Kong on a promotional trip to Jakarta, Indonesia to promote Hong Kong's international legal and dispute resolution services. As in our previous promotional trips to Vietnam, Cambodia and Myanmar in 2014, a seminar was held in Jakarta to promote Hong Kong's international legal and dispute resolution services, during which the delegation had fruitful exchanges with Indonesian legal and arbitration counterparts as well as business leaders there.
- In February 2016, DoJ led another delegation comprising representatives from the legal and arbitral institutions in Hong Kong on a promotional visit to Lima, Peru. The visits were well received by the relevant Peruvian government authorities, legal, arbitral and business organisations which all welcomed mutual exchange and cooperation with Hong Kong in the provision of international legal and dispute resolution services. We also conducted a workshop entitled "Dispute resolution – the key to efficient settlement of business disputes" in collaboration with the United Nations Commission on International Trade Law (UNCITRAL) on 26 February 2016 during the Asia Pacific Economic Cooperation (APEC) First Senior Officials' Meeting held in Lima. A major purpose of the workshop is to share experience with other APEC economies on the use of dispute resolution and the implementation of the UNCITRAL Model Law on International Commercial Arbitration (2006 version) in Hong Kong. In that context, we highlighted the strengths of Hong Kong as a leading centre for international legal and dispute resolution services in the Asia Pacific region.
- We are currently making plans for promotional trips to other emerging economies in the

Asia Pacific (such as Thailand) and beyond in 2016.

***(d) Building a favourable environment and infrastructure so as to facilitate legal and dispute resolution institutions (especially world-class institutions) to develop services or establish in Hong Kong, including the provision of such institutions with certain office space in the West Wing of the former Central Government Offices and the former French Mission Building***

- DoJ will take over the West Wing of the former Central Government Offices as well as the former French Mission Building after completion of necessary procedures and provide certain space in the West Wing and the whole of the former French Mission Building for use by law-related organisations, after carrying out the necessary renovation. Pre-construction preparation works are being carried out for the two renovation projects, and the West Wing project will be submitted to the Legislative Council (LegCo) for funding approval in the second quarter of 2016.

In 2016, we will pursue a number of ***new initiatives*** for the promotion of Hong Kong's legal and arbitration services.

***(a) Further promote Hong Kong's international legal and dispute resolution services so that enterprises in the Mainland and in jurisdictions along the Belt and Road will make use of Hong Kong's professional services in their business development pursuant to the Belt and Road Initiative***

- DoJ has been actively promoting Hong Kong's international legal and dispute resolution services in the Mainland in the context of the Belt and Road Initiative. We have been working in collaboration with the relevant Economic and Trade Offices of the Hong Kong Special Administrative Region Government in the Mainland as well as the legal and dispute resolution services sectors of Hong Kong in organising and participating in promotional events.
- Seminars were held in Beijing and Shanghai (August 2015) and Guiyang and Xi'an (February 2016) to promote Hong Kong's international legal and dispute resolution services in this context, and two more visits, one for Wuhan in April 2016 and the other for Kunming in June 2016, have been planned. These seminars were well received by the Mainland legal and business sectors. DoJ will also co-organise with Hong Kong's legal and arbitration institutions the 4th (biennial) Legal Services Forum in Nanjing (tentative) in the 4th quarter of 2016.
- We are also taking active steps to reinforce Hong Kong's status as an ideal neutral venue for dispute resolution in the Asia Pacific region, providing efficient and reliable dispute resolution services (including arbitration and mediation) for commercial and investment disputes involving Mainland parties and other economies along the Belt and Road. Efforts are therefore being made by DoJ and the Financial Services and the Treasury Bureau to explore with the Asian Infrastructure Investment Bank on the possible arrangements for Hong Kong to be one of the resolution centres for contractual and commercial disputes specified in AIIB's standard contracts so that Hong Kong's

chances as a chosen seat of arbitration by the concerned business partners can be enhanced.

- Subject to the Legislative Council's approval of the proposed creation of a DL2 post in the Legal Policy Division (LPD), a dedicated team will be set up in the LPD to, among other arbitration-related work, plan and organise regular promotional activities in the form of roadshows, conferences, seminars and forums to promote Hong Kong's international legal and arbitration services in places to be identified among the some 60 overseas countries along the Belt and Road. Consideration will also be given to reinforcing Hong Kong's role in the provision of international legal and dispute resolution-related training/capacity building opportunities for professionals and government officials from the Asia Pacific region and/or the Belt and Road countries.

***(b) Study the desirability of amending the relevant legislation (including the Arbitration Ordinance, Cap. 609) with a view to attracting more parties to resolve their intellectual property disputes by arbitration in Hong Kong.***

- In December 2015, DoJ launched a consultation exercise on a legislative proposal to make clear that disputes over intellectual property (IP) rights are capable of resolution by arbitration, and that it would not be contrary to public policy to enforce an arbitral award solely because the award is in respect of a dispute or matter which relates to IP rights. Taking into account the result of the consultation ended in January 2016, and subject to the progress of the preparatory tasks, DoJ intends to introduce a bill to implement the proposal in 2016 by amending the Arbitration Ordinance. Such amendments will be helpful in attracting more parties to resolve their IP disputes by arbitration in Hong Kong and facilitate the enforcement of IP-related awards by Hong Kong courts.

In terms of ***estimates and establishment***, the work of promoting Hong Kong as a regional hub of international legal and dispute resolution services is undertaken by the Legal Policy (General) Section of the LPD amongst its other work, including providing advice to Government bureaux and departments on matters raising questions of legal policy, various types of petitions and statutory appeals as well as matters with Mainland law implications. The expenditure involved cannot be separately identified. That said, one Senior Government Counsel (SGC) post was created in 2014-15 for undertaking promotion work and providing support to the Advisory Committee on Promotion of Arbitration. The proposed establishment of the dedicated team (comprising one Deputy Principal Government Counsel, two SGC, one Law Clerk and one Personal Secretary I) as mentioned above will also enhance the manpower for handling this area of work. The annual emolument for these 5 posts amounts to \$5.35million.

- End -



**CONTROLLING OFFICER'S REPLY****SJ034****(Question Serial No. 3590)**Head: (92) Department of JusticeSubhead (No. & title): (000) Operational expensesProgramme: (-) Not SpecifiedControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

Please give a breakdown of the full expenditure on salary, regularly-paid allowances and job-related allowances for the Secretary for Justice in 2015-16 and the estimates for the same for 2016-17.

Asked by: Dr Hon KWOK Ka-ki (Member Question No. 5639)Reply:

The estimates for the salaries and non-accountable entertainment allowance of the Secretary for Justice in 2015-16 and 2016-17 are set out below -

	Salary (\$ million)	Non-accountable entertainment allowance (\$ million)
2015-16 (Revised Estimates)	3.70	0.22
2016- 17 (Draft Estimates)	3.70	0.22

- End -

**CONTROLLING OFFICER'S REPLY**

**SJ035**

**(Question Serial No. 3592)**

Head: (92) Department of Justice

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

Programme: (-) Not Specified

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Please advise how the non-accountable entertainment allowance for the Secretary for Justice is calculated.

Asked by: Dr Hon KWOK Ka-ki (Member Question No. 616)

Reply:

The rate of non-accountable entertainment allowance payable is adjusted annually in accordance with the movement of the average monthly Composite Consumer Price Index (CCPI) for a 12-month period ending December as compared with that for the preceding 12-month period. For 2016-17, the allowance payable to the Secretary for Justice will be increased by 3.0% with effect from 1 April 2016 based on the CCPI movement.

- End -

**CONTROLLING OFFICER'S REPLY****SJ036****(Question Serial No. 0282)**Head: (92) Department of JusticeSubhead (No. & title): (-) Not SpecifiedProgramme: (1) ProsecutionsControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

The Government is invited to advise on the following:

- (1) The details of the establishment of Government Counsel and Court Prosecutors (including the ranks, numbers of officers and salary points) and the numbers of their vacancies.
- (2) The details of the briefing out of prosecution cases to barristers and solicitors in private practice in the past 3 years by using the table below.

	Barristers		Solicitors	
	Numbers of cases briefed out (breakdowns by local and overseas barristers)	The average, lowest and highest costs involved in cases briefed out	Numbers of cases briefed out (breakdowns by local and overseas solicitors)	The average, lowest and highest costs involved in cases briefed out
Magistrates' Court				
District Court				
Court of First Instance of the High Court				
Court of Appeal of the High Court				
Court of Final Appeal				

- (3) The Government's considerations for briefing out criminal cases, the reasons for engaging overseas barristers and solicitors, and how it ensures and enhances the efficiency and professionalism of its in-house staff in handling prosecutions?

Asked by: Hon Jeffrey LAM Kin-fung (Member Question No. 30)

Reply:

The information sought is provided as follows -

- (1) The ranking of the Government Counsel Grade, as well as the establishment and strength, vacancy and salary band of Government Counsel grade officers in the Prosecutions Division (as at 1 March 2016)

<b>Rank</b>	<b>Establishment</b>	<b>Strength</b>	<b>Vacancy</b>	<b>Salary Band*</b>
Law Officer	1	1	0	DL6
Principal Government Counsel	4	3	1	DL3
Deputy Principal Government Counsel	16	16	0	DL2
Assistant Principal Government Counsel	7	7	0	DL1
Senior Government Counsel	67	50	17	MPS 45-49
Government Counsel	40	53	-13	MPS 32-44
<b>Total</b>	<b>135</b>	<b>130</b>	<b>5</b>	<b>-</b>

\*DL = Directorate Legal Pay Scale

MPS = Master Pay Scale

The ranking, establishment and strength, vacancy and salary band of Court Prosecutor grade officers (as at 1 March 2016)

<b>Rank</b>	<b>Establishment</b>	<b>Strength</b>	<b>Vacancy</b>	<b>Salary band</b>
Chief Court Prosecutor	2	1	1	MPS 40-44
Senior Court Prosecutor I	8	8	0	MPS 34-39
Senior Court Prosecutor II	31	29	2	MPS 28-33
Court Prosecutor	61	38	23	MPS 13-27
<b>Total</b>	<b>102</b>	<b>76</b>	<b>26</b>	<b>-</b>

The number of cases briefed out to Counsel instructed to prosecute at different levels of court in the past 3 years

No. of cases conducted		2013-14	2014-15	2015-16 (as at 31 Jan 2016)
Appeal Court	Court of Final Appeal	15	17 [including 1 overseas counsel]	6 [including 2 overseas counsel]
	Court of Appeal	18 [including 3 overseas counsel]	5 [including 3 overseas counsel]	22
	Magistracy Appeal	1	3	7
Court of First Instance		194	282	222
District Court		608	602	515
Magistracy (prosecution conducted by fiat counsel in place of Government Counsel)		553 [plus 5,014 court days undertaken by fiat counsel to prosecute in place of Court Prosecutors*]	751 [plus 5,109 court days undertaken by fiat counsel to prosecute in place of Court Prosecutors*]	791 [plus 5,585 court days undertaken by fiat counsel to prosecute in place of Court Prosecutors*]
Death Inquest		1	2	1
<b>Total</b> [not covering court days in the Magistracy level undertaken by fiat counsel to prosecute in place of Court Prosecutors*]		<b>1,390</b> [including 3 overseas counsel]	<b>1,662</b> [including 4 overseas counsel]	<b>1,564</b> [including 2 overseas counsel]

*\*Fiat counsel engaged to prosecute in the Magistrates' Court in place of Court Prosecutors are required to attend to all cases before a particular magistrate on each day or half day, hence their engagement is on court-day basis rather than case-base.*

We do not maintain separate breakdown of cases briefed out to barristers and solicitors, or the average, lowest and highest costs involved in cases briefed out. The expenditure for briefing out varies from case to case, depending on its complexity, number of defendants involved, number of trial days, the need for expert witnesses to testify, etc. It is therefore not appropriate to make a comparison amongst briefed out cases solely on the basis of their expenditure.

(2) In general, DoJ may resort to briefing out when –

- (a) there is a need for expert or specialist assistance where the requisite skill is not available in the Department;

- (b) there is no suitable in-house counsel to appear in court for the Hong Kong Special Administrative Region (HKSAR);
- (c) the size, complexity, quantum and length of a case so dictate;
- (d) as a matter of prudence, it is deemed appropriate to obtain independent outside counsel's advice or services so as to address possible perception of bias or issues of conflict of interest;
- (e) there is a need for continuity and economy, e.g. where a former member of the Department who is uniquely familiar with the subject matter is in private practice at the time when legal services are required; and
- (f) there is a need for advice or proceedings involving members of the Department who are in conflict or dispute with the HKSAR.

It should be pointed out that the Department of Justice has been acting most cautiously to ensure that cases are briefed out to overseas counsel only where circumstances so warrant, having regard to, for example, complexity regarding points of law, significant constitutional, policy or financial implications or public interest, sensitivity of the issues involved, the legal representation of the opposite party etc. Besides, admission of overseas barristers to conduct cases before the Hong Kong court are subject to the court's approval.

At the same time, we seek to enhance the efficiency and professionalism of our in-house prosecutors in handling prosecutions through various means, notably the following –

- (a) the continued provision of training programmes to our in-house prosecutors, including seminars on different topics under the Continuing Legal Education Programme, and talks/seminars delivered by experienced private practitioners and other professionals;
- (b) the provision of guidance to prosecutors from time to time through the issue and updating of circulars and reference materials. In particular, the Criminal Advocacy Course Manual was last updated and published in 2014 to serve as a comprehensive set of notes for new recruits and as an informative reference text for prosecutors in court;
- (c) maintaining coordinators or specific units for handling particular types of cases (including cases relating to public order events, human exploitation, money laundering, proceeds of crime, cybercrime, sexual offences involving vulnerable witnesses, as well as matters concerning criminal costs), so as 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
- (d) the continued operation of the quick advisory system known as “FAST” to promptly deal with relatively simple and straightforward cases. Legal advices processed through the system are normally provided on the same day. FAST has proven to be extremely effective in improving 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.

- End -

**CONTROLLING OFFICER'S REPLY**

**SJ037**

**(Question Serial No. 0993)**

Head: (92) Department of Justice

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

Programme: (1) Prosecutions

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

What are the reasons for the substantial increase of 32 % in the estimated expenditure of “Prosecutions” for 2016–17 over that for last year? How much of the estimated expenditure concerns cases of illegal occupy movements and confrontations during protests? How many criminal prosecutions were related to the illegal occupy movements and confrontations during protests in the past 3 years? What were the expenditure and manpower involved in handling the cases?

Asked by: Dr Hon LAM Tai-fai (Member Question No. 64)

Reply:

The estimated expenditure for Programme (1) : Prosecutions for 2016-17 is 32% higher than the revised estimate for 2015-16. This is mainly due to the filling of vacancies, net creation of eight posts to meet operational needs, and anticipated increase in briefing-out expenses and court costs.

According to the Police, during the illegal “Occupy Movement” in 2014, 955 persons were arrested by the Police for various alleged offences, and another 48 persons were arrested after the illegal occupation incident. As at 29 February this year, a total of 216 persons have undergone, are undergoing or will undergo judicial proceedings. Amongst them, 186 persons have gone through the judicial process and 116 of them have to bear legal consequences, including 74 who were convicted and 42 who were bound over upon conclusion of court proceedings.

Regarding the incident involving violence in the early hours of 9 February this year in Mong Kok, as at 20 March, the Police have arrested in total 78 persons and prosecuted 49 of them for riot (one person therefrom was additionally charged for arson) and one person for unlawful assembly.



As regards prosecution in relation to public order events, the figures from 2013 to 2015 kept by the Police are provided as follows –

	2013	2014	2015
Number of public order events resulting in prosecutions	30	89	45
Number of persons prosecuted for alleged illegal acts related to public order events in respective year	43	262	71

Cases relating to the “Occupy Movement” and confrontations during protests are handled by existing staff among their other duties. The expenditure cannot be separately identified. However, to strengthen legal support for handling cases related to, inter alia, public order events, resources will be provided starting from 2016-17 for the creation of one additional Senior Government Counsel post under Programme (1) Prosecutions.

- End-

**CONTROLLING OFFICER'S REPLY**

**SJ038**

**(Question Serial No. 0281)**

Head: (92) Department of Justice

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

Programme: (3) Legal Policy

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Regarding the promotion of Hong Kong's legal and dispute resolution services in the context of the Belt and Road Initiative mentioned under Matters Requiring Special Attention in 2016-17, please advise whether any specific related activities have been drawn up.

Asked by: Dr Hon LAU Wong-fat (Member Question No. 20)

Reply:

Chinese enterprises require extensive legal support when "going global" in their pursuit of business opportunities arising from the Belt and Road Initiative. Hong Kong has a pivotal role to play in providing the requisite international legal and dispute resolution services.

The Department of Justice (DoJ) has been actively promoting Hong Kong's international legal and dispute resolution services in the Mainland in the context of the Belt and Road Initiative. We have been working in collaboration with the relevant Economic and Trade Offices of the Hong Kong Special Administrative Region (HKSAR) Government in the Mainland as well as the legal and dispute resolution services sectors of Hong Kong in organising and participating in promotional events. Seminars were held in Beijing and Shanghai (August 2015) and Guiyang and Xi'an (February 2016) to promote Hong Kong's international legal and dispute resolution services in this context, and two more visits, one for Wuhan in April 2016 and the other for Kunming in June 2016, have been planned.

These seminars were well received by the Mainland legal and business sectors. DoJ will also co-organise with Hong Kong's legal and arbitration institutions the 4<sup>th</sup> (biennial) Legal Services Forum in Nanjing (tentative) in the 4<sup>th</sup> quarter of 2016.

We are also taking active steps to reinforce Hong Kong's status as an ideal neutral venue for dispute resolution in the Asia Pacific region, providing efficient and reliable dispute resolution services (including arbitration and mediation) for commercial and investment

disputes involving Mainland parties and other economies along the Belt and Road. Efforts are therefore being made by DoJ and the Financial Services and the Treasury Bureau to explore with the Asian Infrastructure Investment Bank (AIIB) on the possible arrangements for Hong Kong to be one of the resolution centres for contractual and commercial disputes specified in AIIB's standard contracts so that Hong Kong's chances as a chosen seat of arbitration by the concerned business partners can be enhanced.

Subject to the Legislative Council's approval of the proposed creation of a DL2 post in the Legal Policy Division (LPD) of the DoJ, a dedicated team will be set up in the LPD to, among other arbitration-related work, plan and organise regular promotional activities in the form of roadshows, conferences, seminars and forums to promote Hong Kong's international legal and arbitration services in places to be identified among the some 60 overseas countries along the Belt and Road. Consideration will also be given to reinforcing Hong Kong's role in the provision of international legal and dispute resolution-related training/capacity building opportunities for professionals and government officials from the Asia Pacific region and/or the Belt and Road countries.

- End -

**CONTROLLING OFFICER'S REPLY****SJ039****(Question Serial No. 1911)**Head: (92) Department of JusticeSubhead (No. & title): (000) Operational expensesProgramme: (2) CivilControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

Please provide in the table below the number of cases where the Department of Justice represented the Commissioner of Police or police officers in civil claims for damages against them for their actions taken in the course of duties, the outcome of the proceedings and the related expenses in the past 5 years:

Year	Number of cases where the Department of Justice represented the Commissioner of Police or police officers in civil claims for damages against them	Outcome of proceedings			Related expenses	
		Successful	Unsuccessful	Settled	Court costs	Amount of damages
2011-12						
2012-13						
2013-14						
2014-15						
2015-16						

Asked by: Hon Kenneth LEUNG (Member Question No. 1.01)Reply:

The information sought is provided as follows –

Year	Number of cases <sup>Note 1</sup> where DoJ represented the Commissioner of Police or police officers in civil claims for damages against them	Outcome of proceedings <sup>Note 2</sup>			Related expenses	
		Successful	Unsuccessful	Settled	Court costs <sup>Note 3</sup> \$'000	Amount of damages <sup>Note 3</sup> \$'000
2011-12	82 [9]	23	0	50	601	2,344
2012-13	71 [12]	23	1	35	538	859
2013-14	79 [19]	16	1	43	311	2,159
2014-15	115 [47]	29	3	36	256	901
2015-16 (up to 29.2.16)	74 [56]	8	0	10	0	140

Note 1: The numbers of cases refer to new cases received in the relevant year. Figures in square brackets denote the number of cases that were not completed as at 29 February 2016.

Note 2: For cases completed as at 29 February 2016.

Note 3: The amount of court costs and damages refers to expenses incurred for those cases received in the relevant year which have been completed.

- End -

**CONTROLLING OFFICER'S REPLY****SJ040****(Question Serial No. 1912)**Head: (92) Department of JusticeSubhead (No. & title): (000) Operational expensesProgramme: (2) CivilControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

What were the numbers of cases involving claims for damages for personal injury and wrongful detention against the Commissioner of Police or police officers for their actions taken in the course of duties, the outcome of the proceedings and the related expenses in the past 5 years? Please provide the figures by year in the table below:

Year:

Nature	Successful	Unsuccessful	Settled	Pending	Total	Related expenses	
						Court costs	Amount of damages
Claims for damages for personal injury							
Claims for damages for wrongful detention							

Asked by: Hon Kenneth LEUNG (Member Question No. 1.02)Reply:

The information sought is provided as follows –

Claims for Damages for Personal Injury

Year	Successful	Unsuccessful	Settled	Pending	Total	Related expenses
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	Note 1	Note 1	Note 1	Note 1	Note 2	Court Costs Note 3 \$'000	Amount of damages Note 3 \$'000
2011/12	2	0	7	0	9	600	1,448
2012/13	1	0	3	2	6	515	440
2013/14	2	0	6	2	10	311	917
2014/15	0	1	3	20	24	231	365
2015/16 (up to 29.2.16)	0	0	0	7	7	0	0

### Claims for Damages for Wrongful Detention

Year	Successful Note 1	Unsuccessful Note 1	Settled Note 1	Pending Note 1	Total Note 2	Related expenses	
						Court Costs Note 3 \$'000	Amount of damages Note 3 \$'000
2011/12	0	0	0	0	0	0	0
2012/13	1	0	1	2	4	22	45
2013/14	0	0	0	1	1	0	0
2014/15	1	0	0	3	4	0	0
2015/16 (up to 29.2.16)	0	0	0	2	2	0	0

Note 1: The figures represent the position as at 29 February 2016.

Note 2: The numbers of cases refer to new cases received in the relevant year.

Note 3: The amount of court costs and damages refers to expenses incurred for those cases received in the relevant year which have been completed.

- End -

**CONTROLLING OFFICER'S REPLY****SJ041****(Question Serial No. 1942)**Head: (92) Department of JusticeSubhead (No. & title): (-) Not SpecifiedProgramme: (-) Not SpecifiedControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

1. Regarding the duty visits made by the Secretary for Justice and officers of all divisions of the Department of Justice in the past 5 years, please set out the duty visit by year, and details of the place, purpose, number of officers and expenditure for the visits concerned in the table below.

Year	Items of duty visits and places of visits	Purposes of visits	Number of participating officers	Expenditure

2. In respect of the above visits, please set out in the table below the data on total carbon footprints (including those from flights and transportations used in the local cities) for each trip by year. Please provide the method of estimating the carbon footprints.

Year	Items of duty visits	Total carbon footprints	Carbon footprints from flights	Carbon footprints from transportations used in the cities

3. Has carbon offsetting for the above duty visits been met by public funds or private money by the Secretary for Justice or the Department of Justice? If yes, please set out in the table below the data on carbon offsets in the past 5 years by year.

Year	Items of duty visits	Carbon dioxide emissions with carbon offsets	Ways of carbon offsetting	Expenditure

Asked by: Hon Kenneth LEUNG (Member Question No. 3.16)



Reply:

1. Relevant information on the overseas duty visits of officers of the Secretary for Justice's Office and officers of other divisions of the Department of Justice in the past 5 years (2011-12 to 2015-16) is as follows -

Year	Purposes of visits	Places of visits	Number of visits	Number of participating officers	Expenditure
2011-12	Attending meetings, conferences, seminars, negotiations, consultations, and conducting exchanges and visits on legal and other related issues.	Mainland <sup>1</sup> , Macao	61	97	Around \$2,210,000
2012-13		Special Administrative Region, Taiwan,	64	83	Around \$2,434,000
2013-14		Austria, Australia, Belgium,	73	111	Around \$3,038,500
2014-15		Brazil, Cambodia, Germany, France,	81	94	Around \$2,850,500
2015-16		India, Indonesia, Italy, Japan, Kazakhstan, Luxembourg, Malaysia, Mauritius, Mexico, Mongolia, Morocco, Myanmar, Nauru, Netherlands, New Zealand, Panama, Peru, Philippines, Russia, Singapore, Solomon Islands, South Africa, South Korea, Sri Lanka, Switzerland, Thailand, United Arab Emirates, United Kingdom, Uruguay, The United States of America, Vietnam	82	89	Around \$3,479,800

<sup>1</sup> Including Beijing, Chengdu, Chongqing, Fuzhou, Guangxi, Guangzhou, Guiyang, Harbin, Jinan, Nanjing, Nansha, Ningbo, Qianhai, Qingdao, Shanghai, Shantou, Shenzhen, Tianjin, Weifang, Wuhan, Xiamen, Xi'an.

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\* Status as at end-January 2016, residual payment not included

2.

Year	Carbon footprints from flight (Approximate Emission in tonnes)	Carbon footprints from transportations used in the cities
2011-12	around 81	As we do not have detailed information on the transportations used in the local cities during the duty visits, we cannot calculate the total carbon footprints of transportations in the cities concerned.
2012-13	around 89	
2013-14	around 112	
2014-15	around 102	
2015-16	around 135	

3. Carbon offsetting is currently not a requirement of the Government in respect of officials on duty visits.

- End -

**CONTROLLING OFFICER'S REPLY**

**SJ042**

**(Question Serial No. 4789)**

Head: (92) Department of Justice

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

Programme: (1) Prosecutions

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Regarding the Prosecutions Programme of the Department of Justice, would the Government please provide the breakdown on the 32% increase in the estimated financial provisions for 2016-2017 over the 2015-2016 revised estimate?

Asked by: Hon Kenneth LEUNG (Member Question No. 4.06)

Reply:

The provision for 2016-17 is \$218.4 million (or 32%) higher than the 2015-16 revised estimate. The increase of \$218.4 million is due to the anticipated increase in briefing out expenses and court costs (95.5%), net creation of 8 posts to meet operational needs and filling of vacancies (6.3%) and offset by a decrease in departmental expenses (1.8%).

- End -

**CONTROLLING OFFICER'S REPLY**

**SJ043**

**(Question Serial No. 4790)**

Head: (92) Department of Justice

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

Programme: (2) Civil

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Regarding the Civil Programme of the Department of Justice, would the Government please provide the breakdown on the 36.3% increase in the estimated financial provisions for 2016-2017 over the 2015-2016 revised estimate?

Asked by : Hon Kenneth LEUNG (Member Question No. : 4.07)

Reply:

The provision for 2016-17 is \$273.4 million (or 36.3%) higher than the 2015-16 revised estimate. The increase of \$273.4 million is due to the anticipated increase in briefing out expenses and court costs (92.2%), net creation of 18 posts to meet operational needs and filling of vacancies (5.0%) and general increase in departmental expenses (2.8%).

– End –

**CONTROLLING OFFICER'S REPLY**

**SJ044**

**(Question Serial No. 4791)**

Head: (92) Department of Justice

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

Programme: (3) Legal Policy

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Regarding the Legal Policy Programme of the Department of Justice, would the Government please provide the breakdown on the 14.6% increase in the estimated financial provisions for 2016-2017 over the 2015-2016 revised estimate? What particular policy is expected to spend a significant percentage of the estimated provisions?

Asked by: Hon Kenneth LEUNG (Member Question No. 4.08)

Reply:

The provision for 2016-17 is \$16.3 million (or 14.6%) higher than the 2015-16 revised estimate. This is due to the net creation of six posts to meet operational needs and filling of vacancies (54%) and increase in general departmental expenses (41.5%) as well as anticipated increase in briefing out expenses (4.5%). The provision will be mainly used to deal with matters which require special attention in 2016-17, as set out in the Annex.

- End -

**Matters Requiring Special Attention in 2016–17**

During 2016–17, the Legal Policy Division will continue to:

- promote the use of arbitration in Hong Kong and publicise Hong Kong's arbitration regime;
- promote Hong Kong as a regional centre for legal and dispute resolution services;
- provide support to the Advisory Committee on Promotion of Arbitration, chaired by the Secretary for Justice, to enhance the efforts to foster the promotion of arbitration services in Hong Kong in accordance with the policy objective of the Government;
- provide legal advice on and promote knowledge of the Basic Law;
- provide human rights advice including advice on anti-discrimination legislation;
- provide legal advice on constitutional development, and on election matters (including by-elections and post-election matters);
- develop expertise in respect of legislative powers, procedures and practices in the context of the Basic Law;
- provide support to the Inter-departmental Working Group on Gender Recognition, chaired by the Secretary for Justice, which is 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);
- explore further opportunities for Hong Kong legal professionals to provide services in the Mainland;
- develop working relationships with counterparts in the Mainland and other parts of Greater China; and
- organise visits and training programmes in Hong Kong for Mainland officials and seminars and other promotional activities in the Mainland in order to develop and enhance mutual understanding of the legal systems and professional practices in HKSAR and the Mainland and to promote Hong Kong's legal and dispute resolution services in the context of the Belt and Road Initiative.

**CONTROLLING OFFICER'S REPLY****SJ045****(Question Serial No. 4792)**Head: (92) Department of JusticeSubhead (No. & title): (-) Not SpecifiedProgramme: (1) ProsecutionsControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

Would the Government inform this Committee of:

1) the number of cases where the Department of Justice had to pay court costs as a result of adverse rulings, and the amount of court costs paid as a result in the past 5 years by filling in the following table:

	No. of cases the DoJ had to pay court costs as a result of adverse rulings	The amount of court costs that the DoJ had to pay in criminal cases as a result of adverse decisions (\$)
Magistrates' Courts		
2011-2012		
2012-2013		
2013-2014		
2014-2015		
2015-2016		
District Court		
2011-2012		
2012-2013		
2013-2014		
2014-2015		

2015-2016		
High Court		
2011-2012		
2012-2013		
2013-2014		
2014-2015		
2015-2016		
Total		

2) on what circumstances will the accused be granted the recovery of his legal costs from the prosecution?

3) whether the DoJ has reviewed its process and procedures of whether or not criminal proceedings should be undertaken given the amount of legal costs it has had to bear as a result of adverse rulings? If yes, what were conclusions drawn as a result; if no, why?

Asked by: Hon Kenneth LEUNG (Member Question No. 4.09)

Reply:

1) The number of criminal cases in which the Department of Justice had to pay court costs as a result of adverse rulings, as well as the amount paid, in Magistrates' Court, District Court and High Court respectively in the past 5 years is as follows -

	No. of cases	The amount (\$)
Magistrates' Courts		
2011	229	15,352,047
2012	279	24,521,472
2013	206	20,494,824
2014	273	43,728,391
2015	274	29,695,054
Sub-total:	1,261	133,791,788
District Court		
2011	32	12,866,606
2012	33	17,586,766
2013	12	4,459,722
2014	12	4,702,800
2015	26	9,827,000



	No. of cases	The amount (\$)
Sub-total:	115	49,442,894

High Court		
2011	104	20,319,049
2012	86	21,614,911
2013	60	18,350,144
2014	81	46,714,725
2015	6	18,389,065
Sub-total:	337	125,387,894
Total:	1,713	308,622,576

2) In the context of prosecution, the general rule is that an acquitted defendant is entitled to be compensated by the prosecution of his costs, and in case of an appeal, also the costs of the appeal. On the other hand, in case of conviction or dismissal of the defendant's appeal, save in exceptional circumstances (e.g. the defendant intentionally delaying the case or insisting on the prosecution to prove unimportant or undeniable facts), it is not the practice of the prosecution to seek costs from the defendant. The fundamental constitutional right of the defendant is that it is the duty of the prosecution to prove his guilt. The defendant would be deprived of this fundamental constitutional right indirectly if prosecution costs are to necessarily follow conviction or dismissal of appeal.

3) As the prosecution authority, our objective is to see that appropriate cases are presented fairly to the court. Prosecutions are, as 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. The public interest is not served by proceeding with cases that do not satisfy this test of "reasonable prospect of conviction". The resources required to prosecute must be responsibly applied only to proceedings that will be fair and that are likely to be effective. But once it is decided that prosecution should be pursued, it is the duty of prosecutors to prosecute rigorously in courts but yet to act in a fair and objective manner. The question of guilt or innocence will then be a matter for the court to decide, on the criminal law standard of proving "beyond reasonable doubt". The possibility of payment of court costs in the event of adverse ruling ought not be a consideration which impedes our pursuit of justice. That said, as a matter of practice, we will conduct "case review meetings" with relevant officers of the law enforcement agency after completion of court proceedings, where appropriate, to see what lessons can be learned and how to improve the conduct of prosecution for the future.

- End -

**CONTROLLING OFFICER'S REPLY****SJ046****(Question Serial No. 5698)**Head: (92) Department of JusticeSubhead (No. & title): (-) Not SpecifiedProgramme: (1) ProsecutionsControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

Would the Government inform this Committee of:

- (1) the respective estimated expenditures on the emolument and non-accountable entertainment allowance of the Secretary for Justice this year, and the estimated expenditure on the emolument of the Director of Public Prosecutions this year;
- (2) the explanation of the Department of Justice (DoJ) for the successful conviction rates of only 50% in respect of defendants tried in Magistrates' Court in 2014 and 2015, accounting for only 50.3% and 52% respectively, and if there was an abuse of prosecution;
- (3) the amount of court costs the DoJ had to pay in criminal cases as a result of adverse rulings in the Magistrates' Court, District Court and Court of First Instance over the past 5 years by filling the following table:

	Magistrates' Court	District Court	Court of First Instance
2011			
2012			
2013			
2014			
2015			

- (4) whether provisions will be earmarked by the DoJ for payment of court costs incurred as a result of adverse rulings and, if yes, the estimated expenditure for this year.

Asked by: Hon LEUNG Kwok-hung (Member Question No. 504)Reply:

- (1) The estimated expenditure on the emoluments and non-accountable entertainment allowance of the Secretary for Justice in 2016-17 is \$3.70 million and \$0.22 million respectively. The notional annual mid-point salary of the Director of Public Prosecutions post in 2016-17 is \$2.83 million.
- (2) As the prosecution authority, our objective is to see that appropriate cases are presented fairly to the court. 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”. Conviction rate is not an indicator of abuse or otherwise.

As shown in the conviction rates at the magistracy level set out below, the success rate of prosecutions (including defendants convicted after trial and defendants convicted on their own pleas) has remained relatively steady in the past six years.

Conviction Rate at Magistrates’ Court	2010	2011	2012	2013	2014	2015
- defendants convicted after trial (%)	51.6	51.5	47.6	47.0	50.3	52.0
- defendants convicted after trial and defendants convicted on their own pleas (%)	73.8	74.4	73.3	72.3	74.6	74.6

- (3) The amount of court costs that the Department of Justice (DoJ) had to pay in criminal cases as a result of adverse decisions in Magistrates’ Court, District Court and Court of First Instance in the past 5 years is as follows:

	Magistrates' Court \$	District Court \$	Court of First Instance \$
2011	15,352,047	12,866,606	20,319,049
2012	24,521,472	17,586,766	21,614,911
2013	20,494,824	4,459,722	18,350,144
2014	43,728,391	4,702,800	46,714,725
2015	29,695,054	9,827,000	18,389,065

- (4) The estimated expenditure of DoJ for court costs in respect of criminal cases in 2016-17 is \$333 million. The expenditure on court costs varies from year to year, depending on the number of cases involved, their complexity and development. While the estimate was worked out on information available at the time of preparing the estimates, the actual expenditure to be incurred in 2016-17 would ultimately depend on subsequent development and outcome of the cases concerned (which are not entirely within the control of the Government or DoJ).

- End -

**CONTROLLING OFFICER'S REPLY**

**SJ047**

**(Question Serial No. 0654)**

Head: (92) Department of Justice

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

Programme: (3) Legal Policy

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Quite a number of people and religious groups have been subjected to verbal abuse for disagreeing with homosexuality and same sex marriage, which has resulted in reverse discrimination, making the community worry that freedom of religious belief and freedom to preach in Hong Kong are being jeopardised. In this connection, would the Government inform this Committee of the following:

1. What were the allocations to legal research policy on safeguarding freedom of religious belief and sexual orientation in Hong Kong over the past 3 years? Please provide a detailed breakdown of the expenditure on the measures taken.
2. In the coming 3 years, how will the Government ensure the freedom of speech, religious belief and sexual orientation in Hong Kong will not be prejudiced? What is the expenditure involved in 2016-17?
3. Has the Government conducted any exchanges on these issues with other countries or places such as Taiwan, Macao, the United Kingdom and the United States? If yes, what is the breakdown of the expenditure involved? If not, what are the reasons?

Asked by: Dr Hon Priscilla LEUNG Mei-fun (Member Question No. 27)

Reply:

We conduct legal research on issues relating to the human rights provisions of the Basic Law and the Hong Kong Bill of Rights Ordinance (including the right to freedom of expression, freedom of religion, and the right to equality and non-discrimination) mainly in the context of providing legal advice on these issues. Such work is handled by the Human Rights Unit of the Legal Policy Division, among its other work, for policy bureaux and government departments to ensure that the policies and measures that they adopt or consider adopting are compliant with the human rights law of the Hong Kong Special Administrative Region (SAR), and the expenditure involved cannot be separately identified. We will

continue to provide such support to relevant bureaux/departments in ensuring the compliance of their policies and measures with the human rights law (including that concerning the right to freedom of expression, freedom of religion, and the right to equality and non-discrimination) in the coming three years and beyond.

The Human Rights Unit conducts comparative legal research on human rights issues but does not on its own maintain any direct contact with other jurisdictions on these issues. However, when DoJ's representatives met with representatives of other jurisdictions (whether in the Hong Kong SAR or otherwise), human rights issues might be covered. The expenses so incurred, likewise, cannot be separately identified.

- End -

**CONTROLLING OFFICER'S REPLY**

**SJ048**

**(Question Serial No. 0662)**

Head: (92) Department of Justice

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

Programme: (2) Civil  
(3) Legal Policy

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

It is mentioned under Matters Requiring Special Attention in 2016-17 of Programme (3) Legal Policy of the Department of Justice that “the Secretary for Justice’s Office and the Legal Policy Division will continue to promote the use of arbitration in Hong Kong and publicise Hong Kong’s arbitration regime; promote Hong Kong as a regional centre for legal services and dispute resolution; provide support to the Advisory Committee on Promotion of Arbitration, chaired by the Secretary for Justice, to enhance the efforts to foster the promotion of arbitration services in Hong Kong in accordance with the policy objective of the Government”. In this connection, would the Government inform this Committee of the following:

1. the resources allocated to promote and develop Hong Kong’s mediation and arbitration services over the past 3 years, and the detailed breakdown of the expenditure of the measures taken;
2. the resources planned to be allocated to promote and develop Hong Kong’s mediation and arbitration services in 2016-17, and the specific measures to be taken;
3. whether additional resources will be allocated to universities for running related courses or talks in respect of the legal regime of arbitration? If yes, what will the resources be? If not, what are the reasons?

Asked by: Dr Hon Priscilla LEUNG Mei-fun (Member Question No. 35)

Reply:

- 1. Resources allocated to advocate and develop Hong Kong’s mediation and arbitration services over the past three years**

For the development of Hong Kong's mediation services, the Steering Committee on Mediation (the Steering Committee) chaired by the Secretary for Justice and assisted by its three sub-committees provide steer on the initiatives to enhance the regulatory framework by which mediation will be conducted effectively, the accreditation and regulation of mediators in Hong Kong and the continuous promotion of the more extensive use of mediation to resolve disputes in Hong Kong. Major initiatives taken over the past three years include:

- (a) Enhancing the regulatory framework for the effective conduct of mediation : A study has been undertaken on whether there should be an apology legislation to be enacted in Hong Kong for the purpose of enhancing settlement of disputes by encouraging the making of apologies and clarifying the legal consequences of making apologies. A consultation paper was published for public consultation in June 2015. Following receipt of general support for the proposal, a report for a second round of consultation on specific issues with a draft apology bill annexed was published in February 2016. The Steering Committee will make its final recommendations on the proposal to enact apology legislation and the details of the legislation upon consideration of the responses received during the second round public consultation.
- (b) Enhancing the accreditation and regulation of mediators : The Steering Committee oversees policy matters concerning the formulation of accreditation standard of mediators and standards of training courses of the Hong Kong Mediation Accreditation Association Limited (HKMAAL), a non-statutory industry-led body limited by guarantee formed in 2012 discharging accreditation and disciplinary functions of mediators in Hong Kong. Initiatives being undertaken by HKMAAL and overseen by the Steering Committee include the undertaking of a review of the Hong Kong Mediation Code and the formulation of the HKMAAL disciplinary procedure.
- (c) Promotion of the wider and more extensive use of mediation to resolve disputes in Hong Kong : Events held during the past three years included (i) the Mediation Week in 2014 which involved different sectors and a conference with international and local speakers to draw on experience in the development of mediation in other jurisdictions, (ii) the Mediate First Pledge receptions in 2013 and 2015 to encourage different sectors including the SMEs to use mediation to resolve disputes before resorting to litigation, and (iii) the Intellectual Property Mediation Workshop in 2015 with a view to exploring the use of evaluative mediation to resolve Intellectual Property disputes on top of facilitative mediation.
- (d) Promotion of Hong Kong's mediation services : With a view to enhancing the status of Hong Kong as an international dispute resolution hub and the provision of international dispute resolution services by Hong Kong to the Mainland, the Mediation Team supported the holding of a conference by the Hong Kong Joint Mediation Helpline Office and the Shanghai Commercial Mediation Center in Hong Kong in 2014 and another one in Shanghai in 2016. Support was also given to the China Council for the Promotion of International Trade (CCPIT) and the Hong Kong Mediation Centre (HKMC) on their setting up of the CCPIT-HKMC Joint Mediation Center in Hong Kong in 2015 for providing cross-boundary dispute resolution services.



- (e) Promotion within the Government : Promotion of mediation within the Government included the publication of the Mediation Handbook for Administrators in 2015 and provision of general mediation courses and training for civil servants, as well as purpose-designed training courses and workshops to suit the operational needs of particular departments.

For arbitration, the key measures to promote and develop such services include:

- (a) Constantly reviewing Hong Kong's arbitration regime and considering necessary improvement to the Arbitration Ordinance (Cap. 609) : Two amendment ordinances were passed in July 2013 and July 2015 respectively. In December 2015, Department of Justice (DoJ) launched a consultation exercise on a legislative proposal to make clear that disputes over intellectual property (IP) rights are capable of resolution by arbitration, and that it would not be contrary to public policy to enforce an arbitral award solely because the award is in respect of a dispute or matter which relates to IP rights. Taking into account the result of the consultation ended in January 2016, and subject to the progress of the preparatory tasks, DoJ intends to introduce a bill to implement the proposal in 2016 by amending the Arbitration Ordinance. Such amendments will be helpful in attracting more parties to resolve their IP disputes by arbitration in Hong Kong and facilitate the enforcement of IP-related awards by Hong Kong courts.
- (b) Promotional activities outside Hong Kong : Hong Kong Legal Services Forums were held in Mainland cities on a biennial basis so as to promote Hong Kong's international legal and dispute resolution services. The Secretary for Justice and representatives of the Department of Justice also visited prominent commercial centres in overseas countries to promote the competitive edges of Hong Kong in the provision of international legal and arbitration services, including emerging markets in the Asia Pacific region.
- (c) Facilitation of the establishment and growth of world-class arbitration institutions in Hong Kong : The China Maritime Arbitration Commission set up its Hong Kong Arbitration Center in 2014. In January 2015, a Host Country Agreement between the Central People's Government and the Permanent Court of Arbitration (PCA) on the conduct of dispute settlement proceedings in Hong Kong and a related Memorandum of Administrative Arrangements between the Hong Kong Special Administrative Region Government and the PCA were signed. The aim of signing of these two documents is to facilitate the conduct of PCA-administered arbitration in Hong Kong, including state-investor arbitration.
- (d) Arbitration-related seminars in Hong Kong, which were organised or supported by the DoJ, include : (i) two seminars on PCA (March and November 2015); (ii) 6th Greater China Arbitration Forum (May 2015); (iii) Inter-Pacific Bar Association 25th Annual Meeting and Conference (May 2015); (iv) International Council for Commercial Arbitration – Hong Kong International Arbitration Centre (HKIAC) 2015 Hong Kong Summit (May 2015); (v) 19th International Congress of Maritime Arbitrators (May 2015); (vi) United Nations Commission on International Trade Law Asia Pacific

Judicial Roundtable and Summit (October 2015); (vii) Asian Logistics and Maritime Conference 2015 (November 2015); (viii) Business of IP Asia Forum Seminar (December 2015); and (ix) Seminar on Arbitration to the Japanese business community in Hong Kong (January 2016).

In terms of resources allocated to provide the support for the promotion and development of mediation, the staff costs in the past three years are set out in the table below. For arbitration, one Senior Government Counsel (SGC) post was created in 2014-15 for undertaking promotion work and providing support to the Advisory Committee on Promotion of Arbitration.

	2013-14	2014-15	2015-16
Mediation Team Consisted of 1 Deputy Principal Government Counsel, 1 SGC, 1 Law Clerk and 1 Personal Secretary I	\$3,165,000	\$3,590,000	\$3,795,000
SGC for handling arbitration matters	NA [post not yet created]	\$1,153,800	\$1,222,560

As for other staff assisting in taking forward the efforts in respect of mediation and arbitration as set out above, they undertake the work among their other duties. Their staff costs and other expenses cannot be separately identified.

## **2. Specific measures in 2016-17 to promote and develop Hong Kong's international mediation and arbitration services**

For mediation, continuous efforts will be made to enhance the regulatory framework for the conduct of mediation, the accreditation and regulation of mediators in Hong Kong, public awareness of mediation as an effective means to resolve disputes, and the status of Hong Kong as an international dispute resolution hub. Specific initiatives include the following:

- (a) The enactment of apology legislation: The second round public consultation on the proposed apology legislation will end on 5 April 2016. The responses received during this second consultation will be reported to the Steering Committee. Subject to the final recommendations of the Steering Committee, DoJ will seek to introduce the Apology Bill to the Legislative Council in the latter part of 2016;
- (b) The Mediation Week 2016 in May: There will be different events highlighting the use of mediation to resolve different types of disputes such as medical disputes, commercial disputes, IP disputes, community disputes and cross border types disputes during the Mediation Week. A Mediation Conference, which is part of the Mediation Week 2016, will feature overseas and local speakers and will review the global development of mediation with sharing of experience on how regulatory framework,

training and promotion of mediation may be further enhanced in Hong Kong;

- (c) Promulgation and promotion of guidelines on the exemption for disclosure of mediation communication for research, evaluation and education purposes;
- (d) Holding of forums among mediation stakeholders and practitioners to collate information on the implementation of the Mediation Ordinance, with a view to studying ways to enhance the regulatory framework for the conduct of mediation;
- (e) Holding of seminars and training within the Government to encourage the wider use of mediation to resolve disputes encountered by Government; and
- (f) Holding of forums jointly with local mediation service providers as well as mediation service providers from outside Hong Kong with the view to promoting Hong Kong's international mediation services.

For arbitration, we will continue with our general promotion work, but also at the same time concentrate our efforts on developing arbitration services in the following areas:

- (a) Promoting Hong Kong's international legal and dispute resolution services in the Mainland in the context of the Belt and Road Initiative. We have been working in collaboration with the relevant Economic and Trade Offices of the Hong Kong Special Administrative Region (HKSAR) Government in the Mainland as well as the legal and dispute resolution services sectors of Hong Kong in organising and participating in promotional events in numerous Mainland cities. These seminars were well received by the Mainland legal and business sectors. Two more visits, one for Wuhan in April 2016 and the other for Kunming in June 2016, have been planned. DoJ will also co-organise with Hong Kong's legal and arbitration institutions the 4th (biennial) Legal Services Forum in Nanjing (tentative) to be held in the 4th quarter of 2016.
- (b) Enhancing the promotion of international dispute resolution services of Hong Kong in emerging economies in the Asia Pacific region. Promotional visits in this financial year to emerging economies in the Asia Pacific region are being planned.
- (c) Reinforcing Hong Kong's status as an ideal neutral venue for dispute resolution in the Asia Pacific region, providing efficient and reliable dispute resolution services for commercial and investment disputes involving Mainland parties and other economies along the Belt and Road. Efforts are therefore being made by DoJ and the Financial Services and the Treasury Bureau to discuss with the Asian Infrastructure Investment Bank (AIIB) on the possible arrangements for Hong Kong to be one of the resolution centres for contractual and commercial disputes specified in AIIB's standard contracts, so that Hong Kong's chances as a chosen seat of arbitration by the concerned business partners can be enhanced.

Subject to the Legislative Council's approval of the proposed creation of a DL2 post in the Legal Policy Division (LPD) of the DoJ, a dedicated team will be set up in the LPD to, among other arbitration-related work, plan and organise regular promotional activities in the form of roadshows, conferences, seminars and forums to promote Hong Kong's

international legal and arbitration services in places to be identified among the some 60 overseas countries along the Belt and Road. Consideration will also be given to reinforcing Hong Kong's role in the provision of international legal and dispute resolution-related training/capacity building opportunities for professionals and government officials from the Asia Pacific region and/or the Belt and Road countries.

The related expenses will continue to be absorbed within the existing resources of the Department.

### **3. Additional resources for arbitration-related courses or talks run by the universities**

We understand that the subject of arbitration is currently offered as an elective in undergraduate law courses in Hong Kong. At the postgraduate level, programmes on Master of Laws in Arbitration and Dispute Resolution are offered by two universities while arbitration-related talks are being held by the three law schools from time to time.

In addition, there are two arbitration professional bodies in Hong Kong which provide education and training courses on arbitration. Arbitral institutions in Hong Kong also organise seminars, talks and conferences on topics relating to arbitration.

We do from time to time jointly organise talks and conferences on arbitration with academic institutions and/or professional bodies, and we will continue to do so, as appropriate. However, we currently have no plan to allocate additional resources to universities for running on their own related courses or talks in respect of the arbitration regime.

- End -

**CONTROLLING OFFICER'S REPLY**

**SJ049**

**(Question Serial No. 2885)**

Head: (92) Department of Justice

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

Programme: (3) Legal Policy

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

It is mentioned under Matters Requiring Special Attention in 2016-17 of Programme (2) of the Immigration Department that the Department will continue to “plan the immigration facilities required in the new control points at the Guangzhou-Shenzhen-Hong Kong Express Rail Link West Kowloon Terminus, Hong Kong-Zhuhai-Macao Bridge Hong Kong port area and Liangtang/Heung Yuen Wai”. The planning and design of the immigration facilities will be impacted considerably by the implementation or otherwise of the co-location arrangements at the Guangzhou-Shenzhen-Hong Kong Express Rail Link (XRL) West Kowloon Terminus. While the working group dealing with the legal issues involved in the co-location arrangements is headed by the Secretary for Justice, the Department of Justice has not mentioned the above work in its Programmes. In this connection, would the Government inform this Committee of:

1. the resources allocated for the planning of the immigration facilities at the XRL West Kowloon Terminus over the past 3 years as well as the effectiveness and progress of the work;
2. the resources estimated to be allocated for the planning of the immigration facilities at the XRL West Kowloon Terminus in the next 3 years;
3. given no specific proposals have been presented so far, whether the Government is confident that the “co-location” arrangements will be in place at the commissioning of the XRL, and if yes, what are the details; if not, what are the reasons?
4. whether the planning proposal for the Terminus can cater for both the “co-location” and “separate-location” arrangements to allow operation in the “separate-location” mode before the implementation of the “co-location” arrangements at the XRL and its conversion to the “co-location” mode anytime in the future?

Asked by: Dr Hon Priscilla LEUNG Mei-fun (Member Question No. 26)

Reply:

The Department of Justice advises Government bureaux and departments on legal issues as required from time to time, including those arising from projects under their purview. The co-location arrangement of the XRL project is one such example. Such advice has been and will be, from time to time, tendered among other advisory duties of the Department and the relevant expenditure therefore cannot be separately identified. As has been reiterated by the Hong Kong Special Administrative Region (HKSAR) Government on various occasions, the arrangements and details of the implementation of the co-location arrangement (which will have to be consistent with the Basic Law and the “One Country, Two Systems” principle) are still under study and discussion between the HKSAR Government and the relevant Mainland authorities. The HKSAR Government will provide such information as it is in a position so to do to the public and the Legislative Council in due course.

- End -

**CONTROLLING OFFICER'S REPLY**

**SJ050**

**(Question Serial No. 1753)**

Head: (92) Department of Justice

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

Programme: (2) Civil

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

The provision for 2016-17 is \$273.4 million (36.3%) higher than the revised estimate for 2015-16, which is mainly used for the net creation of 18 posts and the anticipated increase in briefing out expenses and court costs. The matters requiring special attention of the Civil Division in 2016-17 are numerous and complex, involving issues arousing wide public concern recently or in the next few years. They include the new regulatory framework for the tourism sector; regulation of information technology and e-commerce; matters arising from the excess lead in drinking water; various studies in relation to the enhancement of Hong Kong's financial system, the Guangzhou-Shenzhen-Hong Kong Express Rail Link and the Hong Kong-Zhuhai-Macao Bridge.

Would the Government inform this Committee of the specific provisions and staffing allocation for the above matters requiring special attention, with regard to the increased revised estimate and the net creation of posts? What are the main areas of work and performance indicators in relation to the additional staff?

Asked by: Hon Martin LIAO Cheung-kong (Member Question No. 11)

Reply:

The net creation of 18 posts in the Civil Division in 2016-17 will mainly be for the purpose of providing legal support in the following areas of work -

- (a) the review of the regulatory framework for the electricity market;
- (b) the implementation of the Private Columbaria Ordinance;
- (c) the development of Government Electronic Trading Services into a "Single Window";
- (d) the comprehensive review of the unified screening mechanism to determine claims for non-refoulement protection against expulsion, return or extradition from Hong Kong to another country and other related aspects;

- (e) the handling of complex charity-related cases; and
- (f) the handling of student loan recovery cases by replacing Non-civil Service Contract posts by permanent posts.

The existing key performance measures in place will equally apply to these new posts as appropriate.

Regarding the matters mentioned in the question (i.e. the new regulatory framework for the tourism sector; regulation of information technology and e-commerce; matters arising from the excess lead in drinking water; various studies in relation to the enhancement of Hong Kong's financial system, the Guangzhou-Shenzhen-Hong Kong Express Rail Link and the Hong Kong-Zhuhai-Macao Bridge), as these are on-going work of the Division, no new posts are provided specifically for these areas of work and the financial provision involved cannot be separately identified.

- End -



**CONTROLLING OFFICER'S REPLY**

**SJ051**

**(Question Serial No. 1754)**

Head: (92) Department of Justice

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

Programme: (3) Legal Policy

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

The key emphases of the work of the Department of Justice (DoJ) include promoting Hong Kong as a regional hub of international legal and dispute resolution services, as well as promoting Hong Kong's legal and dispute resolution services in the context of the Belt and Road Initiative. DoJ held seminars in Beijing, Shanghai, Chongqing and Chengdu in 2015 and has tentatively planned to organise similar ones in Guiyang, Xi'an, Wuhan and Kunming in 2016 to introduce to the Mainland business sector the possibilities of utilising Hong Kong's legal and dispute resolution services when going global in pursuit of the Belt and Road initiative.

Would the Government inform this Committee of the feedback of the Mainland and local business sectors in respect of the seminars and other promotional activities held in 2015, and of the legal issues and the resolution methods they were particularly interested in? Does DoJ have any enhanced initiatives for promoting Hong Kong as a regional hub of international legal and dispute resolution services in future? If yes, what are they?

Asked by: Hon Martin LIAO Cheung-kong (Member Question No. 12)

Reply:

The feedback received from participants of seminars DoJ organised or participated in the Mainland (including those recently held in Guiyang and Xi'an in February 2016) is very positive. The turnout was encouraging and the questions raised thereat (such as those concerning the procedural aspects of reciprocal enforcement of arbitral awards, how arbitration fees were charged in Hong Kong, points to note for selection of arbitrators and how to handle trademark and patents disputes in Hong Kong, etc.) demonstrated a genuine interest. In response to suggestions received, DoJ continued to introduce improvements to the format and details of such seminars in order to allow more time for Mainland participants and Hong Kong speakers to interact and network after the seminar and to cover as many areas of interest as practicable. The content and focus of individual sessions are also carefully worked out to keep up with and address the latest trends.

The organisation of seminars and roadshows, etc. in the Mainland and elsewhere is only one aspect of the series of work DoJ does to enhance Hong Kong's competitiveness as a regional hub of international legal and dispute resolution services. In seeking to achieve this objective, DoJ plans to step up measures intended to pursue other initiatives which include the following -

- (i) To work closely with the legal professional bodies and arbitration-related bodies to make Hong Kong an arbitration-friendly jurisdiction by, inter alia, enhancing the statutory framework for arbitration in Hong Kong and facilitating the establishment and growth of world-class arbitration and law-related organisations in Hong Kong;
- (ii) To monitor the operation of the Arbitration Ordinance (Cap. 609) and consider the need to introduce amendments in the light of feedback from the arbitration community so as to maintain the competitiveness of our legal framework for arbitration;
- (iii) To work alongside the relevant stakeholders in enhancing Hong Kong's capability in specialised areas of arbitration, including investment arbitration, maritime arbitration and intellectual property (IP) arbitration, etc.; and
- (iv) To explore different forms of cooperation with leading arbitration-related international organisations, in particular the United Nations Commission on International Trade Law (UNCITRAL). DoJ will maintain close contact with UNCITRAL, monitor its deliberations in relation to arbitration and, where appropriate, attend international conferences and meetings, so as to keep the department abreast of developments on the international front and further enhance our cooperation with the organization.

- End -

**CONTROLLING OFFICER'S REPLY**

**SJ052**

**(Question Serial No. 2116)**

Head: (92) Department of Justice

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

Programme: (3) Legal Policy

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

The Law Reform Commission established 2 sub-committees to consider the issues of access to information and archives law. What is the latest progress of the work of these 2 sub-committees? When will the findings be expected to be released to the public? Have manpower and resources been earmarked by the Department of Justice for preliminary work of the enactment of the archives law and the freedom of information law? If yes, what are the details? If not, what are the reasons?

Asked by: Hon Claudia MO (Member Question No. 44)

Reply:

The Law Reform Commission (LRC)'s Sub-committee on Archives Law and Sub-committee on Access to Information were both formed in May 2013 to review the current local situation and conduct comprehensive comparative studies of the relevant regimes and laws in overseas jurisdictions, with a view to making recommendations on possible options for reform where necessary.

These two Sub-committees have since been meeting regularly, having so far reviewed the current regimes and are undertaking a comparative study of the situation in other jurisdictions. After detailed deliberation of the relevant issues, the Sub-committees will come up with provisional recommendations for consultation. They will take into account the responses received in the consultation exercise before finalising proposals for reform, if any. Upon the consideration of the draft reports submitted by the Sub-committees, the LRC will publish its final reports. Given the importance and complexity of the issues involved, as well as the level of local and comparative research and analysis required, it is too early for the two Sub-committees to commit to an expected completion date for the projects. Nonetheless, the Sub-committees are working diligently on the projects and they will publish the relevant consultation papers in due course.

As has been the case since its establishment, the LRC Secretariat, which is staffed and financed by the Department of Justice (DoJ), has been providing all necessary support, in terms of legal research or otherwise, to the work of the LRC (including its sub-committees) which is independent.

Upon the publication of an LRC report with recommendations for reform, the DoJ will, in collaboration with the LRC Secretariat, provide assistance to the relevant policy bureau(x) in the consideration and implementation of the recommendations. Depending on the nature and urgency of the reform, as well as the volume of work warranted, the relevant policy bureau(x) will decide if additional resources, including staff, are called for. Given the current stage of the work of the two Sub-committees, DoJ has not earmarked additional manpower or other resources for the purpose of advising the relevant policy bureau(x) on any LRC recommendations on the subject matters.

- End -

**CONTROLLING OFFICER'S REPLY****SJ053****(Question Serial No. 1491)**Head: (92) Department of JusticeSubhead (No. & title): (-) Not SpecifiedProgramme: (1) ProsecutionsControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

2016-17 (Estimate) as compared with 2014-15 (Actual) + \$224 million or +33%.

The estimate for 2016-17 is one third higher than the actual expenditure in 2014-15. What are the reasons for such an increase over a period of 2 years? What specific areas do the 5 expenditure items with the largest increases involve? What is the amount of increase in the expenditure for handling non-refoulement claims and related matters?

Concerning the performance targets, the actual compliance rates for “providing advice for law enforcement agencies within 14 working days upon receipt of request, or for a complex case, interim reply within 14 working days (%)” in 2014 and 2015 were 94% and 94.4% respectively, which fall short of the target of 100% by about 6%. What are the reasons for this? What type of resources is insufficient that have led to this situation? As the target compliance rate is set at 100 for 2016, what is the prospect of meeting the target this year? What are the challenges?

Asked by: Hon NG Leung-sing (Member Question No. 10)Reply:

The increase in provision for Programme (1) : Prosecutions when comparing the estimate for 2016-17 and the actual expenditure in 2014-15 is mainly due to the following reasons : the filling of vacancies, net creation of nine posts to meet operational needs, increase in the provision for court costs arising from some mega cases that may require payment in 2016-17, as well as the increase in briefing out expenses to cater for the anticipated increase in standard briefing out rate.

The details of the nine posts created / to be created are as set out below –

Post(s)	Nature of Duties	NAMS*
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One Clerical Assistant (created in 2015-16)	Strengthen clerical support for the increase in volume of work in the Prosecutions Division	\$181,740
One Government Counsel (to be created in 2016-17)	Strengthening legal support for handling cases related to proceeds of crime	\$931,800
One Senior Government Counsel (to be created in 2016-17)	Strengthening legal support for handling cases related to Public Order Events and cybercrime	\$1,309,080
Six Clerical Assistant (to be created in 2016-17)	Catering for the manpower need of prosecution work in the Magistracies	\$190,140 x 6 = \$1,140,840
One Confidential Assistant (to be created in 2016-17)	Strengthening support for the Confidential Registry	\$291,360
<b>Offset by deletion of <u>one</u> time-limited SGC post which will lapse on 1.4.2016.</b>		

\*NAMS means notional annual mid-point salary

As for the anticipated increase in standard briefing out rate, currently, we adopt the same fee scale as that of the Legal Aid Department for criminal legal aid fees as prescribed in the Legal Aid in Criminal Cases Rules (Cap. 221D) under the Criminal Procedure Ordinance (Cap. 221), as well as that for the duty lawyer fees under the duty lawyer scheme, as appropriate, when engaging lawyers in private practice on a standard briefing-out basis to prosecute criminal cases on fiat. This will ensure that neither the defence nor the prosecution would have unfair advantage in competing for the same pool of lawyers, thus ensuring parity between the defendants and the prosecution.

Having regard to the outcome of the 2014 biennial review of the fees mentioned above as well as the review of criminal legal aid fees, both spearheaded by the Home Affairs Bureau, and adopting the “equality of arms” approach mentioned above, we plan to correspondingly adjust the standard briefing-out rates to tie in with the relevant adjustments to duty lawyer fees (to increase by 7.7% in line with the movement of the Consumer Price Index (CPI) (C) for the reference period under the biennial review, which is applicable to the briefing-out of cases at the magistracy level in place of Court Prosecutors) as well as the proposed increase in relevant criminal legal aid fees (by 50%, applicable to the standard briefing-out rates at all other levels). The current rate of and proposed revisions to different levels of standard prosecution fees are set out in the table at **Annex**. The revisions will be effected at the same time when revised scales of criminal legal aid fees and duty lawyer fees are implemented.

As for non-refoulement claims and related matters, there is no record of the Prosecutions Division handling such matters. Even if inputs from the Prosecutions Division are required for such cases, they will be handled by existing staff among their other duties, hence the expenditure involved cannot be separately identified.

The Prosecutions Division will at all times seek 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.

To achieve better compliance with our performance pledges, we have strengthened our monitoring system to remind counsel to handle requests for advice with due regard to the response time pledged. This has produced a positive result with an increase in the compliance rate from 90.4% in 2013 to 94% and 94.4% in 2014 and 2015 respectively. We will continue our efforts in this regard.

Our compliance rate has been steadily on the rise and reached 95.2% for January and February 2016. We will continue to closely monitor the compliance trend and provide additional resources to the relevant team for handling complicated cases or requests, where necessary.

**Current and Proposed Standard Briefing Out Rate for Criminal Prosecution  
Cases of Department of Justice**  
(Adjustment in accordance with the increase in  
criminal legal aid fees and duty lawyer fees)

Fee item	Department/ Service	Current maximum fee (\$)	Proposed maximum fee (\$)
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**1. Magistrates' Courts**

(a) Counsel or solicitor acting as advocate in committal proceedings  
*(The prosecution fees of DoJ adopts the same fee scale as that of criminal legal aid fees after adjustment)*

(i)	Brief <sup>i</sup>	Legal Aid Department (LAD)/ Department of Justice (DOJ)	9,800	14,700
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(ii)	Refresher <sup>ii</sup>	LAD/DOJ	4,890 per day	7,340 per day
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*(The prosecution fees of DoJ are adjusted upward by 50% according to the increase in criminal legal aid fees)*

(iii)	Conference	DOJ	790 per hour	1,180 per hour
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(iv)	Pre-trial Review (per review)	DOJ	1,360	2,040
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(b) Counsel or solicitor acting as advocate in preliminary inquiry

(i)	Brief <sup>i</sup>	LAD	9,800	14,700
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(ii)	Refresher <sup>ii</sup>	LAD	4,900 per day	7,350 per day
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(c) Instructing solicitor in committal proceedings (including preliminary inquiry)



- |      |                         |     |                  |                  |
|------|-------------------------|-----|------------------|------------------|
| (i)  | Brief <sup>i</sup>      | LAD | 2,640            | 3,300            |
| (ii) | Refresher <sup>ii</sup> | LAD | 2,170<br>per day | 2,710<br>per day |
- (d) Counsel or solicitor acting as advocate in place of court prosecutor in committal proceedings  
*(The prosecution fees of DoJ for the engagement of counsel or solicitor to act as advocate in place of court prosecutor in committal proceedings are adjusted upward by about 7.7% according to the increase in duty lawyer fees)*
- |     |       |     |                                       |                                       |
|-----|-------|-----|---------------------------------------|---------------------------------------|
| (i) | Brief | DOJ | 6,520<br>per day<br>3,250<br>half day | 7,020<br>per day<br>3,490<br>half day |
|-----|-------|-----|---------------------------------------|---------------------------------------|
- (e) Counsel or solicitor acting as advocate in committal proceedings (Newly qualified lawyers)  
*(The prosecution fees of DoJ for the engagement of counsel or solicitor to act as advocate in place of court prosecutor in committal proceedings are adjusted upward by about 7.7% according to the increase in duty lawyer fees)*
- |      |  |     |                                       |                                       |
|------|--|-----|---------------------------------------|---------------------------------------|
| (i)  | Brief (For 2 weeks engagement)                   | DOJ | 43,720                                | 47,080                                |
| (ii) | Brief after 2 weeks engagement (Part-heard case) | DOJ | 6,520<br>per day<br>3,250<br>half day | 7,020<br>per day<br>3,490<br>half day |
- (f) Counsel or solicitor acting as advocate in committal proceedings (Newly qualified monolingual lawyers)  
*(The prosecution fees of DoJ for the engagement of counsel or solicitor to act as advocate in place of court prosecutor in committal proceedings are adjusted upward by about 7.7% according to the increase in duty lawyer fees)*
- |     |       |     |                  |                  |
|-----|-------|-----|------------------|------------------|
| (i) | Brief | DOJ | 6,520<br>per day | 7,020<br>per day |
|-----|-------|-----|------------------|------------------|

3,250	3,490
half day	half day

## 2. District Court (DC)

### (a) Counsel

(i)	Preparation <sup>iii</sup>	LAD	8,160	12,240
(ii)	Additional preparation	LAD	4,210 per 4-hour unit	6,320 per 4-hour unit

**(The prosecution fees of DoJ adopts the same fee scale as that of criminal legal aid fees after adjustment)**

(iii)	Court hearing	LAD/DOJ	8,160 per day	12,240 per day
(iv)	Conference	LAD/DOJ	1,040 per hour	1,560 per hour

**(The prosecution fees of DoJ are adjusted upward by 50% according to the increase in criminal legal aid fees)**

(v)	Brief <sup>1</sup>	DOJ	16,320	24,480
(vi)	Pre-trial Review (per review)	DOJ	2,050	3,070
(vii)	Mention	DOJ	1,360	2,040
(viii)	Plea	DOJ	1,360	2,040
(ix)	Sentence	DOJ	1,360	2,040
(x)	Plea & Sentence	DOJ	2,050	3,070

### (b) Instructing solicitor

(i)	Reading	LAD	670 per hour	840 per hour
(ii)	Preparation	LAD	2,740 per 4-hour unit	3,430 per 4-hour unit
(iii)	Court hearing	LAD	5,490	6,860

			per day	per day
(iv)	Conference	LAD	670	840
			per hour	per hour
(c) <u>Solicitor acting as both advocate and instructing solicitor</u>				
(i)	Preparation <sup>iii</sup>	LAD	10,095	14,130
(ii)	Additional preparation	LAD	5,030	7,040
			per 4-hour unit	per 4-hour unit
(iii)	First day Court hearing	LAD	10,095	14,130
			per day	per day
(iv)	Refresher <sup>iv</sup>	LAD	11,190	15,670
			per day	per day
(d) <u>Attendance at DC (other than for the trial, plea or sentence)</u>				

LAD	At a rate that appears to the Director of Legal Aid (DLA) to be reasonable and proper	At a rate that appears to DLA to be reasonable and proper
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### 3. Court of First Instance (CFI)

#### (a) Counsel

(i)	Preparation <sup>iii</sup>	LAD	12,260	18,390
(ii)	Additional preparation	LAD	5,140	7,710
			per 4-hour unit	per 4-hour unit

**(The prosecution fees of DoJ adopts the same fee scale as that of criminal legal aid fees after adjustment)**

(iii)	Court hearing	LAD/DOJ	12,260	18,390
			per day	per day
(iv)	Conference	LAD/DOJ	1,270	1,910

per hour      per hour

*(The prosecution fees of DoJ are adjusted upward by 50% according to the increase in criminal legal aid fees)*

(v)	Brief <sup>i</sup>	DOJ	24,520	36,780
(vi)	Pre-trial Review (per review)	DOJ	2,420	3,630
(vii)	Mention	DOJ	3,670	5,500
(viii)	Plea	DOJ	3,670	5,500
(ix)	Sentence	DOJ	3,670	5,500
(x)	Plea & Sentence	DOJ	4,360	6,540

(b) Solicitor advocate with higher rights of audience (HRA) acting as both advocate and instructing solicitor

(i)	Preparation <sup>iii</sup>	LAD	-	21,240
(ii)	Additional preparation	LAD	-	8,600 per 4-hour unit
(iii)	First day Court hearing	LAD	-	21,240 per day
(iv)	Refresher <sup>iv</sup>	LAD	-	23,540 per day

(c) Instructing solicitor

(i)	Reading	LAD	800 per hour	1,000 per hour
(ii)	Preparation	LAD	3,230 per 4-hour unit	4,040 per 4-hour unit
(iii)	Court hearing	LAD	6,480 per day	8,100 per day
(iv)	Conference	LAD	800 per hour	1,000 per hour

(d) Attendance at CFI (other than for the trial, plea or sentence)

LAD	At a rate that appears to DLA to be reasonable and proper	At a rate that appears to DLA to be reasonable and proper
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**4. Appeals from a magistrate to CFI**

Rates for counsel and solicitors (including new rates for solicitor advocates with HRA) are the same as those applicable to proceedings in CFI as set out in (3) above.

**5. Appeals to the Court of Appeal (CA)**

(a) Counsel (appeals from magistrates<sup>v</sup> or CFI)

(i)	Preparation <sup>iii</sup>	LAD	16,350	24,530
(ii)	Additional preparation	LAD	5,140 per 4-hour unit	7,710 per 4-hour unit

*(The prosecution fees of DoJ are adjusted upward by 50% according to the increase in criminal legal aid fees)*

(iii)	Brief <sup>1</sup>	DOJ	32,700	49,050
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*(The prosecution fees of DoJ adopts the same fee scale as that of criminal legal aid fees after adjustment)*

(iv)	Court hearing	LAD/DOJ	16,350 per day	24,530 per day
(v)	Conference	LAD/DOJ	1,270 per hour	1,910 per hour

(b) Counsel (appeals from DC)

(i)	Preparation <sup>iii</sup>	LAD	13,070	19,610
(ii)	Additional preparation	LAD	5,140 per 4-hour unit	7,710 per 4-hour unit

*(The prosecution fees of DoJ are adjusted upward by 50% according to the increase in criminal legal aid fees)*

(iii)	Brief <sup>1</sup>	DOJ	26,140	39,210
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*(The prosecution fees of DoJ adopts the same fee scale as that of criminal legal aid fees after adjustment)*

(iv)	Court hearing	LAD/DOJ	13,070	19,610
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			per day	per day
(v)	Conference	LAD/DOJ	1,270 per hour	1,910 per hour
(c) <u>Solicitor advocate with HRA acting as both advocate and instructing solicitor (appeals from magistrates<sup>v</sup> or CFI)</u>				
(i)	Preparation <sup>iii</sup>	LAD	-	28,320
(ii)	Additional preparation	LAD	-	8,600 per 4-hour unit
(iii)	First day Court hearing	LAD	-	28,320 per day
(iv)	Refresher <sup>iv</sup>	LAD	-	31,400 per day
(d) <u>Solicitor advocate with HRA acting as both advocate and instructing solicitor (appeals from DC)</u>				
(i)	Preparation <sup>iii</sup>	LAD	-	22,640
(ii)	Additional preparation	LAD	-	8,600 per 4-hour unit
(iii)	First day Court hearing	LAD	-	22,640 per day
(iv)	Refresher <sup>iv</sup>	LAD	-	25,100 per day
(e) <u>Instructing solicitor</u>				
(i)	Reading	LAD	1,090 per hour	1,360 per hour
(ii)	Preparation	LAD	4,390 per 4-hour unit	5,490 per 4-hour unit
(iii)	Court hearing	LAD	8,780 per day	10,980 per day
(iv)	Conference	LAD	1,090	1,360

per hour      per hour

(f) Attendance at CA (other than for the appeal hearing)

LAD	At a rate that appears to DLA to be reasonable and proper	At a rate that appears to DLA to be reasonable and proper
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(g) Counsel or solicitor settling notice of appeal<sup>vi</sup>

LAD	3,240	4,860
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**6. Appeals (or applications for leave to appeal) to the Court of Final Appeal**

<u>Counsel and solicitor</u>	LAD	Fees that appear to DLA to be reasonable and proper	Fees that appear to DLA to be reasonable and proper
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**7. Proceedings in DC or CFI or appeals**

<u>Senior Counsel</u>	LAD	Fees at an hourly rate that appears to DLA to be reasonable and proper	Fees at an hourly rate that appears to DLA to be reasonable and proper
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- i Covering preparation (regardless of duration) and the first day of attendance in Court.
- ii For additional day(s) of attendance in Court subsequent to the first day as covered under the Brief fee.
- iii Covering the first eight hours of preparation.
- iv For additional day(s) of attendance in Court subsequent to the first day of Court hearing.
- v In respect of an appeal, or any point in an appeal, reserved to be argued before CA under section 118 of the Magistrates Ordinance (Cap. 227).
- vi That is, for preparing the notice of appeal for filing with the Court.

**CONTROLLING OFFICER'S REPLY****SJ054****(Question Serial No. 1492)**Head: (92) Department of JusticeSubhead (No. & title): (-) Not SpecifiedProgramme: (2) CivilControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

2016-17(Estimate), as compared with 2014-15(Actual) + 487million or + 90%.

The estimate for 2016-17 is 90% higher than the actual expenditure in 2014-15. What are the reasons for such an increase over a period of 2 years? What specific areas do the 5 expenditure items with the largest increases involve? What is the amount of increase in the expenditure for handling non-refoulement claims and related issues?

Asked by: Hon NG Leung-sing (Member Question No. 11)Reply:

The actual and estimated expenditure for Programme (2): Civil from 2014-15 to 2016-17 is as follows -

As shown in the above table, the increase of 90.2% in the 2016-17 estimates was against the

	2014-15 Actual expenditure	2015-16 Original Estimates	2015-16 Revised Estimates	2016-17 Estimates	2016-17 Estimates vs. 2014-15 actual expenditure
	(A)	(B)	(C)	(D)	(D) vs. (A)
Programme (2): Civil	\$539.3M	\$967.7M	\$752.5M	\$1025.9M	+90.2%
		[(B) vs. (A)] = +79.4%]	[(C) vs. (A) = +39.5%]	[(D) vs. (C) = +36.3%]	

actual expenditure for 2014-15. When compared to the revised estimate for 2015-16, the estimated financial provision is \$273.4 million (or 36.3%) higher. The bulk of the increase is due to anticipated increase in briefing out and court costs requirements.



The provision for 2016-17 is \$486.6 million higher than the actual expenditure for 2014-15. The five expenditure items with the largest increases during the 3-year period involved are court costs, briefing out expenses for non-construction and construction related disputes and for Pilot Scheme for Arbitration on Land Premium, personal emoluments and general departmental expenses.

The bulk of the increase is due to the expected increase in the expenditure on court costs and on briefing out expenses including those in respect of the Pilot Scheme for Arbitration on Land Premium. The relevant expenditure varies from year to year, depending on the number of cases involved, their complexity and progress. In 2016-17, the expected increase in this area of expenditure is mainly due to the need to meet related expenses of some mega cases. The increase in personal emoluments and general departmental expenses, on the other hand, is due to a number of factors including salary increase, creation of new posts, filling of vacancies and the general increase in the operating expenditure.

The Division has a dedicated team of counsel and supporting staff to deal with advisory and litigation matters relating to non-refoulement claims and related issues. In 2014-15, the annual staff cost for the team was \$29.2 million. In 2016-17, the estimated annual staff cost for the team is \$34.2 million, involving an increase of \$5 million.

- End -

**CONTROLLING OFFICER'S REPLY****SJ055****(Question Serial No. 0472)**Head: (92) Department of JusticeSubhead (No. & title): (000) Operational expensesProgramme: (-) Not SpecifiedControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

The Department of Justice stated that the number of non-directorate posts will be increased by 35 to 1240 posts as at 31 March 2017. Please inform this Council of the nature of work, ranks and salaries of these new posts.

Asked by: Hon Abraham SHEK Lai-him (Member Question No. 42)Reply:

Details of the net creation of 35 non-directorate posts in 2016-17 are provided as follow-

Post(s)	Nature of Duties	NAMS*
<b>Creation of <u>37</u> non-directorate posts:</b>		
One Senior Government Counsel (SGC)	Providing legal support for the handling of complex charity-related cases	\$1,309,080
Three Government Counsel (GC)	Replacing Non-civil Service Contract posts by permanent posts for providing legal support in the handling of student loan recovery cases	\$931,800 x 3 = \$2,795,400
Six Law Clerk (LC)		\$372,240 x 6 = \$2,233,440
Five Assistant Clerical Officer (ACO)		\$243,660 x 5 = \$1,218,300
One SGC (time-limited for 3 years)	Providing legal support for the development of Government Electronic Trading Services into a "Single Window"	\$1,309,080

Post(s)	Nature of Duties	NAMS*
One SGC (time-limited for 2 years)	Providing legal support for the implementation of the Private Columbaria Ordinance	\$1,309,080
One SGC (time-limited for 3 years)	Providing legal support for the comprehensive review of the unified screening mechanism to determine claims for non-refoulment protection against expulsion, return or extradition from Hong Kong to another country and other related aspects	\$1,309,080
One GC (time-limited for 3 years)	Providing legal support to the Torture Claims Appeal Board in relation to judicial reviews on its decisions	\$931,800
One SGC One GC One ACO	Giving legal support to Trade and Industry Department in the pursuit of their initiative to expand the network of Free Trade Agreements of the Hong Kong Special Administrative Region	\$1,309,080
		\$931,800
		\$243,660
Two SGC	Coping with the increasing workload in legislative drafting and related work	$\$1,309,080 \times 2 = 2,618,160$
One SGC One LC One Personal Secretary I	Promoting and developing Hong Kong's legal and arbitration services with special focus on the "Belt and Road Initiative" development strategy	\$1,309,080
		\$372,240
		\$390,720
One GC	Strengthening legal support for the Law Reform Commission Secretariat	\$931,800
One GC	Strengthening legal support for handling cases related to proceeds of crime	\$931,800
One SGC	Strengthening legal support for handling cases related to Public Order Events and cybercrime	\$1,309,080
Six Clerical Assistant	Catering for the manpower need of prosecution work in the Magistracies	$\$190,140 \times 6 = \$1,140,840$
One Confidential Assistant	Strengthening support for the Confidential Registry	\$291,360
<b>Offset by deletion of <u>two</u> time-limited SGC posts which will lapse on 1.4.2016.</b>		
<b>Net creation of non-directorate posts: <u>35</u></b>		

\* NAMS means notional annual mid-point salary

- End -

**CONTROLLING OFFICER'S REPLY****SJ056****(Question Serial No. 0805)**Head: (92) Department of JusticeSubhead (No. & title): (-) Not SpecifiedProgramme: (1) ProsecutionsControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

Regarding the estimated expenditure of \$900.3 million for the Prosecutions Division of the Department of Justice for 2016-17, which represents an increase of 32% (around \$218.9 million) over the \$681.9 million for 2015-16, what are the reasons for the increase in the expenditure?

Asked by: Hon TAM Yiu-chung (Member Question No. 1)Reply:

The estimated expenditure for Programme (1) : Prosecutions for 2016-17 is 32% higher than the revised estimate for 2015-16. This is mainly due to the filling of vacancies, net creation of eight posts to meet operational needs, increase in the provision for court costs arising from some mega cases that may require payment in 2016-17, as well as the increase in briefing out expenses to cater for the anticipated increase in standard briefing out rate.

The details of the eight posts to be created in 2016-17 are set out below –

Post	Nature of Duties	NAMS*
One Government Counsel	Strengthening legal support for handling cases related to proceeds of crime	\$931,800
One Senior Government Counsel	Strengthening legal support for handling cases related to Public Order Events and cybercrime	\$1,309,080
Six Clerical Assistant	Catering for the manpower need of prosecution work in the Magistracies	\$190,140 x 6 = \$1,140,840

\*NAMS means notional annual mid-point salary

As for the anticipated increase in standard briefing out rate, currently, we adopt the same fee scale as that of the Legal Aid Department for criminal legal aid fees as prescribed in the

Legal Aid in Criminal Cases Rules (Cap. 221D) under the Criminal Procedure Ordinance (Cap. 221), as well as that for the duty lawyer fees under the duty lawyer scheme, as appropriate, when engaging lawyers in private practice on a standard briefing-out basis to prosecute criminal cases on fiat. This will ensure that neither the defence nor the prosecution would have unfair advantage in competing for the same pool of lawyers, thus ensuring parity between the defendants and the prosecution.

Having regard to the outcome of the 2014 biennial review of the fees mentioned above as well as the review of criminal legal aid fees, both spearheaded by the Home Affairs Bureau, and adopting the “equality of arms” approach mentioned above, we plan to correspondingly adjust the standard briefing-out rates to tie in with the relevant adjustments to duty lawyer fees (to increase by 7.7% in line with the movement of the Consumer Price Index (CPI) (C) for the reference period under the biennial review, which is applicable to the briefing-out of cases at the magistracy level in place of Court Prosecutors) as well as the proposed increase in relevant criminal legal aid fees (by 50%, applicable to the standard briefing-out rates at all other levels). The current rate of and proposed revisions to different levels of standard prosecution fees are set out in the table at **Annex**. The revisions will be effected at the same time when revised scales of criminal legal aid fees and duty lawyer fees are implemented.

**Current and Proposed Standard Briefing Out Rate for Criminal Prosecution  
Cases of Department of Justice**  
(Adjustment in accordance with the increase in  
criminal legal aid fees and duty lawyer fees)

Fee item	Department/ Service	Current maximum fee (\$)	Proposed maximum fee (\$)
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**1. Magistrates' Courts**

(a) Counsel or solicitor acting as advocate in committal proceedings  
*(The prosecution fees of DoJ adopts the same fee scale as that of criminal legal aid fees after adjustment)*

(i)	Brief <sup>i</sup>	Legal Aid Department (LAD)/ Department of Justice (DOJ)	9,800	14,700
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(ii)	Refresher <sup>ii</sup>	LAD/DOJ	4,890 per day	7,340 per day
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*(The prosecution fees of DoJ are adjusted upward by 50% according to the increase in criminal legal aid fees)*

(iii)	Conference	DOJ	790 per hour	1,180 per hour
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(iv)	Pre-trial Review (per review)	DOJ	1,360	2,040
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(b) Counsel or solicitor acting as advocate in preliminary inquiry

(i)	Brief <sup>i</sup>	LAD	9,800	14,700
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(ii)	Refresher <sup>ii</sup>	LAD	4,900 per day	7,350 per day
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(c) Instructing solicitor in committal proceedings (including preliminary inquiry)

(i)	Brief <sup>i</sup>	LAD	2,640	3,300
(ii)	Refresher <sup>ii</sup>	LAD	2,170 per day	2,710 per day

(d) Counsel or solicitor acting as advocate in place of court prosecutor in committal proceedings  
*(The prosecution fees of DoJ for the engagement of counsel or solicitor to act as advocate in place of court prosecutor in committal proceedings are adjusted upward by about 7.7% according to the increase in duty lawyer fees)*

(i)	Brief	DOJ	6,520 per day	7,020 per day
			3,250 half day	3,490 half day

(e) Counsel or solicitor acting as advocate in committal proceedings (Newly qualified lawyers)  
*(The prosecution fees of DoJ for the engagement of counsel or solicitor to act as advocate in place of court prosecutor in committal proceedings are adjusted upward by about 7.7% according to the increase in duty lawyer fees)*

(i)	Brief (For 2 weeks engagement)	DOJ	43,720	47,080
(ii)	Brief after 2 weeks engagement (Part-heard case)	DOJ	6,520 per day	7,020 per day
			3,250 half day	3,490 half day

(f) Counsel or solicitor acting as advocate in committal proceedings (Newly qualified monolingual lawyers)  
*(The prosecution fees of DoJ for the engagement of counsel or solicitor to act as advocate in place of court prosecutor in committal proceedings are adjusted upward by about 7.7% according to the increase in duty lawyer fees)*

(i)	Brief	DOJ	6,520	7,020
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per day	per day
3,250	3,490
half day	half day

## 2. District Court (DC)

### (a) Counsel

(i)	Preparation <sup>iii</sup>	LAD	8,160	12,240
(ii)	Additional preparation	LAD	4,210 per 4-hour unit	6,320 per 4-hour unit

**(The prosecution fees of DoJ adopts the same fee scale as that of criminal legal aid fees after adjustment)**

(iii)	Court hearing	LAD/DOJ	8,160 per day	12,240 per day
(iv)	Conference	LAD/DOJ	1,040 per hour	1,560 per hour

**(The prosecution fees of DoJ are adjusted upward by 50% according to the increase in criminal legal aid fees)**

(v)	Brief <sup>i</sup>	DOJ	16,320	24,480
(vi)	Pre-trial Review (per review)	DOJ	2,050	3,070
(vii)	Mention	DOJ	1,360	2,040
(viii)	Plea	DOJ	1,360	2,040
(ix)	Sentence	DOJ	1,360	2,040
(x)	Plea & Sentence	DOJ	2,050	3,070

### (b) Instructing solicitor

(i)	Reading	LAD	670 per hour	840 per hour
(ii)	Preparation	LAD	2,740 per 4-hour unit	3,430 per 4-hour unit

(iii)	Court hearing	LAD	5,490 per day	6,860 per day
(iv)	Conference	LAD	670 per hour	840 per hour
(c) <u>Solicitor acting as both advocate and instructing solicitor</u>				
(i)	Preparation <sup>iii</sup>	LAD	10,095	14,130
(ii)	Additional preparation	LAD	5,030 per 4-hour unit	7,040 per 4-hour unit
(iii)	First day Court hearing	LAD	10,095 per day	14,130 per day
(iv)	Refresher <sup>iv</sup>	LAD	11,190 per day	15,670 per day
(d) <u>Attendance at DC (other than for the trial, plea or sentence)</u>				
		LAD	At a rate that appears to the Director of Legal Aid (DLA) to be reasonable and proper	At a rate that appears to DLA to be reasonable and proper

### 3. Court of First Instance (CFI)

(a) <u>Counsel</u>				
(i)	Preparation <sup>iii</sup>	LAD	12,260	18,390
(ii)	Additional preparation	LAD	5,140 per 4-hour unit	7,710 per 4-hour unit
<i><u>(The prosecution fees of DoJ adopts the same fee scale as that of criminal legal aid fees after adjustment)</u></i>				
(iii)	Court hearing	LAD/DOJ	12,260 per day	18,390 per day

(iv)	Conference	LAD/DOJ	1,270 per hour	1,910 per hour
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***(The prosecution fees of DoJ are adjusted upward by 50% according to the increase in criminal legal aid fees)***

(v)	Brief <sup>i</sup>	DOJ	24,520	36,780
(vi)	Pre-trial Review (per review)	DOJ	2,420	3,630
(vii)	Mention	DOJ	3,670	5,500
(viii)	Plea	DOJ	3,670	5,500
(ix)	Sentence	DOJ	3,670	5,500
(x)	Plea & Sentence	DOJ	4,360	6,540

(b) Solicitor advocate with higher rights of audience (HRA) acting as both advocate and instructing solicitor

(i)	Preparation <sup>iii</sup>	LAD	-	21,240
(ii)	Additional preparation	LAD	-	8,600 per 4-hour unit
(iii)	First day Court hearing	LAD	-	21,240 per day
(iv)	Refresher <sup>iv</sup>	LAD	-	23,540 per day

(c) Instructing solicitor

(i)	Reading	LAD	800 per hour	1,000 per hour
(ii)	Preparation	LAD	3,230 per 4-hour unit	4,040 per 4-hour unit
(iii)	Court hearing	LAD	6,480 per day	8,100 per day
(iv)	Conference	LAD	800 per hour	1,000 per hour

(d) Attendance at CFI (other than for the trial, plea or sentence)

LAD	At a rate that appears to DLA to be reasonable and proper	At a rate that appears to DLA to be reasonable and proper
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**4. Appeals from a magistrate to CFI**

Rates for counsel and solicitors (including new rates for solicitor advocates with HRA) are the same as those applicable to proceedings in CFI as set out in (3) above.

**5. Appeals to the Court of Appeal (CA)**

(a) Counsel (appeals from magistrates<sup>v</sup> or CFI)

(i)	Preparation <sup>iii</sup>	LAD	16,350	24,530
(ii)	Additional preparation	LAD	5,140 per 4-hour unit	7,710 per 4-hour unit

***(The prosecution fees of DoJ are adjusted upward by 50% according to the increase in criminal legal aid fees)***

(iii)	Brief <sup>i</sup>	DOJ	32,700	49,050
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***(The prosecution fees of DoJ adopts the same fee scale as that of criminal legal aid fees after adjustment)***

(iv)	Court hearing	LAD/DOJ	16,350 per day	24,530 per day
(v)	Conference	LAD/DOJ	1,270 per hour	1,910 per hour

(b) Counsel (appeals from DC)

(i)	Preparation <sup>iii</sup>	LAD	13,070	19,610
(ii)	Additional preparation	LAD	5,140 per 4-hour unit	7,710 per 4-hour unit

***(The prosecution fees of DoJ are adjusted upward by 50% according to the increase in criminal legal aid fees)***

(iii)	Brief <sup>i</sup>	DOJ	26,140	39,210
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***(The prosecution fees of DoJ adopts the same fee scale as that of criminal legal aid fees after adjustment)***

(iv)	Court hearing	LAD/DOJ	13,070 per day	19,610 per day
(v)	Conference	LAD/DOJ	1,270 per hour	1,910 per hour
(c) <u>Solicitor advocate with HRA acting as both advocate and instructing solicitor (appeals from magistrates<sup>v</sup> or CFI)</u>				
(i)	Preparation <sup>iii</sup>	LAD	-	28,320
(ii)	Additional preparation	LAD	-	8,600 per 4-hour unit
(iii)	First day Court hearing	LAD	-	28,320 per day
(iv)	Refresher <sup>iv</sup>	LAD	-	31,400 per day
(d) <u>Solicitor advocate with HRA acting as both advocate and instructing solicitor (appeals from DC)</u>				
(i)	Preparation <sup>iii</sup>	LAD	-	22,640
(ii)	Additional preparation	LAD	-	8,600 per 4-hour unit
(iii)	First day Court hearing	LAD	-	22,640 per day
(iv)	Refresher <sup>iv</sup>	LAD	-	25,100 per day
(e) <u>Instructing solicitor</u>				
(i)	Reading	LAD	1,090 per hour	1,360 per hour
(ii)	Preparation	LAD	4,390 per 4-hour unit	5,490 per 4-hour unit
(iii)	Court hearing	LAD	8,780 per day	10,980 per day

(iv)	Conference	LAD	1,090 per hour	1,360 per hour
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(f) Attendance at CA (other than for the appeal hearing)

LAD	At a rate that appears to DLA to be reasonable and proper	At a rate that appears to DLA to be reasonable and proper
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(g) Counsel or solicitor settling notice of appeal<sup>vi</sup>

LAD	3,240	4,860
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**6. Appeals (or applications for leave to appeal) to the Court of Final Appeal**

<u>Counsel and solicitor</u>	LAD	Fees that appear to DLA to be reasonable and proper	Fees that appear to DLA to be reasonable and proper
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**7. Proceedings in DC or CFI or appeals**

<u>Senior Counsel</u>	LAD	Fees at an hourly rate that appears to DLA to be reasonable and proper	Fees at an hourly rate that appears to DLA to be reasonable and proper
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- <sup>i</sup> -----  
<sup>ii</sup> Covering preparation (regardless of duration) and the first day of attendance in Court.  
<sup>iii</sup> For additional day(s) of attendance in Court subsequent to the first day as covered under the Brief fee.  
<sup>iv</sup> Covering the first eight hours of preparation.  
<sup>v</sup> For additional day(s) of attendance in Court subsequent to the first day of Court hearing.  
In respect of an appeal, or any point in an appeal, reserved to be argued before CA under section 118 of the Magistrates Ordinance (Cap. 227).  
<sup>vi</sup> That is, for preparing the notice of appeal for filing with the Court.

**CONTROLLING OFFICER'S REPLY**

**SJ057**

**(Question Serial No. 0806)**

Head: (92) Department of Justice

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

Programme: (1) Prosecutions

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

How many criminal prosecutions were instituted by the Department of Justice in 2015-16 relating to the illegal occupy movement in the year before last, the series of confrontations instigated by unruly elements to disrupt social order last year and the Mong Kok riot this year? What was the expenditure incurred? According to the Government's estimation, how many criminal prosecutions will be instituted and what will the expenditure be in 2016-17 relating to the illegal occupy movement in the year before last, the series of confrontations instigated by unruly elements to disrupt social order last year and the Mong Kok riot this year?

Asked by: Hon TAM Yiu-chung (Member Question No. 2)

Reply:

According to the Police, during the illegal "Occupy Movement" in 2014, 955 persons were arrested by the Police for various alleged offences, and another 48 persons were arrested after the illegal occupation incident. As at 29 February this year, a total of 216 persons have undergone, are undergoing or will undergo judicial proceedings. Amongst them, 186 persons have gone through the judicial process and 116 of them have to bear legal consequences, including 74 who were convicted and 42 who were bound over upon conclusion of court proceedings.

On the other hand, a total of 149 and 71 persons were arrested and prosecuted respectively for alleged illegal acts related to public order events in 2015.

Regarding the incident involving violence in the early hours of 9 February this year in Mong Kok, as at 20 March, the Police have arrested in total 78 persons and prosecuted 49 of them for riot (one person therefrom was additionally charged for arson) and one person for unlawful assembly.

As the Police's investigation for and the Department of Justice's examination of some of the cases are on-going, it is neither possible nor appropriate for us to forecast with exactitude the number of cases requiring prosecution action.

Cases relating to the illegal "Occupy Movement", public order events in 2015 and the Mong Kok incident involving violence this year are all handled by existing staff among their other duties. The expenditure cannot be separately identified. That said, to strengthen legal support for handling cases related to, inter alia, public order events in general, resources will be provided starting from 2016-17 for the creation of one additional Senior Government Counsel post under Programme (1) Prosecutions.

- End -



**CONTROLLING OFFICER'S REPLY****SJ058****(Question Serial No. 0807)**Head: (92) Department of JusticeSubhead (No. & title): (-) Not SpecifiedProgramme: (2) CivilControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

How many non-refoulement claims were handled by the Department of Justice in the past 3 years and what was the expenditure involved? How many non-refoulement claims does the Government expect to handle in 2016-17 and what is the estimated expenditure involved?

Asked by: Hon TAM Yiu-chung (Member Question No. 3)Reply:

The work of the Civil Division of the Department of Justice involves providing legal services to the Government on civil matters, including giving legal advice and handling non-refoulement claims made under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (prior to the implementation of the Unified Screening Mechanism (USM) in March 2014) and claims on all applicable grounds (including torture grounds) made under the USM. The Division has a dedicated team of counsel and supporting staff to deal with advisory and litigation matters relating to non-refoulement claims, among other work. The number of such staff and the annual staff cost from 2013-14 to 2015-16 are as follows –

Year	Number of staff	Annual staff cost (\$ million)
2013-14	28	26.2
2014-15	30	29.2
2015-16	30	30.9

In 2016-17, the number of staff will increase to 31. The annual staff cost is estimated to be \$34.2 million.

The other expenditure involved in handling matters relating to non-refoulement claims is part of the Department's general departmental expenses and a separate breakdown is not

available.

The number of new cases concerning non-refoulement claims handled by the Department (inclusive of advisory and litigation work) in 2013-14, 2014-15 and 2015-16 (up to 8 March 2016) are 203, 753 and 584 respectively. While it is not possible for us to forecast with exactitude the number of new cases relating to non-refoulement claims that will require the Department's assistance in 2016-17, we are working on a basis that at least around the same number of new cases as that in 2015-16 will arise.

- End -

**CONTROLLING OFFICER'S REPLY****SJ059****(Question Serial No. 0809)**Head: (92) Department of JusticeSubhead (No. & title): (-) Not SpecifiedProgramme: (1) ProsecutionsControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

Over the past 3 years, how many cases under the Prosecutions Division of the Department of Justice received adverse decisions in different levels of courts owing to errors in the prosecution process? What kinds of criminal cases were involved? Have reviews been conducted on the errors in the prosecution process to minimise such situations? If yes, what are the details? If not, what are the reasons?

Asked by: Hon TAM Yiu-chung (Member Question No. 5)Reply:

The conviction rates for the past 3 years are provided as follows -

	2013	2014	2015
Magistrates' Court			
- defendants convicted after trial (%)	47.0	50.3	52.0
- defendants convicted after trial and defendants convicted on their own pleas (%)	72.3	74.6	74.6
District Court			
- defendants convicted after trial (%)	79.8	89.1	70.2
- defendants convicted after trial and defendants convicted on their own pleas (%)	95.3	97.6	93.4
Court of First Instance			
- defendants convicted after trial (%)	67.3	64.2	68.8
- defendants convicted after trial and defendants convicted on their own pleas (%)	94.0	92.3	93.5

We do not maintain statistical figures on cases (if any) in which the defendants were acquitted owing to errors in the prosecution process.

As the prosecution authority, our objective is to see that appropriate cases are presented fairly to the court. Prosecutions are, as 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 prosecute rigorously in courts but yet to act in a fair and objective manner. The question of guilt or innocence will then be a matter for the court to decide, on the criminal law standard of proving “beyond reasonable doubt”. The mere fact that a defendant is acquitted after trial does not necessarily mean that there have been any errors in the prosecution process. Instead, such an acquittal may be due to numerous factors (some of which, e.g. witnesses’ performance in court, are beyond the prosecution’s control). As a matter of practice, we will conduct “case review meetings” with relevant officers of the law enforcement agency after completion of court proceedings, where appropriate, to see what lessons can be learned and how to improve the conduct of prosecution for the future.

- End -

**CONTROLLING OFFICER'S REPLY****SJ060****(Question Serial No. 1624)**Head: (92) Department of JusticeSubhead (No. & title): (-) Not SpecifiedProgramme: (3) Legal PolicyControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

The Secretary for Justice's Office and the Legal Policy Division will provide legal advice on the Basic Law in 2016-17. Will the Government inform this Committee of the following:

a) Pursuant to Article 18 of the Basic Law, the laws listed in Annex III to the Basic Law shall be applied locally by way of promulgation or legislation by the Hong Kong Special Administrative Region (HKSAR). In this regard, there are altogether 12 national laws which are applied in the HKSAR. Please set out which of them are applied locally by way of promulgation and which by legislation using the table below. If they are applied by legislation in Hong Kong, what are the domestic laws involved?

	National laws applied in the HKSAR	Applied locally by way of promulgation or legislation?
1.	Resolution on the Capital, Calendar, National Anthem and National Flag of the People's Republic of China	
2.	Resolution on the National Day of the People's Republic of China	
3.	Declaration of the Government of the People's Republic of China on the Territorial Sea	
4.	Nationality Law of the People's Republic of China	
5.	Regulations of the People's Republic of China Concerning Diplomatic Privileges and Immunities	
6.	Law of the People's Republic of China on the National Flag	
7.	Regulations of the People's Republic of	

	China concerning Consular Privileges and Immunities	
8.	Law of the People's Republic of China on the National Emblem	
9.	Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone	
10.	Law of the People's Republic of China on the Garrisoning of the Hong Kong Special Administrative Region	
11.	Law of the People's Republic of China on the Exclusive Economic Zone and the Continental Shelf	
12.	Law of the People's Republic of China on Judicial Immunity from Compulsory Measures Concerning the Property of Foreign Central Banks	

b) The Department of Justice and other departments, including the Transport and Housing Bureau, are discussing closely with the relevant ministries of the Central Government on the issue of co-location to draw up a feasible option in strict compliance with the provisions of the Basic Law and the “One country, Two systems” principle. What are all the options under consideration?

Asked by: Hon Michael TIEN Puk-sun (Member Question No. 5)

Reply:

Part (a)

Items 1 to 5, 7 and 9 to 11 of the national laws applicable to Hong Kong as listed in the question are applied by way of promulgation, while items 6 and 8 are applied by way of local legislation (i.e. the National Flag and National Emblem Ordinance).

Part (b)

The Department of Justice advises Government bureaux and departments on legal issues as required from time to time, including those arising from projects under their purview. The co-location arrangement of the Guangzhou-Shenzhen-Hong Kong Express Rail Link project is one such example. As has been reiterated by the Hong Kong Special Administrative Region (HKSAR) Government on various occasions, the arrangements and details of the implementation of the co-location arrangement (which will have to be consistent with the Basic Law and the “One Country, Two Systems” principle) are still under study and discussion between the HKSAR Government and the relevant Mainland authorities. The HKSAR Government will provide such information as it is in a position so to do to the public and the Legislative Council in due course.

- End -

**CONTROLLING OFFICER'S REPLY**

**SJ061**

**(Question Serial No. 4014)**

Head: (92) Department of Justice

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

Programme: (2) Civil

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Regarding the implementation of the Pilot Scheme for Arbitration on Land Premium under the Programme, please advise this Committee of:

- 1) the number of cases handled under the Pilot Scheme for Arbitration on Land Premium last year and the amount involved;
- 2) the reasons why only \$3 million was spent out of the original estimate of \$91.5 million reserved under Subhead 000.

Asked by: Hon James TO Kun-sun (Member Question No. 70)

Reply:

- 1) The Pilot Scheme for Arbitration on Land Premium (Pilot Scheme) was launched by the Government in October 2014. So far, the Department of Justice (DoJ) has represented the Lands Department in one residential case which proceeded to arbitration under the Pilot Scheme. The case was concluded in December 2015.
- 2) The original estimate of \$91,500,000 was reserved based on an estimate of the number of arbitration cases that might possibly proceed to arbitration under the Pilot Scheme during the financial year 2015-16. It took into account the costs of arbitrators (each arbitral tribunal will consist of one arbitrator with legal qualification who will be the chairperson and two co-arbitrators who will be valuation professionals), counsel, experts and other expenditure incidental to and/or arising from the handling of arbitration cases. The original estimate was subsequently revised to \$3,000,000 when the revised estimate for 2015-16 was prepared, following a review of the expenditure likely required for the financial year having regard to the development of the case referred to in paragraph 1 above and other relevant circumstances. Only cases which are considered suitable for arbitration (within the confine of the determination of the amount of land premium only) are selected and Government issues invitation to the lot

owners in those suitable cases to invite them to consider the option of arbitration under the Pilot Scheme. Lot owners may also apply to the Government for resorting to arbitration. In other words, whether to adopt the option to arbitrate or to continue with the normal premium negotiation is a matter subject to the mutual agreement of the Government and the lot owner concerned. As such, the number of cases that would eventually proceed to arbitration under the Pilot Scheme cannot be predicted with certainty and the expenditure requirement would depend on a number of factors including the case development and the number of disputes ultimately to be referred to arbitration under the Pilot Scheme.

- End -



**CONTROLLING OFFICER'S REPLY****SJ062****(Question Serial No. 1882)**Head: (92) Department of JusticeSubhead (No. & title): (000) Operational expensesProgramme: (-) Not SpecifiedControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

What are the respective estimated annual emoluments and allowances of the Secretary for Justice and his Administrative Assistant for 2016-17?

Asked by: Hon WONG Yuk-man (Member Question No. 7)Reply:

The estimated emoluments and allowances of the Secretary for Justice and his Administrative Assistant for 2016-17 are set out below -

	Emolument (\$ million)	Allowance (\$ million)
Secretary for Justice	3.70	0.22
Administrative Assistant to Secretary for Justice	1.97	Allowances for civil servant employees are provided under Head 46- General Expenses of the Civil Service. There is no separate provision for individual posts.

- End -

**CONTROLLING OFFICER'S REPLY**

**SJ063**

**(Question Serial No. 1905)**

Head: (92) Department of Justice

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

Programme: (4) Law Drafting

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

How many recommendations did the Chinese Drafting Sub-committee under the Drafting Techniques and Legislative Style Committee publish internally last year? Will consideration be given to making such recommendations public this year for the legal sector and the general public to discuss and jointly improve the standard of law drafting?

What is the estimated expenditure of the Chinese Drafting Sub-committee for this year? Will there be any increase in manpower compared with last year?

Asked by: Hon WONG Yuk-man (Member Question No. 30)

Reply:

Ten recommendations or guidelines were published by the Chinese Drafting Sub-committee under the Drafting Techniques and Legislative Style Committee in 2015 for the Law Drafting Division's internal reference. This year, we will consider whether it is suitable to make the relevant internal guidelines public.

Officers serve in the Chinese Drafting Sub-committee on top of their other duties, and the expenditure involved cannot be separately identified. We do not envisage significant change in the manpower support to the work of the Sub-committee as compared with last year.

- End -

**CONTROLLING OFFICER'S REPLY**

**SJ064**

**(Question Serial No. 1906)**

Head: (92) Department of Justice

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

Programme: (4) Law Drafting

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

The Department of Justice holds regular law drafting workshops conducted by experienced drafting counsel and outside experts. Linguists are also invited to speak on Chinese language issues. How many such workshops were conducted last year? How many workshops are expected to be conducted and how many various experts to be invited this year?

Asked by: Hon WONG Yuk-man (Member Question No. 31)

Reply:

Four workshops and a 3-day drafting course were conducted by the Law Drafting Division last year. Experienced drafting counsel and outside experts were invited to present the training. In the coming year, we plan to arrange four workshops including two by outside experts.

- End -

**CONTROLLING OFFICER'S REPLY**

**SJ065**

**(Question Serial No. 1907)**

Head: (92) Department of Justice

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

Programme: (1) Prosecutions

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

The Department of Justice provides training programmes to in-house prosecutors and organises talks by distinguished counsel to enhance the standards of advocacy and preparation in the handling of criminal cases. How many programmes were organised last year and how many speakers were invited? How many programmes are planned for this year and will speakers different from those of last year be invited?

Asked by: Hon WONG Yuk-man (Member Question No. 32)

Reply:

To better equip in-house prosecutors of the Department of Justice to meet anticipated challenges and demands, we have in place comprehensive training programmes to strengthen their professional knowledge and expertise. The key programmes organised in 2015 are set out as follows -

- (a) Similar to previous years, two rounds of Criminal Advocacy Course were arranged for the newly recruited public prosecutors and legal trainees in 2015 involving over 30 speakers. The course consisted of lectures, mock court exercise and supervised court attachments.
- (b) As part of the Prosecutions Division's Continuing Legal Education programme, a series of seminars and sharing sessions were provided to prosecutors to keep them abreast of the latest developments in procedural and substantive law and to enhance their advocacy skills. A total of 12 seminars and 4 sharing sessions were conducted in 2015 involving a total of 30 speakers including experienced in-house counsel and experts from various law enforcement agencies and representatives of non-governmental organisations.
- (c) A new in-house advocacy training programme was introduced in 2015. Four experienced directorate officers were appointed as trainers. A total of 22 public prosecutors participated in the training.

- (d) In 2015, five junior counsel attended a two-week Middle Temple Advocacy Course in the United Kingdom. Experienced judges and legal practitioners were engaged to provide training on legal knowledge and advocacy skills.

The above training programmes were well received and shown to be beneficial to all participants. We shall continue our effort in enhancing the legal knowledge and the advocacy skills of prosecutors through similar programmes in 2016. We envisage that both previous speakers and new ones will be invited, as appropriate.

- End -

**CONTROLLING OFFICER'S REPLY**

**SJ066**

**(Question Serial No. 1908)**

Head: (92) Department of Justice

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

Programme: (3) Legal Policy

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

What are the areas covered by the 8 ongoing Law Reform Commission projects intended for this year in the Estimates? Which of these projects are expected to be completed this year? Are all last year's outstanding projects expected to be completed this year?

Asked by: Hon WONG Yuk-man (Member Question No. 33)

Reply:

The Law Reform Commission (LRC) handled six ongoing references in 2015, and undertook background work on a further project relating to criminal law, which is expected to be referred to the LRC in 2016. In addition, if resources permit, further new topic may be referred to the LRC for study in 2016.

The six ongoing references are as follows -

- (a) Review of Sexual Offences;
- (b) Causing or Allowing the Death of a Child;
- (c) Archives Law;
- (d) Access to Information;
- (e) Third Party Funding for Arbitration; and
- (f) Periodical Payments for Future Pecuniary Loss in Personal Injury Cases.

Depending on the results of the public consultation and progress of relevant work, the report on Third-Party Funding for Arbitration may be issued in the fourth quarter of 2016 or the first quarter of 2017. It is not anticipated that other LRC projects might be completed this year.

- End -

**CONTROLLING OFFICER'S REPLY**

**SJ067**

**(Question Serial No. 1909)**

Head: (92) Department of Justice

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

Programme: (3) Legal Policy

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Last year, the Department of Justice conducted a consultancy study on the development of arbitration in Hong Kong and the challenges and opportunities that Hong Kong faces as a regional centre for international arbitration in the Asia Pacific region. What specific measures will be taken this year?

How many seminars on arbitration held in the Mainland did the Department of Justice participate in last year? How many promotional activities on arbitration were organised in emerging economies in the Asia Pacific region? In which emerging economies in the Asia Pacific region are promotional activities expected to be held this year?

Asked by: Hon WONG Yuk-man (Member Question No. 34)

Reply:

The Department of Justice (DoJ) launched in 2014 the consultancy study conducted in conjunction with the Hong Kong Trade Development Council on the development of arbitration in Hong Kong and the challenges and opportunities faced by Hong Kong as a centre for international arbitration in the Asia Pacific region. This study considers the strengths, weaknesses, opportunities and challenges for Hong Kong in relation to its status as an international arbitration hub, particularly in the face of stiffening regional and international competition. The study is reaching its final stage and we anticipate the results can be released in 2016. We expect that the findings and recommendations from the study will greatly assist the long-term policy planning and strategic development in this area.

In parallel, we will also take forward a number of *specific measures in 2016-17* to support the development of arbitration in Hong Kong and meet the challenges that Hong Kong faces as a regional centre for international arbitration in the Asia Pacific region.

An important aspect of DoJ's work is the constant review of Hong Kong's arbitration regime and introduction of necessary improvements to the Arbitration Ordinance (Cap. 609)

(the Ordinance). In this regard, two amendments were made in July 2013 and July 2015 respectively to the Ordinance. In December 2015, DoJ launched a consultation exercise on a legislative proposal to make clear that disputes over intellectual property (IP) rights are capable of resolution by arbitration, and that it would not be contrary to public policy to enforce an arbitral award solely because the award is in respect of a dispute or matter which relates to IP rights. Taking into account the result of the consultation ended in January 2016, and subject to the progress of the preparatory tasks, DoJ intends to introduce a bill to implement the proposal in 2016 by amending the Ordinance. Such amendments will be helpful in attracting more parties to resolve their IP disputes by arbitration in Hong Kong and facilitate the enforcement of IP-related awards by Hong Kong courts.

At the same time, we are also taking active steps to reinforce Hong Kong's status as an ideal neutral venue for dispute resolution in the Asia Pacific region, providing efficient and reliable dispute resolution services (including arbitration and mediation) for commercial and investment disputes involving Mainland parties and other economies along the Belt and Road. Efforts are therefore being made by DoJ and the Financial Services and the Treasury Bureau to explore with the Asian Infrastructure Investment Bank on the possible arrangements for Hong Kong to be one of the resolution centres for contractual and commercial disputes specified in AIIB's standard contracts, so that Hong Kong's chances as a chosen seat of arbitration by the concerned business partners can be enhanced.

Subject to the Legislative Council's approval of the proposed creation of a DL2 post in the Legal Policy Division (LPD) of the DoJ, a dedicated team will be set up in the LPD to, among other arbitration-related work, plan and organise regular promotional activities in the form of roadshows, conferences, seminars and forums to promote Hong Kong's international legal and arbitration services in places to be identified among the some 60 overseas countries along the Belt and Road. Consideration will also be given to reinforcing Hong Kong's role in the provision of international legal and dispute resolution-related training/capacity building opportunities for professionals and government officials from the Asia Pacific region and/or the Belt and Road countries.

As regards ***promotion activities***, DoJ has been actively promoting Hong Kong's international legal and dispute resolution services in the Mainland in the context of the Belt and Road Initiative. We have been working in collaboration with the relevant Economic and Trade Offices of the Hong Kong Special Administrative Region Government in the Mainland as well as the legal and dispute resolution services sectors of Hong Kong in organising and participating in promotional events in numerous Mainland cities. In particular, seminars were held in Beijing and Shanghai (August 2015) and Guiyang and Xi'an (February 2016). DoJ has also participated in a promotional event in Qingdao (September 2015) to promote Hong Kong's maritime arbitration. These promotional activities were well received by the Mainland legal and business sectors. Two more visits, one for Wuhan in April 2016 and the other for Kunming in June 2016, have been planned. DoJ will also co-organise with Hong Kong's legal and arbitration institutions the 4th (biennial) Legal Services Forum in Nanjing (tentative) in the 4th quarter of 2016.

As for the ***emerging economies in the Asia Pacific region***, DoJ led in September 2015 a delegation of representatives from the Hong Kong Bar Association, the Law Society of Hong Kong and various arbitral institutions in Hong Kong on a promotional trip to Jakarta,



Indonesia to promote Hong Kong's international legal and dispute resolution services. As in our previous promotional trips to Vietnam, Cambodia and Myanmar in 2014, a seminar was held in Jakarta to promote Hong Kong's international legal and dispute resolution services, during which the delegation had fruitful exchanges with Indonesian legal and arbitration counterparts as well as business leaders there.

In February 2016, DoJ led another delegation comprising representatives from the legal and arbitral institutions in Hong Kong on a promotional visit to Lima, Peru. The visits were well received by the relevant Peruvian government authorities, legal, arbitral and business organizations which all welcomed mutual exchange and cooperation with Hong Kong in the provision of international legal and dispute resolution services. We have also conducted a workshop entitled "Dispute resolution - the key to efficient settlement of business disputes" in collaboration with the United Nations Commission on International Trade Law (UNCITRAL) on 26 February 2016 during the Asia Pacific Economic Cooperation (APEC) First Senior Officials' Meeting held in Lima, Peru to share experience with other APEC economies on the use of dispute resolution and to introduce the strengths of Hong Kong as a leading centre for international legal and dispute resolution services in the Asia Pacific region.

We are currently making plans for promotional trips to other emerging economies in the Asia Pacific region (such as Thailand) and beyond in 2016.

- End -

**CONTROLLING OFFICER'S REPLY**

**SJ068**

**(Question Serial No. 1910)**

Head: (92) Department of Justice

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

Programme: (2) Civil

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

What are the contents of the Department of Justice's activities to promote mediation with emphases on the building management, construction, family, medical and intellectual property sectors? How many such activities are expected to be organised this year? How many for each sector?

Asked by: Hon WONG Yuk-man (Member Question No. 35)

Reply:

In relation to the Department of Justice's activities this year to promote mediation in specific sectors, the Department will hold a "Mediation Week" in May with an emphasis on the use of mediation to resolve disputes in the medical, commercial, community (including building management and family) and the intellectual property sectors. Events for the "Mediation Week" include a number of mediation seminars for the medical sector (one), the commercial sector (two), the community sector (two), as well as seminar to further explore the use of evaluative mediation in addition to facilitative mediation to resolve intellectual property disputes (one). In addition, as part of the "Mediation Week" event, there will be a mediation conference to be held at Hong Kong Convention and Exhibition Centre where overseas and local speakers (including academics, professionals and representatives of mediation stakeholders) will be invited to discuss the latest global development in mediation and the effective approach to develop a sustainable mediation culture.

The Department of Justice, with the benefit of the advice of the Steering Committee on Mediation, will continue to work with mediation stakeholders to organize or take part in activities for the promotion of the wider use of mediation in the specific sectors and the community in general. The Department of Justice will also keep in view the promotion of more extensive use of mediation to resolve disputes in other sectors.

- End -

**CONTROLLING OFFICER'S REPLY**

**SJ069**

**(Question Serial No. 2913)**

Head: (92) Department of Justice

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

Programme: (3) Legal Policy

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Regarding the provision of legal support to other government departments, please inform this Committee of:

- 1) the details of the preparation work undertaken by the Department of Justice with the relevant Mainland authorities on implementing the “co-location” arrangements at West Kowloon Terminus since funding approval for the Guangzhou-Shenzhen-Hong Kong Express Rail Link (XRL) was granted in 2010;
- 2) whether the Department of Justice had set 2015 as its work target for implementing the “co-location” arrangements, given that the XRL was originally scheduled for commissioning in 2015;
- 3) studies on other options of “co-location” arrangements and other clearance arrangements conducted by the Department of Justice in the past 3 years. Please advise the details of the work and the expenditure involved.

Asked by: Hon WU Chi-wai (Member Question No. 33)

Reply:

The Department of Justice advises Government bureaux and departments on legal issues as required from time to time, including those arising from projects under their purview. The co-location arrangement of the XRL project is one such example. Such advice has been and will be, from time to time, tendered among other advisory duties of the Department and the relevant expenditure therefore cannot be separately identified. As has been reiterated by the Hong Kong Special Administrative Region (HKSAR) Government on various occasions, the arrangements and details of the implementation of the co-location arrangement (which will have to be consistent with the Basic Law and the “One Country, Two Systems” principle) are still under study and discussion between the HKSAR Government and the relevant Mainland authorities. The HKSAR Government will provide such information as it is in a position so to do to the public and the Legislative Council in due course.

- End -

**CONTROLLING OFFICER'S REPLY****SJ070****(Question Serial No. 2965)**Head: (92) Department of JusticeSubhead (No. & title): (-) Not SpecifiedProgramme: (2) CivilControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

Regarding the 2016-17 estimate for Programme (2) Civil, which is 36.3% higher than the revised estimate for 2015-16, the Government states that it is necessary to create 18 posts to meet operational needs.

In connection with the 18 new posts, would the Government inform this Committee of:

- (1) the distribution of these posts in the division;
- (2) their respective areas of responsibilities; and
- (3) the reasons for the anticipated increase in briefing-out expenses and court costs.

Asked by: Hon Alvin YEUNG Ngok-kiu (Member Question No. 22)Reply:

The information sought is provided as follows -

- (1) & (2) The net creation of 18 posts in the Civil Division in 2016-17 involves creation of 19 new posts offset by deletion of one post. Distribution of the relevant posts and their respective areas of responsibilities are as follows -

Unit	Number of Posts	Area of Responsibilities
<b>Creation of 19 posts:</b>		
Commercial Unit	1	Providing legal support in the review of the regulatory framework for the electricity market
Civil Advisory Unit	1	Providing legal support for the development of Government Electronic Trading Services into a "Single Window"

Unit	Number of Posts	Area of Responsibilities
Civil Litigation Unit	1	Providing legal support for the handling of complex charity-related cases
	14	Replacing Non-civil Service Contract posts by permanent posts for providing legal support in the handling of student loan recovery cases
	1	Providing legal support for the comprehensive review of the unified screening mechanism to determine claims for non-refoulement protection against expulsion, return or extradition from Hong Kong to another country and other related aspects
Planning, Environment, Lands and Housing Unit	1	Providing legal support for the implementation of the Private Columbaria Ordinance
<b>Offset by deletion of <u>one</u> time-limited post which will lapse on 1.4.2016.</b>		
<b>Net creation of posts: <u>18</u></b>		

- (3) The court costs and briefing out expenditure varies from year to year, depending on the number of cases involved, their complexity and progress. In 2016-17, the expected increase in this area of expenditure is mainly due to the need to meet related expenses of some mega cases.

- End -

**CONTROLLING OFFICER'S REPLY**

**SJ071**

**(Question Serial No. 0368)**

Head: (92) Department of Justice

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

Programme: (1) Prosecutions

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Would the Government set out the respective number of persons prosecuted and convicted, as well as the convicted offences and sentences imposed, in relation to the Occupy Central movement? What is the number of persons against whom prosecution has not been instituted so far? What are the reasons for it?

Asked by: Hon YIU Si-wing (Member Question No. 315)

Reply:

According to the Police, during the illegal "Occupy Movement" in 2014, 955 persons were arrested by the Police for various alleged offences, and another 48 persons were arrested after the illegal occupation incident. As at 29 February this year, a total of 216 persons have undergone, are undergoing or will undergo judicial proceedings. Amongst them, 186 persons have gone through the judicial process and 116 of them have to bear legal consequences, including 74 who were convicted and 42 who were bound over upon conclusion of court proceedings. The convictions include unlawful assembly, possession of offensive weapon, common assault, assaulting police officer, theft, indecent assault, criminal intimidation and possession of dangerous drugs etc. The Police do not maintain statistics of court sentences for cases involving public order events.

Once the Police, upon completion of investigation, have submitted a case to the Department of Justice (DoJ) for legal advice, the DoJ will seek to decide, as quickly as practically possible, whether prosecution will be laid and if so what charges. And amongst the cases submitted to the DoJ, in the event that directions were necessary for the Police to make further investigations, they would be given before the legal advice could be finalised and prosecutions (if considered appropriate) be taken forward.

The DoJ will continue to follow up on cases related to the "Occupy Movement" for pursuit of offenders' legal responsibility. As follow-up actions for these cases are still being undertaken, more arrested persons may be prosecuted in due course.

- End -

**CONTROLLING OFFICER'S REPLY****SJ072****(Question Serial No. 1560)**Head: (92) Department of JusticeSubhead (No. & title): (-) Not SpecifiedProgramme: (1) ProsecutionsControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

Please provide information on the cases involving unlicensed operation of travel agents' businesses handled by the Department of Justice in the past 5 years, including the number of successful prosecutions, the sentences and so on.

Asked by: Hon YIU Si-wing (Member Question No. 336)Reply:

Available statistics on the enforcement figures against unlicensed operation of travel agents contrary to the Travel Agents Ordinance (Cap. 218) in the past five years and the sentences imposed on convicted persons are tabulated below –

Enforcement figures provided by the Police [based on the year of enforcement actions taken]

<b>Year</b>	<b>Number of cases</b>	<b>Number of arrested persons</b>
2011	16	16
2012	2	2
2013	8	7
2014	11	13
2015	13	15

Sentences imposed on convicted persons [based on the number of prosecution cases concluded by calendar year]

No. of cases	2011	2012	2013	2014	2015 (as at 30 September 2015)
Convicted	9	0	4	2	9
Immediate imprisonment	0	0	0	0	1
Suspended imprisonment	3	0	0	0	2
Fine	6	0	4	2	6
Acquitted	2	0	0	0	0
Total	11	0	4	2	9

- End -



**CONTROLLING OFFICER'S REPLY****SJ073****(Question Serial No. 1561)**Head: (92) Department of JusticeSubhead (No. & title): (-) Not SpecifiedProgramme: (1) ProsecutionsControlling Officer: Director of Administration and Development (Alan Siu)Director of Bureau: Secretary for JusticeQuestion:

Please provide information on the cases involving unlicensed operation of guesthouse businesses handled by the Department of Justice in the past 5 years, including the number of successful prosecutions, the sentences and so on.

Asked by: Hon YIU Si-wing (Member Question No. 337)Reply:

The Office of the Licensing Authority (the Office) under the Home Affairs Department is the enforcement agency for cases involving unlicensed operation of guesthouse businesses, and also conducts prosecution for most of the cases (which are relatively straightforward). For cases which are complicated or expected to involve complicated legal issues in the court proceedings, the Office will seek legal advice from the Department of Justice (DoJ), and if considered necessary, the advising counsel will recommend the cases to be prosecuted by DoJ prosecutors or fiat counsel.

Statistics of the enforcement figures against unlicensed guesthouse operation (including prosecutions undertaken by DoJ) in the past five years as maintained by the Office are tabulated below –

No. of cases <sup>Note</sup>	2011-12	2012-13	2013-14	2014-15	2015-16 (as at 29 February 2016)
Prosecution	54	146	188	126	157
Conviction	45	132	168	135	127

Note : The figures refer to the number of prosecution and the number of conviction in the same financial year respectively; the trials of some prosecution cases are conducted in the subsequent financial year and hence the outcome (if convicted) is reflected in the figure for the subsequent financial year.

The sentences imposed on convicted cases of unlicensed guesthouse operation for the past five years as maintained by the Office are tabulated below –

Sentence		2011-12	2012-13	2013-14	2014-15	2015-16 (as at 29 February 2016)
Fine	\$3,000 or less	22	90	82	7	3
	\$3,001 to \$5,000	14	29	37	11	8
	\$5,001 to \$10,000	6	10	27	106	90
	\$10,001 or above	3	3	3	5	17
	Total	45	132	149	129	118
Imprisonment	2 months or less	4	7	10	8	13
	Above 2 months to 6 months	2	-	-	3	1
	Above 6 months to 12 months	-	-	-	-	-
	Above 1 year to 2 years	-	-	-	-	-
	Total	6	7	10	11	14

- End -

**CONTROLLING OFFICER'S REPLY**

**SJ074**

**(Question Serial No. 2205)**

Head: (92) Department of Justice

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

Programme: (3) Legal Policy

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Further to the Legislative Council's rejection of the Marriage (Amendment) Bill 2014 on 22 October 2014, when will the Inter-departmental Working Group on Gender Recognition put forward a new round of reform proposals on the protection of the legal rights and interests of transsexual persons? Will the Government update the Bill again and introduce it into the Legislative Council in the future?

Asked by: Hon YIU Si-wing (Member Question No. 347)

Reply:

The IWG is reviewing issues relating to transsexual persons in Hong Kong, including the condition known as gender identity disorder or gender dysphoria. It is also conducting a review of the legislation, schemes and case law in other jurisdictions and the standards of international bodies, with a view to making recommendations to the Government on possible legislation that may be necessary to address the issues faced by transsexual persons.

The scope of the IWG's study includes both recognition and post-recognition issues. On recognition issues, the IWG is reviewing such issues as the various options for a gender recognition scheme, the relevant qualification criteria and the application procedure. As for post-recognition issues, the IWG is reviewing all the existing legislative provisions and administrative measures in Hong Kong which may be affected by legal gender recognition, so that any required legislative or procedural reform can be followed up by the Government.

In 2016-17, the IWG will continue its study of recognition issues and will then extend the scope to post-recognition issues. The IWG is currently focusing on the completion of a consultation paper to seek the views of the public on recognition issues (which is the first major part of the study). It will endeavour to publish the paper as early as possible this year. The IWG will continue to consult widely in the course of its work before finalising its recommendations to the Government.

- End -

**CONTROLLING OFFICER'S REPLY**

**SJ075**

**(Question Serial No. 3226)**

Head: (92) Department of Justice

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

Programme: (3) Legal Policy

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Our tourism will be impacted considerably by the future implementation or otherwise of the co-location arrangements at the Guangzhou-Shenzhen-Hong Kong Express Rail Link West Kowloon Terminus. Should it be implemented, Hong Kong will be able to become a hub of the express rail network of the Pan-Pearl River Delta Region, which will allow passengers and cargoes to reach a number of Mainland cities direct from Hong Kong under an hour or within several hours. In this connection:

- (1) what are the results and progress of the study on the legal issues concerning the implementation of the co-location arrangements being conducted by the Secretary for Justice?
- (2) has the Government set any timetable for the implementation of the co-location arrangements?
- (3) does the Government have any fallback options if the co-location arrangements option is rejected in the future?

Asked by: Hon YIU Si-wing (Member Question No. 353)

Reply:

The Department of Justice advises Government bureaux and departments on legal issues as required from time to time, including those arising from projects under their purview. The co-location arrangement of the Guangzhou-Shenzhen-Hong Kong Express Rail Link project is one such example. As has been reiterated by the Hong Kong Special Administrative Region (HKSAR) Government on various occasions, the arrangements and details of the implementation of the co-location arrangement (which will have to be consistent with the Basic Law and the "One Country, Two Systems" principle) are still under study and discussion between the HKSAR Government and the relevant Mainland authorities. The HKSAR Government will provide such information as it is in a position so to do to the public and the Legislative Council in due course.

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