



Department of Justice
2012

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Counsel in the department





Foreword

by the Secretary for Justice



Foreword by the Secretary for Justice



This is the eighth periodical review of the work of the Department of Justice. It is the fourth since I took office as Secretary for Justice in October 2005 and covers the period from 1 January 2010 to 31 December 2011. The legal landscape keeps transforming, presenting new challenges as well as fresh opportunities. The department's work has increased significantly in breadth and depth, which is being shouldered and discharged by colleagues with admirable dedication.

Over the last two years, my department has been instrumental in taking forward a number of significant legislative measures.

In March 2011, the Matrimonial Proceedings and Property (Amendment) Ordinance came into effect, empowering Hong Kong courts to order financial relief for a former spouse whose marriage has been dissolved or annulled, or who has been legally separated, in proceedings outside Hong Kong. The new Arbitration Ordinance came into effect in June 2011, establishing a unified legal regime for domestic and international arbitration based on the Model Law on International Commercial Arbitration of the United Nations Commission on International Trade. In December 2011, amendments were made to the Enduring Powers of Attorney Ordinance

to reflect proposals made by the Law Reform Commission to simplify the procedure for executing an enduring power of attorney.

In addition, my department has been responsible for a number of Bills which are currently under consideration by the Legislative Council. These include the Mediation Bill, implementing recommendations made in the February 2010 report of the Mediation Working Group which I chaired, and the Legal Practitioners (Amendment) Bill, which seeks to introduce limited liability partnerships as a vehicle for solicitors' practices in Hong Kong.

There have been important decisions by the courts in both criminal and civil matters in which counsel from my department have played a role. In June 2011, the Court of Final Appeal, for the first time since the promulgation of the Basic Law, referred several questions on state immunity for interpretation by the Standing Committee of the National People's Congress pursuant to Article 158(3) of the Basic Law. The rights enshrined in the Basic Law have also been tested and clarified in a number of important cases in which my department has played a part in assisting the courts. Basic Law questions considered by the



courts included the right to marry and what amounts to interference in the internal affairs of a religious organisation.

On the criminal law side, for the first time, a prosecution was brought under section 153P of the Crimes Ordinance, which extends the jurisdiction of the Hong Kong courts to certain sexual offences committed outside Hong Kong. In another case, the courts affirmed that the choice of the venue for a prosecution is a matter for the Secretary for Justice without any external interference. The Prosecutions Division is to be congratulated for the initiative to jointly organise a training programme with the Bar and the Law Society providing seminars and prosecution work opportunities for junior lawyers with under five years' experience to enhance and consolidate their skills. The programme has been warmly received and widely applauded.

Reflecting the importance of Hong Kong's connections with the wider world, the department's activities have continued to extend beyond purely domestic issues. For instance, counsel from the department have worked with their counterparts in other jurisdictions on the establishment of a regional office in Hong Kong of the Hague Conference on Private International Law. The department has also been heavily involved in promoting Hong Kong as a regional centre for international arbitration in the Asia-Pacific

region. Nearer home, in November 2011, my department signed an agreement with the Shenzhen Municipal Government to discuss and exchange information on legal issues, including the development of modern service industries in Qianhai.

I cannot end this brief introduction to what the department has done over the last two years without paying tribute again to the dedication and skill of those who serve within it, whether lawyer or layman. The calibre of those staff members ensures that the Department of Justice is able to fulfil its important role in Hong Kong's legal system.



(WONG YAN LUNG, SC)
Secretary for Justice
31 December 2011



Highlights

of 2010 and 2011

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Highlights of 2010 and 2011

Initiatives and reforms

Mediation Task Force

The cross-sector Working Group on Mediation, set up and chaired by the Secretary for Justice in February 2008, published a report for public consultation in February 2010, putting forward 48 recommendations on public education and publicity, accreditation and training, and a regulatory framework, all intended to promote and facilitate the wider use of mediation to resolve disputes in Hong Kong. To implement those recommendations in the report which received general support, the Secretary for Justice has set up a Mediation Task Force, assisted by three sub-groups working specifically on accreditation, a mediation Ordinance, and public education and publicity.

On accreditation, the Task Force supports the setting up of a non-statutory industry-led single accreditation body and is facilitating the establishment of such a body.



As for the proposed mediation legislation, the Mediation Bill was introduced to the Legislative Council in November 2011. The Bill defines mediation and mediation communication and provides for the confidentiality of mediation communications and for their admissibility in evidence with leave of the court or tribunal.

On public education and publicity, the Task Force has been involved in the production of an Announcement in the Public Interest which was broadcast on television and radio from December 2011 to enhance public awareness of the use of mediation to resolve disputes. The Task Force is proposing to hold a two-day conference on mediation in Hong Kong in the first half of 2012 which will provide opportunities to share experience, review the development of mediation in Hong Kong and overseas, and to consider ways to promote and facilitate the greater use of mediation.



Conference on "The Administrative Disputes Resolution Systems Adopted by the Governments of the Mainland, Taiwan, Hong Kong and Macao", Guangzhou, March 2010

Plenary session of the Guangzhou conference on Administrative Disputes Resolution Systems



The conference was co-organised by the Society on Administrative Law of the China Law Society and Guangzhou University. Participants came from the Mainland, Taiwan, Macao and Hong Kong, and included members of the Department of Justice, the Legal Aid Department and the City University of Hong Kong. Counsel from the Civil Division gave a presentation on the mechanism for resolving disputes between the government and the public in Hong Kong. They also participated in the discussions at the plenary sessions and shared the Hong Kong experience in resolving disputes through judicial and non-judicial means. The conference facilitated useful exchanges amongst academics and practitioners in the Mainland, Taiwan, Macao and Hong Kong.

Towards more accessible legislation

The Legislation Publication Ordinance (Cap 614) was passed by the Legislative Council in

June 2011. This is a major step towards the establishment of a verified, authenticated and searchable electronic database of all Hong Kong legislation. The Ordinance provides legislative backing for the establishment of the database. While the existing Bilingual Laws Information System also provides a consolidated version of the laws of Hong Kong through the internet, it has no legal status and serves for reference purposes only. The enactment of the Ordinance paves the way for the establishment of a reliable legislation database on an official website. This initiative will allow the public and the legal profession free and convenient online access to accurate and updated Hong Kong legislation with legal status anywhere, anytime. The following are some of the more important benefits expected:

- timely dissemination of, and free access to, Hong Kong legislation with legal status
- improved accuracy and efficiency in compiling Hong Kong legislation
- opening up opportunities for the effective provision of value-added services such as annotation of legislation
- contribution to greener lifestyle

We plan to implement the database in two phases. Phase one will cover core functions for use by the Department of Justice internally and phase two will cover functions for use by the rest of government and the public. However, the process of verifying and confirming

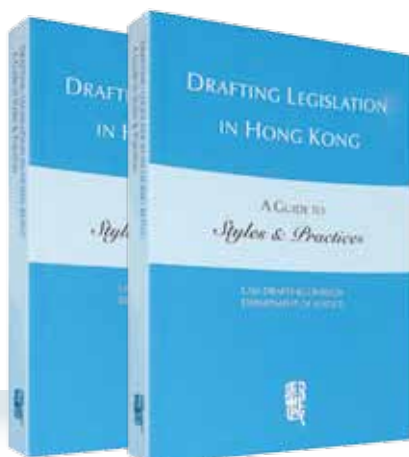
the legislation database as an accurate and authoritative version of the legislation will be a formidable task which will probably take several years to complete. The existing loose-leaf edition of our legislation will be phased out progressively as the process makes its way to completion.

Legislation on the move

Pending the establishment of the legal status of the legislation database, we are continuing to improve and upgrade our Bilingual Laws Information System. The existing system was designed only for reading by browsers running on computer platforms. The department therefore launched the Mobile Bilingual Laws Information System in May 2011 to provide a user-friendly display of the system on mobile devices such as tablet computers.

Guide to styles of local legislation

In 2011, the Law Drafting Division decided to publish a booklet entitled *Drafting Legislation*



in Hong Kong - A Guide to Styles and Practices, which is a comprehensive guide to the styles and practices used in drafting legislation in Hong Kong. Illustrated with numerous examples, the guide explains the techniques and practices used by the counsel who draft Hong Kong's legislation. It also discusses the legal parameters within which Hong Kong's laws are drafted, including the Basic Law, specific Ordinances and common law principles. The guide also offers tips on drafting and the pitfalls to be avoided. It is hoped the guide will be of interest to government officials, legislators, the judiciary, the legal profession and the general community of Hong Kong, who may find our statute book easier to understand with the assistance of the guide. The guide will be published in January 2012.

Development of the legal profession

The Legal Practitioners (Amendment) Bill 2010 was introduced into the Legislative Council in June 2010. The Bill seeks to introduce limited liability partnerships (LLPs) as a vehicle for solicitors' practices in Hong Kong, so as to enhance the development and competitiveness of our law firms. The effect of LLP status would be that the liability of partners of the firm would no longer be unlimited (as in the case of a conventional partnership) and innocent partners would not, solely by reason of being partners, be held personally liable for professional negligence committed by other partners of their firm.

The department has been working closely with stakeholders and the Legislative Council to ensure the legislation strikes a proper balance between limiting professional liability and safeguarding public interests. We hope that the Bill will be passed by the Legislative Council in the 2011-12 legislative session.

In addition, the department is working closely with the Higher Rights Assessment Board, which is empowered to make rules to implement the statutory scheme under the Legal Practitioners (Amendment) Ordinance 2010 to allow solicitors having at least 5 years' post-qualification experience and satisfying further eligibility requirements to apply to the board for higher rights of audience before the High Court and the Court of Final Appeal. The scheme will be brought into full operation after the Legislative Council's clearance of the rules made by the Higher Rights Assessment Board.

Enactment of the Matrimonial Proceedings and Property (Amendment) Ordinance 2010

The Amendment Ordinance came into effect on 1 March 2011. It empowers the High Court and the District Court to order financial relief for a former spouse whose marriage has been dissolved or annulled, or who has been legally separated, in judicial or other proceedings outside Hong Kong. Before the Matrimonial Proceedings and Property Ordinance (Cap 192)

was so amended, the court's powers to make an order for financial provision in favour of a former spouse were conditional on the grant of a divorce decree by a Hong Kong court. A party who had obtained a divorce decree in a jurisdiction outside Hong Kong which was recognised in Hong Kong could not therefore apply to the Hong Kong courts for financial relief.

Promotion of Hong Kong as a regional arbitration centre

The department has been making vigorous efforts to promote Hong Kong as a regional centre for international arbitration in the Asia-Pacific region. In October 2010, the department signed a co-operation arrangement with the China Council for the Promotion of International Trade with the aim of enhancing the dispute resolution mechanisms in both Hong Kong and the Mainland. In May 2011, the government offered to make available additional office space to the Hong Kong International Arbitration Centre (HKIAC) to enable it to expand its hearing and office facilities. The expanded facilities would enable the HKIAC to cope with the increasing demand for arbitration services in Hong Kong.



With the commencement of the new Arbitration Ordinance (Cap 609) on 1 June 2011, Hong Kong now provides a unified legal regime for domestic and international arbitration based on the Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law. The new Ordinance will further strengthen the city's appeal as a regional hub for international arbitration.



The Secretary for Justice with Mr Huen Wong, the Chairman of the Hong Kong International Arbitration Centre, at a reception to promote the Arbitration Ordinance

“Hong Kong Legal Services – Global Vision” forum, Shanghai, July 2010

To demonstrate Hong Kong's strength as a regional centre for legal services and dispute resolution and to promote Hong Kong's legal and arbitration services, the department co-organised the “Hong Kong Legal Services – Global Vision” forum in Shanghai on 6 July 2010 with the Hong Kong Trade Development Council, the Bar Association of Hong Kong, the Law Society of Hong Kong, the Hong Kong International Arbitration Centre and the International Court of Arbitration of the International Chamber of Commerce.



The Secretary for Justice addressing the Hong Kong Legal Services Forum in Shanghai

The forum brought together experienced Hong Kong legal practitioners and arbitrators to share their experience of various practical legal issues (including legal risks in international trade and resolving commercial disputes) and to examine the strategies for dispute resolution through case analysis. More than 500 Mainland government officials, lawyers, corporate counsel, and representatives from Mainland and foreign business enterprises attended the forum.

The Closer Economic Partnership Arrangement with the Mainland (CEPA) and the development of Qianhai

In August 2011, Mr Li Keqiang, Vice-Premier of the State Council, announced a package of measures by the Central Government to support social and economic development in Hong Kong. These included a proposal to explore ways of improving the mode of association between law firms in Hong Kong and the Mainland and support for the establishment of services in Qianhai by Hong Kong arbitration



The Secretary for Justice (first right) signs the "Co-operative Arrangement on Legal Matters" with Shenzhen's Vice Mayor Chen Yingchun (second right)

bodies. This support was in line with the "Overall Development Plan on Shenzhen-Hong Kong Co-operation on Modern Services Industries in Qianhai Area", which was announced in December 2010 by the Shenzhen authorities.

Following Vice-Premier Li's announcement, in August 2011 the Secretary for Justice led a delegation of representatives of the Hong Kong legal and arbitration services sectors to Shenzhen to exchange views with relevant parties there on the promotion of Hong Kong's legal and arbitration services in Qianhai. The Department of Justice and the Shenzhen Municipal Government subsequently signed a "Co-operative Arrangement on Legal Matters" on 25 November 2011. Under this arrangement, the two sides undertake to discuss, and exchange information on, legal issues relating to Hong Kong-Shenzhen co-operation projects, including the development of modern service industries in Qianhai.

On 13 December 2011, CEPA Supplement VIII was signed in Hong Kong, making new commitments on the liberalisation of legal services. These were (i) to explore ways of improving the mode of association between law firms in Hong Kong and the Mainland and (ii) to consider broadening the scope of business of Hong Kong residents with Mainland legal qualifications and a Mainland practice certificate in acting as agents in civil litigation cases in the Mainland relating to Hong Kong residents and juridical persons.

Arrangement for the reciprocal recognition and enforcement of arbitral awards between Hong Kong and Macao

At present, there is no arrangement between Hong Kong and Macao for the mutual recognition and enforcement of arbitral awards. In order to add certainty to the enforcement of awards in Hong Kong made by Macao arbitration

authorities and vice versa, the department has exchanged views and information with the Macao SAR Government on a proposal to establish an arrangement for the reciprocal recognition and enforcement of arbitral awards. It is anticipated that formal discussions between the two governments will begin soon, with a view to finalising the terms of the arrangement in 2012.

Criminal Advocacy Course

In 2011, the Prosecutions Division commissioned a barrister in private practice to revise and update the course materials of its Criminal Advocacy Course for new recruits. The product, which is not only a comprehensive set of lecture notes but also a handy reference for court purposes, will be published in 2012.

Continuing legal education for prosecutors

To keep prosecutors abreast of recent developments in the law, the Prosecutions

Division engaged an associate professor of the University of Hong Kong to provide a series of monthly seminars for 12 consecutive months, commencing in March 2011. As a manifestation of the spirit of co-operation between Hong Kong and Singapore in matters of common interest, the seminars are also shared with counsel of Singapore's Attorney General's Chambers through a live television link. The seminars have been well-received and well-attended by prosecutors in both places.

Joint training programme with the Bar Association and the Law Society

As a new initiative, in February 2011 the Prosecutions Division joined the Hong Kong Bar Association and the Law Society of Hong Kong in organising a training programme for newly qualified lawyers. The training programme, which will be held twice a year, aims to equip new members of the profession with the knowledge and skills necessary for prosecutorial



Prosecutors take part in a programme of continuing legal education

work, with a view to including them on the Prosecutions Division Magistrate's Courts Fiat List. Barristers and solicitors with less than five years' post-qualified experience who have acquired some advocacy experience are eligible for the training programme, which consists of a one-day training course and a two-week magistracy assignment.

Enhancement of information technology capability

A range of initiatives were undertaken during 2010 and 2011 to enhance the department's information technology (IT) capability. These included:

- the enhancement of the Bilingual Laws Information System to allow its contents to be displayed on mobile devices in a user-friendly way
- the replacement of the outdated Library Management System by a new Integrated Library System with more advanced functions and user-friendly interface to improve the operations and services of the library
- the redevelopment of the Work Management System for the International Law Division and the Law Drafting Division to improve system performance, reliability and security
- the upgrade of the Virtual Private Network facility to an updated system with improved reliability and a more user-friendly user interface
- the upgrading of the office software suite and the web browser to an updated version

- the implementation of the Electronic Record System for the Prosecutions Division to convert paper case files into electronic format for custody
- the enhancement of the legislation drafting templates for the Law Drafting Division
- the upgrade of the document management software and the replacement of the server and storage hardware of the Bilingual Document Management and Archival system to improve the system's reliability, performance and security

Notable cases

Criminal

In *Lily Chiang v Secretary for Justice* (2010) 13 HKCFAR 208, the applicant sought leave to appeal to the Court of Final Appeal to challenge the decision of the prosecution to choose as the venue of the trial the District Court (where the trial would be before a professional judge sitting alone) rather than the Court of First Instance (where the trial would be before a judge and a jury), her judicial review proceedings having failed both at first instance and on appeal. In refusing leave, Li CJ said, "*it is in our view clear that the contention that section 88 is unconstitutional because it allocates a judicial function to the Secretary for Justice is not reasonably arguable. Choice of the venue for a prosecution is clearly a matter covered by Article 63 of the Basic Law which gives control of prosecutions to the Secretary for*



Justice without any external interference. Wright J's conclusion was plainly correct." The criminal trial of the applicant subsequently proceeded in the District Court and she was convicted after trial of various charges of conspiracy to defraud, fraud and false statement by directors and was sentenced to a total of 3½ years' imprisonment.

In *HKSAR v Nancy Ann Kissel* (2010) 13 HKCFAR 27, the Court of Final Appeal in allowing the appeal of the defendant, who had been convicted of murdering her husband, an American banker of Merrill Lynch, after lacing his milkshake, set the scope of permissible cross-examination of the accused on matters pertaining to her bail applications. A retrial was ordered and the

defendant was eventually convicted of murder on retrial.

In *HKSAR v Chan Wai-yip and others* (2010) 13 HKCFAR 842, the Court of Final Appeal determined the issue of whether a secret agreement between potential bidders not to compete at an auction constituted the common law offence of conspiracy to defraud. The facts were that before attending a restricted auction held by the Food and Environmental Hygiene Department (FEHD), the tenants of the cooked food stalls had attended a pre-allotment exercise and agreed among themselves not to compete against one another in bidding for the cooked food stalls at the auction. The court held that there was no deception because the FEHD was not aware of the pre-allotment and the agreement not to compete until sometime after the auction; there was no evidence that the FEHD had been deceived; the FEHD did believe that only one bid was offered at the upset price for each stall but that belief was founded on the FEHD's knowledge of what in fact happened at the auction. The court declined to discard the English authorities to bring "knock out" agreements within the reach of the law of criminal conspiracy. Accordingly, the appeal was dismissed. The judgment triggered a series of debates in the community over the need to legislate for a comprehensive anti-competition law for Hong Kong.

In *HKSAR v Hung Yung-chun and Ko Tien-ping* (2011) 2 HKLRD 174, the Court of Appeal gave guidance on sentencing for telephone deception, a crime which has become prevalent in recent years. The victims in that case were all aged from 58 to 70 years old. They each received phone calls from someone who claimed to be the victim's son seeking help as he was being detained or beaten up. Another unknown man then took over the phone and said that the victim's son had acted as a guarantor for others. Since the debtor had gone missing, the son had to repay the debt on the debtor's behalf. The Court of Appeal stressed that telephone deception was more serious than street deception and that a starting point of four years' imprisonment and an enhancement of sentence of one-third under the provisions of the Organized and Serious Crimes Ordinance (Cap 455) were appropriate.



Secretary for Justice v Ng Wai-bing and others (HCMP 840/2010) was a case where criminal contempt of court proceedings were brought by the Secretary for Justice against three respondents for using a concealed recording device to record the conversations of several police witnesses in a witness room within the court precincts in the course of a criminal trial. Two of the respondents were found in contempt and were committed to jail for nine and six months respectively, both suspended for 18 months. The Secretary for Justice brought appeals against the sentences imposed against them (CACV 11/2011) and the order not to commit the third respondent (CACV 247/2010). However, both appeals were dismissed by the Court of Appeal. Separately, criminal proceedings were instituted against the first respondent for one count of perverting the course of public justice and one count of perjury. Two police officers involved in the original trial were also prosecuted for, and convicted of, perverting the course of public justice and misconduct in public office (DCCC 884/2010).

In *HKSAR v Francis Lee Kwok-wah* (HCCC 183/2010), the defendant was convicted of offences of unlawful sexual intercourse, indecent conduct towards a child and indecent assault. The defendant was the operator of a children's home in a small town in the Yunnan Province of Mainland China and the offences were committed against children resident there. The provisions of section 153P of the Crimes Ordinance (Cap 200),

which extends the jurisdiction of the courts of Hong Kong to certain sexual offences committed outside Hong Kong, were invoked for the first time in this prosecution.

In *HKSAR v Du-jun* (DCCC 787/2008), the defendant, the Managing Director of the Fixed Income Department of Morgan Stanley Asia Ltd, was charged with 10 charges of insider dealing. The prosecution's case was that he, being involved in the issue of bonds to fund the acquisition of a Kazakhstan oil field, dealt with the shares of Citic Resources Holdings Ltd after receiving confidential and non-public information about the fact that Citic had decided to buy the oilfield and by that insider information he made a notional profit of \$23.3 million. The defendant was convicted as charged and sentenced to seven years' imprisonment which was the maximum sentence that could be imposed by the District Court.

In *HKSAR v Mo Ri-ming and Zhou Yao-xing* (DCCC 118/2010), the two defendants together stole a diamond ring with a market price of HK\$2,750,000 from a jewellery shop in Busan, South Korea. After finding that the ring had gone, sales staff checked the closed circuit television recording and found that the ring had been stolen by the defendants. The matter was reported and the defendants were traced to a flight to Hong Kong. Upon landing at the Hong Kong International Airport, the defendants were arrested. They were prosecuted for dealing with property

known to represent the proceeds of an indictable offence under the Organized and Serious Crimes Ordinance (Cap 455). They were both convicted and were sentenced to imprisonment for 22 months and two weeks.

In *HKSAR v Ki Chun-yim* (DCCC 408/2011), the defendant was convicted after trial of eight charges of blackmail and one charge of perverting the course of public justice. The victim, X, was a director and shareholder of a publicly listed company in Hong Kong. X came to know the defendant in a pub where she was working as a hostess and they had an extramarital affair. Subsequently, X wanted to terminate the relationship. The defendant, however, refused to do so and repeatedly threatened to harm X and his family. The defendant told X that she had employed private detectives to follow him and she was able to give details of his movements. She also said that she was in contact with persons on the Mainland who would carry out her threats. Whilst on police bail, the defendant threatened to kill the victim and his family if he were to give a witness statement to the police. By her threats, the defendant obtained a total of \$10 million from X. The trial judge, in his sentencing remarks, described the defendant as an "evil, ruthless, manipulative, calculating and dangerous person" and he sentenced her to seven years' imprisonment, the maximum imprisonment term that can be imposed in a District Court case.

In *HKSAR v Lui Yuk-lin and Tsang Chun-ying* (ESCC 1341/2011), members of the League of Social Democrats held a public procession to the Liaison Office of the Central People's Government on 1 October 2010. The protestors intended to charge the police cordon. During the event, Lui pulled a metal bar off a barrier and Tsang forcefully bumped against the chest and/or left arm of a serving police constable. The defendants were respectively charged with and convicted of the offences of criminal damage and assaulting a police officer. They were ordered to serve Community Service Orders of 120 hours and 160 hours respectively.

Civil

Basic Law litigation

In *Vallejos Evangeline Banao v Commissioner of Registration & another* (HCAL 124/2010), the applicant challenged the constitutionality of section 2(4)(a)(vi) of the Immigration Ordinance (Cap 115), which deems a person's presence in Hong Kong when employed as a foreign domestic helper not to be ordinary residence, preventing her from acquiring the right of abode in Hong Kong. In its judgment dated 30 September 2011, the Court of First Instance held that on the common law interpretation approach the impugned provision is inconsistent with Article 24(2)(4) of the Basic Law. The Government has lodged an appeal which will be heard before the Court of Appeal on 21-23 February 2012.

In *The Catholic Diocese of Hong Kong v Secretary for Justice* (FACV 1/2011), the applicant challenged the

compulsory implementation of the school-based management policy in aided schools and sought declaratory relief that sections 40BK(2) and (3)(a) and 40 BU(2) & (3) of the Education Ordinance (Cap 279) which obliged sponsoring bodies of aided schools to submit draft constitutions of the proposed incorporated management committees (with the mandatory inclusion of a number of stakeholders such as teachers, parents and alumni as managers to sit along with managers appointed by the school sponsoring body) before certain specified dates contravened Articles 136(1), 137(1) and 141(3) of the Basic Law. The Court of Final Appeal held that the sections did not involve abandonment of the pre-1997 education system nor affect the religious dimension of the applicant's "previous practice" in running schools. There was no violation of any constitutional rights enjoyed by the applicant and the appeal was dismissed on 13 October 2011.

In *W v Registrar of Marriages* (HCAL 120/2009), a post-operative male-to-female transsexual challenged the Registrar of Marriages' refusal to allow her to register a marriage with her male partner. Insofar as she was prohibited from marrying a man (as opposed to a woman), the applicant argued that the Registrar had misinterpreted the words "man" and "woman" and "male" and "female" in sections 21 and 40 of the Marriage Ordinance (Cap 181), or, alternatively, that those provisions were inconsistent with Article 37 of the Basic Law and Article 19(2) of the Hong Kong Bill of Rights guaranteeing the right to marry. The Court of First Instance, in its judgment dated 5 October 2010, held that on a proper interpretation

of the relevant provisions, “man” and “woman” and “male” and “female” did not cover a post-operative male-to-female man and woman respectively. Rather, their sex was to be determined for the purposes of those provisions according to their biological sex at birth. The court further concluded that the relevant provisions did not infringe the right to marry guaranteed under the Basic Law and the Hong Kong Bill of Rights. In a judgment dated 25 November 2011 the Court of Appeal upheld the lower court’s decision. The applicant is seeking leave to appeal to the Court of Final Appeal.

Health and social welfare

In *Fok Chun-wa and another v Hospital Authority and another* (HCAL 94/2007), the Court of First Instance upheld the policy of the Hospital Authority to charge non-Hong Kong resident pregnant women higher rates for obstetric services as being constitutional and not discriminatory. The appeal to the Court of Appeal took place on 2-4 March 2010 and the Court of Appeal’s judgment was handed down on 10 May 2010, allowing the appeal but only on the single issue of waiver and setting aside the Hospital Authority’s refusals to waive or reduce the hospital fees levied upon the second applicant. The matter was remitted to the Hospital Authority for fresh consideration. The hearing of the appeal before the Court of Final Appeal is fixed for 8-9 March 2012.

In *Kong Yun-ming v Director of Social Welfare* (HCAL 127/2008), the Court of First Instance

dismissed an application for judicial review of the constitutionality of the seven-year residence requirement for an applicant to receive assistance under the Government’s Comprehensive Social Security Assistance Scheme (CSSA). In *Yao Man-fai v Director of Social Welfare* (HCAL 69/2009), the Court of First Instance allowed an application for judicial review challenging the constitutionality of the requirement that, subject to a grace period of 56 days, an applicant for CSSA must have resided in Hong Kong continuously for at least one year immediately before the date of application and held that the one-year continuous residence requirement constituted an unconstitutional and unlawful discrimination against those permanent residents who had been absent from Hong Kong for a total period of more than 56 days in the year immediately prior to their applications for CSSA and infringed their rights to travel. The appeals of Kong Yun-ming (CACV 185/2009) and of the Director of Social Welfare (CACV 153/2010) were heard together by the Court of Appeal between 18 and 21 July 2011, with judgments reserved.



In *Lam Wo-lun v Director of Social Welfare* (HCAL 133/2010), the applicant challenged by judicial review the constitutionality of the Director of Social Welfare's decision dated 23 July 2010 in rejecting his application for old age allowance on the sole ground that he did not satisfy the residence requirement of having resided in Hong Kong continuously for at least one year immediately before the date of his application and the decision of the Social Security Appeal Board in dismissing his appeal against the director's decision dated 23 July 2010. The substantive application for judicial review was heard on 12 December 2011, with judgment reserved.

Elections

In *Charles Peter Mok v Tam Wai-ho, Vincent Fung Hao-yin and Secretary for Constitutional and Mainland Affairs* (FACV 8/2010), the petitioner, who was a candidate for the Legislative Council election for the information technology functional constituency held on 7 September 2008, challenged the result of the election on the ground that material irregularities had occurred in the election and that the first respondent had engaged in illegal and corrupt conduct. The petition was dismissed by the Court of First Instance on 9 April 2009. On 3 December 2009, the Court of Appeal dismissed the appeal on the ground that the absence of a right of an intermediate appeal to the Court of Appeal (the combined effect of the finality provision in section 67(3) of the Legislative Council Ordinance (Cap 542) which provided for the finality of the determination

of the Court of First Instance after the trial of an election petition and section 14(3) of the High Court Ordinance (Cap 4)) did not contravene Article 82 of the Basic Law. On 13 December 2010, the Court of Final Appeal allowed the appeal, holding that the finality provision failed to satisfy the proportionality test in *A Solicitor v Law Society of Hong Kong and Secretary for Justice* (FACV 7/2003) and thus was unconstitutional and invalid as being inconsistent with Article 82 of the Basic Law. The substantive appeal from the Court of First Instance decision was remitted to the Court of Appeal for a re-hearing and was dismissed on 9 June 2011. The petitioner's application for leave to appeal to the Court of Final Appeal was dismissed by the Court of Appeal on 21 October 2011. The petitioner's application to the Appeal Committee for leave to appeal to the Court of Final Appeal is fixed for 6 January 2012.

In *Chan Yu-nam v Secretary for Justice and Lo Hom-chau v Secretary for Justice*, the applicants sought a declaration that sections 25 and 26 of the Legislative Council Ordinance (Cap 542), to the extent that they provide for corporate votes, are unconstitutional and have no effect. The applicants contended, inter alia, that an individual's right to vote was unjustifiably restricted by the requirement of permanent residence for seven years, whereas corporate electors only needed to have been established for 12 months immediately before an application for registration. The latter were therefore given undue advantage in expressing their political views, in contravention of article 26 of the Basic Law (and article 21(b)

of the Hong Kong Bill of Rights) which gives the right to vote to permanent residents of the Hong Kong Special Administrative Region only. The substantive applications for the judicial review of the two proceedings were heard together and were dismissed by the Court of First Instance on 10 December 2009. By a judgment handed down on 7 December 2010, the Court of Appeal dismissed the appeals. The two applicants' applications for leave to appeal to the Court of Final Appeal were refused by the Court of Appeal on 21 October 2011 and they have lodged applications to the Court of Final Appeal for leave to appeal. Hearing of the leave applications before the Appeal Committee has been fixed for 18 January 2012.

Rating and government rent

In *The Hong Kong Electric Company Ltd (HEC) v Commissioner of Rating and Valuation* (LDRA 358/2004 and LDGA 224/2004, CACV 27/2010 and FACV 12/2010), HEC lodged a rating appeal and a government rent appeal, both in respect of the assessment year of 2004/2005, against the commissioner's valuation of its tenement which comprised the land, buildings and structures it occupied and used for the generation, transmission and distribution of electricity. There were parallel appeals on both rates and government rent in respect of three other assessment years (2005/2006, 2006/2007 and 2007/2008). Judgment was handed down by the Lands Tribunal on 30 November 2009,

upholding the commissioner's use of the receipts and expenditure method of valuation while agreeing with HEC that the permitted return under the scheme of control, instead of the weighted average of cost of capital, should be used to determine the hypothetical tenant's share of the divisible balance in the valuation. The commissioner obtained leave to appeal against the Lands Tribunal's judgment to the Court of Appeal. On 14 September 2010, the Court of Appeal handed down its unanimous judgment allowing the commissioner's appeal. HEC appealed against the Court of Appeal's judgment to the Court of Final Appeal. By its unanimous judgment dated 21 June 2011, the Court of Final Appeal allowed HEC's appeal and restored the judgment of the Lands Tribunal.

Best Origin Limited v Commissioner of Rating and Valuation (LDGA 14/1998, CACV 67/2008 and FAMV 21/2011) concerns the assessment of the rateable value of development sites in Hong Kong under the Government Rent (Assessment and Collection) Ordinance (Cap 515) and, in particular, the function and content of the rebus sic stantibus principle in rating law. On 25 February 2008, the Lands Tribunal dismissed Best Origin's government rent appeals lodged in respect of the development site concerned. Best Origin appealed unsuccessfully to the Court of Appeal against the Lands Tribunal's judgment, and Best Origin's subsequent application for leave to appeal was unanimously dismissed by the Court of Appeal with costs on 15 April 2011.

Best Origin's application to the Court of Final Appeal for leave to appeal against the Court of Appeal's judgment had been fixed to be heard before the Appeal Committee of the Court of Final Appeal on 1 December 2011. On 1 December 2011, the Appeal Committee of the Court of Final Appeal allowed Best Origin's application for leave to appeal against the Court of Appeal's judgment. Best Origin's appeal has been fixed to be heard by the Court of Final Appeal on 26 November 2012 (with 27-30 November 2012 reserved).

Environment

In *Chu Yee-wah v Director of Environmental Protection* (CACV 84/2011), the Director of Environmental Protection appealed against the Court of First Instance's judgment of 18 April 2011 which allowed the applicant's judicial review (HCAL 9/2010) and quashed the director's decisions in granting approval to (i) the Environmental Impact Assessment reports relating to two of the three designated projects of the Hong Kong-Zhuhai-Macao Bridge Project (namely,

the Hong Kong Boundary Crossing Facilities and the Hong Kong Link Road) and (ii) the environmental permits to construct and operate these designated projects. The Court of First Instance ruled in favour of the applicant on only one of the seven main issues canvassed in the judicial review and against her on the other six. The applicant cross-appealed four of the main issues and also appealed against the costs order of the Court of First Instance. The appeal was heard by the Court of Appeal on 23-25 August 2011 on an expedited basis. On 27 September 2011, the Court of Appeal unanimously allowed the director's appeal with costs, and dismissed the applicant's cross-appeal and her appeal against the Court of First Instance's costs order.

Public international law

In *FG Hemisphere Associates LLC v Democratic Republic of the Congo and others* (CACV 373/2008 and 43/2009), the plaintiff appealed against the judgment of the Court of First Instance to dismiss its application for leave to enforce in the HKSAR two foreign arbitral awards against the Democratic Republic of the Congo. The Court of Appeal held on 10 February 2010 that, pursuant to the principle of "restrictive immunity", the Democratic Republic of the Congo did not enjoy full sovereign immunity, and remitted the case to the Court of First Instance. The Democratic Republic of the Congo and other defendants as well as the Secretary for Justice (as intervener) lodged an appeal to the Court of Final Appeal against the Court of Appeal's judgment (FACV 5-7/2010).

The judicial review involving the Hong Kong - Zhuhai - Macao Bridge was one of the important cases handled



As the case involved questions about the application of the system of state immunity in the HKSAR, and the provisions of Articles 13(1) and 19 of the Basic Law concerning affairs which were the responsibility of the Central People's Government or the relationship between the Central Authorities and the HKSAR, the Court of Final Appeal decided on 8 June 2011 to seek an interpretation from the Standing Committee of the National People's Congress (NPCSC) on several questions relating to the relevant provisions of the Basic Law. Pursuant to the Court of Final Appeal's request, the NPCSC on 26 August 2011 issued an interpretation of the relevant provisions of the Basic Law under Article 158(3) of the Basic Law. Thereafter, the Court of Final Appeal handed down its final judgment on 8 September 2011, confirming that the HKSAR courts had no jurisdiction over the Democratic Republic of the Congo under the principle of absolute immunity as applied by the Central People's Government.

In *C and others v Director of Immigration* (CACV 132-137/2008), the appellants appealed against the judgment of the Court of First Instance that the principle of "non-refoulement of refugees" was not applicable in the HKSAR. The appellants contended that the principle of "non-refoulement of refugees" had become a rule of customary international law, and the HKSAR Government was required under that rule not to expel a refugee to the frontiers of a territory where he or she would face persecution, and to determine the status of all refugee claimants by way of screening. The Court of Appeal dismissed the appeal on 21 July 2011 and considered that,

while the principle of "non-refoulement of refugees" had become a rule of customary international law, it had been "*clearly overridden by domestic legislation to the contrary*", with the result that it had not been incorporated into the domestic law of the HKSAR. As such, the HKSAR Government was not required pursuant to that principle to screen all refugee claimants. Some of the appellants made applications for leave to appeal to the Court of Final Appeal and on 14 December 2011 the Court of Appeal granted leave to these appellants to appeal to the Court of Final Appeal. The hearing date of the substantive appeal is yet to be fixed.

People

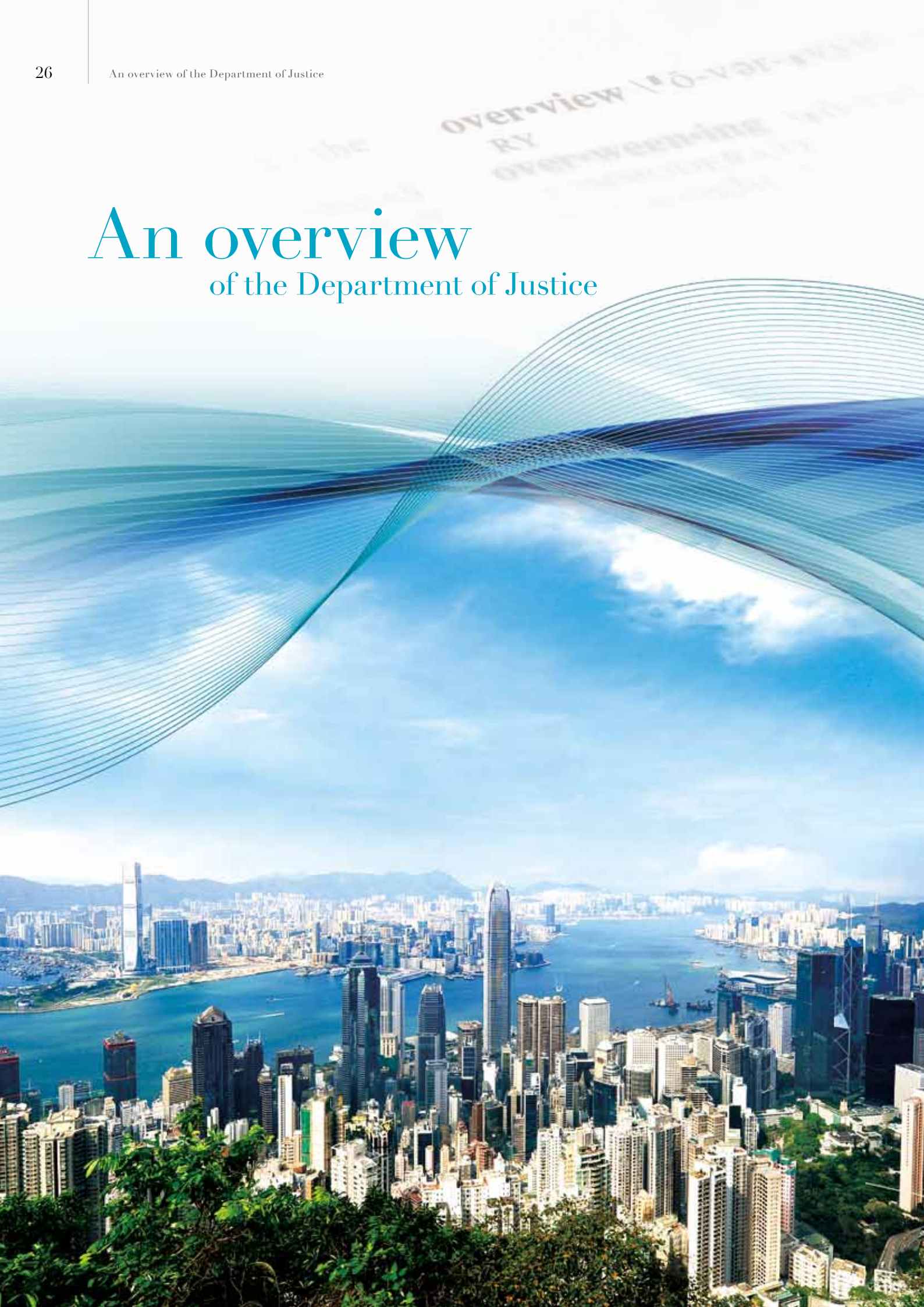
Mr Frank Poon was appointed Solicitor General in August 2010 in succession to Mr Ian Wingfield who retired from that post after 28 years of dedicated service in the government. Mr Kevin Zervos, SC, was appointed Director of Public Prosecutions in January 2011 in succession to Mr Ian McWalters, SC, who took up the appointment of Judge of the Court of First Instance of the High Court.

Mr Grenville Cross, SC, former Director of Public Prosecutions, and Mr Benedict Lai, Law Officer (Civil Law), were awarded the Silver Bauhinia Star in July 2010 and July 2011 respectively.

Four serving/retired Principal Government Counsel of the department were awarded the Bronze Bauhinia Star: Mrs May Tam and Mr Arthur Luk, SC, in July 2010, and Ms Lena Chi and Mr James O'Neil in July 2011.

An overview

of the Department of Justice



An overview of the Department of Justice



The role of the Secretary for Justice

The Department of Justice is headed by the Secretary for Justice, who fulfils a wide range of duties. Chief among these is to act as the principal legal adviser to the Chief Executive, to the government and to individual government bureaux, departments and agencies. The Secretary for Justice is also a member of the Executive Council.

The decision to prosecute criminal offences is the sole responsibility of the Secretary for Justice who in this respect operates independently, free

from any interference. The Secretary for Justice is also the defendant in all civil actions brought against the government and represents both the government and the public interest in the courts.

As guardian of the public interest in a wider sense, the Secretary for Justice may make application for judicial review to enforce public legal rights. The Secretary has a right to intervene in any case involving a matter of great public interest. The Secretary represents the public interest as counsel to tribunals of inquiry. The Secretary is the Protector of Charities and must be joined as a party in all actions to enforce charitable or public trusts. The Secretary for Justice also has a more

general public interest role as *amicus curiae* (literally, friend of the court), the most important example of which is bringing alleged contempts of court to the notice of the courts.

Amongst many other functions, the Secretary for Justice is Chairman of the Law Reform Commission, Vice-Chairman of the Fight Crime Committee, and serves on the Chief Secretary for Administration's Policy Committee, the Judicial Officers Recommendation Commission and the ICAC's Operations Review Committee.

The Secretary for Justice's Office

The Secretary for Justice's Office provides legal and administrative support in respect of the Secretary for Justice's many functions. This includes assisting the Secretary in all



matters related to the Executive and Legislative Councils, be it the promotion of legislation or providing answers to legislators' questions. Members of the office ensure that the Secretary is fully briefed on the issues which arise, assist in the analysis of those issues, and help to prepare speeches and responses.

Information and public relations

The department considers that part of its role is to promote understanding in the community of Hong Kong's legal system. To that end, the Public Relations and Information Unit of the Secretary for Justice's Office provides information to the public and the media about the work of the department through press releases, press conferences, and arranging for counsel to give media interviews and participate in TV and radio public affairs programmes. Arrangements are also made for counsel to contribute articles to newspapers on a variety of law-related issues. The unit also co-ordinates the preparation of educational materials and publications to introduce aspects of Hong Kong's legal system and foster commitment to the rule of law.

The divisions

The lawyers in the department work within one of five distinct legal "divisions". These divisions are Civil, International Law, Law Drafting, Legal Policy and Prosecutions. The legal divisions



The Secretary for Justice with division heads (from right) : Director of Administration & Development, Miss Susie Ho; Solicitor General, Mr Frank Poon; Law Draftsman, Mr Eamonn Moran; Secretary for Justice, Mr Wong Yan Lung, SC; Law Officer (Civil Law), Mr Benedict Lai; Law Officer (International Law), Ms Amelia Luk; and Director of Public Prosecutions, Mr Kevin Zervos, SC

are provided with general support by the Administration & Development Division, which is headed by the Director of Administration & Development.

Each of the legal divisions is headed by a "Law Officer" who, as well as directing the work of their respective divisions, assists the Secretary for Justice in the overall management of the department. The Law Officers are the Law Officer (Civil Law) (who heads the Civil Division), the Law Officer (International Law) (heading the International Law Division), the Law Draftsman (who heads the Law Drafting Division), the Solicitor General (heading the Legal Policy

Division) and the Director of Public Prosecutions (heading the Prosecutions Division).

While each of the legal divisions has distinct areas of responsibility, many issues arise where input from more than one division or specialist unit within a division may be necessary. In such cases, lawyers from each of the relevant units will work together to ensure that the client department or bureau is provided with comprehensive legal advice which fully meets the client's needs.

civ·ies \vī-kēz
and duties of citizens
civ·il \ˈsī-vəl\ adj 1 : of or
state as a political body
or relating to legal pro
private right

Civil Division



Civil Division



Counsel in the division

The Civil Division has a major role in providing legal advice on a wide range of legal issues on civil matters to all government bureaus and departments. The division also represents the government in the conduct of all civil claims and disputes involving the government.

The Civil Division comprises four major units:

- Advisory
- Civil Litigation
- Commercial
- Planning, Environment, Lands & Housing

Counsel of this unit advise various government bureaus and departments on civil law issues of a general nature, including statutory interpretation, administrative law issues and legislative proposals in a wide range of areas, such as:

- agricultural, fisheries and conservation matters
- civil aviation, shipping and public transport
- civil service and disciplinary proceedings
- education and social welfare
- election related matters
- employment related matters
- matters relating to the police force, fire services, correctional and customs services
- protection of personal data
- public health and environmental hygiene
- recreation and culture

Advisory Unit



Civil Division counsel (first right) with the Liquor Licensing Board

Matters of particular interest on which the unit advised in 2010 and 2011 include:

Civil service

- issues relating to disciplinary proceedings in the civil service arising from recent court decisions

Elections

- legislative amendments regarding the method for the election of the Chief Executive and the formation of the Legislative Council (LegCo) with 10 extra seats in 2012
- legislative amendments to make changes to electoral and related arrangements, such as allowing a party to an election petition concerning a LegCo, District Council (DC) or Village Representative (VR) election to lodge an appeal directly to the Court of Final Appeal against the determination of the petition by the Court of First Instance, allowing letters sent free of postage by several categories of candidates in a LegCo election and candidates in an Election Committee (EC) subsector election to contain information on certain other candidates, increasing the financial assistance to candidates in DC elections, and providing reliefs for minor errors to candidates under the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554)
- general electoral matters in the VR, Heung Yee Kuk, DC and EC subsector elections in 2011

Employment

- measures to improve enforcement of Labour Tribunal awards
- introduction of a statutory minimum wage

Social welfare

- financial assistance for elderly persons who choose to retire on the Mainland

Protection of personal data

- amendments to the Personal Data (Privacy) Ordinance (Cap 486) to regulate the sale of personal data and the use of personal data for direct marketing, to add provisions to the data protection principles, to create new offences and give the Privacy Commissioner various powers to enhance personal data protection, to introduce new exemptions in respect of certain requirements under the Ordinance, and to make technical amendments to improve the operation and presentation of the Ordinance

Road traffic and shipping

- amendment to the Road Traffic Ordinance (Cap 374) to impose stricter controls over driving under the influence of drugs and to confer necessary enforcement powers on the Police to combat this effectively
- introducing a package of statutory measures to deter driving malpractices and speeding by

- Public Light Bus (PLB) drivers, and to achieve better control and regulation of the speed of PLBs (eg imposing a maximum speed limit for PLBs and mandating installation of suitable safety equipment on PLBs)
- major review of the Merchant Shipping (Seafarers) Ordinance (Cap 478) to implement the latest requirements under the Convention on Standards of Training Certification and Watchkeeping for Seafarers 1978, and the Maritime Labour Convention 2006
- setting up a new licensing scheme to regulate the operation of private columbaria
- the government's "Scheme \$6 000" to pay \$6 000 to every adult holder of a Hong Kong permanent identity card
- reciprocal enforcement of matrimonial judgments between Hong Kong and the Mainland
- matters arising from the subcommittee appointed by the Legislative Council's House Committee to study issues relating to the power of the Legislative Council to amend subsidiary legislation

Others

- issues arising from the Adaptation of Laws (Military References) Bill 2010
- matters relating to developments in country parks
- legislative amendments to ban trawling in Hong Kong waters and to pursue sustainable fisheries development in Hong Kong through limiting entry of new fishing vessels, the designation of Fisheries Protection Areas and the restriction of fishing activities with the use or aid of non-fishing vessels
- issues relating to genetically modified organisms under the Genetically Modified Organisms (Control of Release) Ordinance (Cap 607)
- licensing matters relating to clubs and guesthouses
- advising on the electronic system for processing liquor licences, the 2011 public consultation on liquor licensing, and advising on liquor licensing approvals at the Liquor Licensing Board's weekly meetings

Civil Litigation Unit

Counsel in the Civil Litigation Unit act as instructing solicitors or advocates, as the case may be, in representing the government in the conduct of civil claims and disputes involving the government, and some of the work has been briefed out to private practitioners as may be required.

As in previous years, public law cases have formed a major part of the unit's work. Some of the more important of these are mentioned under "Notable cases" in the "Highlights of 2010 and 2011" chapter.

In recent years, one notable phenomenon in public law litigation has been the dramatic increase in the number of cases brought by people who came to Hong Kong and subsequently lodged claims for protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.



Mr David Chong, SC, Chief Counsel (third left), and Mr Shawn Ho, State Counsel (second left), of the Singapore Attorney-General's Chambers, who participated in an attachment programme organised by Civil Division in February 2011

Following the decision of the Court of First Instance in *FB v Director of Immigration* (HCAL 51/2007), a revised administrative screening scheme has been developed by the Administration for handling claims made under the Convention. In October 2009, a dedicated team was set up within the division to provide legal support to deal with Convention-related and other immigration cases, including advice on the enhanced screening procedure, legal representation at oral hearings before tribunals and in judicial review cases before the Court of First Instance and any subsequent appeals.

Apart from public law litigation, and in addition to the type of cases already referred to, the Civil Litigation Unit handles a wide spectrum

of other civil litigation matters on behalf of the government, including personal injury cases, civil service matters, immigration matters, charities and trusts matters, revenue appeals, telecommunications appeals, and general recovery of government debts.

To enhance mutual understanding and to share experience in areas of civil law work common to both jurisdictions, Civil Division organised an attachment programme for members of the Civil Division of the Attorney-General's Chambers of Singapore in February 2011, who were briefed on the structure, operation and work of the division. The attachment provided a useful opportunity for the exchange of ideas and information on the work of the Civil Divisions in the two jurisdictions.

Commercial Unit

Work on commercial law is generated by the government's own commercial requirements, by the government's regulation of utilities, franchisees and licensees, and by certain commercial services provided to the community. During 2010 and 2011, counsel in the unit advised on such matters as:

- the rewrite of the Companies Ordinance (Cap 32)
- reform of banking and securities and futures legislation, including implementation of the Basel II recommendations, regulation of listed companies and codification of the listing rules, changes to the supervisory framework to enhance investor protection and education, company investigation, investment criteria, establishment of the Financial Dispute Resolution Centre and a scripless securities market.
- regulation of the Mandatory Provident Fund Schemes (MPF) and related legislative proposals, including the regulation of MPF intermediaries
- telecommunications, broadcasting and electronic transactions (including the preparation and implementation of legislative proposals on the establishment of the proposed Communications Authority, the consultation on public service broadcasting and the future of RTHK, the proposed Spectrum Policy Framework and proposals concerning licensing and frequency assignment for Broadband Wireless Access service
- drafting agreements and major project work such as the Disney theme park, the Ocean Park Redevelopment Plan, Shatin Central Link, South Island Line (East), West Island Line, the new cruise terminal facilities and the Hong Kong-Zhuhai-Macao Bridge
- the establishment of various trust funds and schemes, including the "Trust Fund in Support of Reconstruction in the Sichuan Earthquake Stricken Areas" and the "Community Care Fund"
- privatisation and the sale of the government's shares in publicly listed companies
- public-private partnerships and private sector involvement
- review of consumer protection legislation
- the Deposit Protection Scheme (Amendment) Bill
- government procurement of goods and services and preparation of tender documents/contracts
- a number of major computer contracts, including in some cases their termination
- general competition policy in Hong Kong, including the proposed introduction of a new cross-sector competition law, and initiatives in specific sectors such as telecommunications, broadcasting, electronic trade manifests and the auto-fuel industry
- school service contracts for government, aided and direct subsidy schools
- development of private hospital services
- the regulatory functions of government in the West Kowloon Cultural District project

- the proposed establishment of an independent Insurance Authority
- proposed legislation to enhance the anti-money laundering regulatory regime in respect of the financial sector, including the preparation of the Prevention of Money Laundering and Terrorist (Financial Institutions) Bill
- documentation and implementation of Islamic finance initiatives
- review of the Trustee Ordinance (Cap 29)
- a number of financial schemes to assist research and development and small and medium enterprises

Planning, Environment, Lands & Housing Unit

The Planning, Environment, Lands & Housing (PEL&H) Unit has two teams, namely, the Advisory Team and the Litigation Team. Counsel in the PEL&H (Advisory) Team advise the government on a wide range of matters relating to town planning, environmental protection and control, lands, regulatory control of building operations and building management, rating, government rent and declaration of monuments, including a significant number of infrastructure projects, policy initiatives and legislative proposals.

PEL&H (Advisory) Team

In 2010 and 2011, significant matters and projects advised on by the team included:



Town planning

- preparation of Development Permission Area plans under the Town Planning Ordinance (Cap 131) to protect Country Park enclaves from incompatible developments



A model of the new cruise terminal

Environmental protection

- use of electric vehicles in Hong Kong
- extension of the environmental levy scheme on plastic shopping bags
- prohibition against idling vehicles
- review of air quality objectives

Land and buildings

- post-enactment review and proposed amendments to the Land Titles Ordinance (Cap 585)
- land-related commercial agreements and tender documents relating to the Kai Tak, Lion Rock, Shing Mun and Tseung Kwan O Tunnels

- proposals for mandatory buildings and windows inspection schemes
- introduction of the Special Stamp Duty to deter speculative activities in the property market
- proposal to introduce legislation to regulate sales of first-hand residential properties
- measures and policies to address community concerns over the way in which the government's concessionary policy to allow private buildings to increase floor area to include green and amenity features has been used by developers

Heritage conservation

- implementation of the "Revitalisation of Industrial Buildings" scheme
- declaration of important historical buildings, including Ho Tung Garden, St Stephen's College and King's College

Major infrastructure projects

One of the major projects the PEL&H (Advisory) Team advised on is a new cruise terminal (including two berths) at the former Kai Tak runway. Site formation works commenced in November 2009 and the first berth is expected to come into operation in mid-2013. The second berth will be commissioned in 2014. The cruise terminal building works contract (including the customs, immigration and health quarantine facilities and other supporting facilities)

commenced in May 2010. The terminal building is expected to come into operation in mid-2013. The team also assists the Tourism Commission in the tender process to procure a tenancy agreement for operation and management of a certain portion of the new cruise terminal.

Other major projects include the Express Rail Link, the Hong Kong-Zhuhai-Macao Bridge, the proposed development at Lok Ma Chau Loop, the proposed Shatin-Central Link and the Liantang / Heung Yuen Wai Border Crossing Facilities.

PEL&H (Litigation) Team

Counsel in the PEL&H (Litigation) Team act as instructing solicitors or advocates, as the case may be, in representing the government in the conduct of civil claims and disputes involving the government, and some of the work has been briefed out to private practitioners as may be required. A wide variety of litigation cases fall within the purview of the team, which include both public law cases and private law cases, and at different court levels and at the tribunal level, relating to land, town planning, building, environment, housing, heritage conservation, rating and government rent, land resumption and other types of statutory compensation claims. The team also handles arbitration cases (other than those related to construction works).

In 2010 and 2011, the PEL&H (Litigation) Team handled a wide variety of litigation cases, including:

- town planning appeal cases and related judicial reviews
- building appeal cases and related judicial reviews
- land dispute cases and related judicial reviews
- environmental law related judicial reviews
- environmental protection appeals, such as the Air Pollution Control Appeal Board appeal cases and the Noise Control Appeal Board appeal cases
- rating and government rent appeal cases
- government rent exemption cases
- statutory compensation cases (including land resumption cases)
- arbitration cases



Christina Cheung Kam-wai

Principal Government Counsel, Civil Division

Christina Cheung graduated from the University of Keele, UK with a joint degree in law and economics in 1986. Having completed her training in the UK, Christina stayed there to practise as a solicitor in private practice until she returned to Hong Kong to join the then Attorney General's Chambers in 1995 as a Senior Crown Counsel.

Christina's experience lies mainly in civil law matters and she has been in her present posting in the Civil Litigation Unit of the Civil Division since joining the department. She was promoted to Deputy Principal Government Counsel in 2001 and Principal Government Counsel in 2008. Christina is presently in charge of the Civil Litigation Unit which is responsible for all civil proceedings involving government and statutory bodies. The unit handles a wide range of civil litigation and one of its main areas of work is judicial review proceedings. The unit has been kept very busy with the surge in judicial review proceedings in recent years, coupled with the growth in complexity and diversity of legal challenges against government decisions, both in terms of their subject matter and the arguments involved. Looking ahead, Christina expects that the unit's workload will increase as judicial challenges are likely to continue to grow in a free society like Hong Kong. In a changing legal environment, Christina considers continuing training vital for the professional development of government counsel to meet the demands of society and to enable them to successfully discharge their professional duties.

Despite the pressure, Christina considers her work highly meaningful *"as many of the court's decisions in cases handled by the unit have significant implications for the development of the HKSAR's rule of law and the administration of justice generally."*



Beverly Yan Man-wai

Deputy Principal Government Counsel, Civil Division

Beverly Yan graduated from the University of Hong Kong and joined the Commercial Unit as a Government Counsel in 1995 after several years of private practice in commercial and company matters.

"The decision to join the department wasn't a hard one. After working in a law firm for a few years, I wanted to practise law in a place where costs and returns in money terms weren't the primary concern. I thank the Lord that this was and still is a correct decision."

Beverly was promoted to Senior Government Counsel in 1996. Her first challenging task was advising the government on the enactment of the Securities and Futures Ordinance. *"I was the first port of call and co-ordinator within the department for most of the time and had to answer on the spot all legal questions from the Bills Committee during their over 12-month scrutiny of the Bill,"* she says. *"Through this exercise, thanks to all the expert advice and input from my colleagues in other units and divisions, I've learnt a lot about the Basic Law, human rights and legal policy - and even sharpened my fading memory of criminal law and administrative law!"*

In 2010, Beverly was promoted to Deputy Principal Government Counsel and now heads team II of the Commercial Unit which handles company, securities, banking, trusts, mandatory provident funds, insurance, transport, government procurement of services and general commercial work. *"I enjoy working with counsel in teams. It's often a mutual learning experience. We all become wiser and the client is no doubt better advised."*



Jenny Fung Mei-fung

Assistant Principal Government Counsel, Civil Division

Jenny Fung joined the Civil Service in 1987 as an Assistant Registrar in the Trade Marks Registry of the Registrar General's Department (now the Intellectual Property Department). In 1990, she won a Government Legal Scholarship to study for the PCLL at the University of Hong Kong and joined the then Attorney General's Chambers as a trainee solicitor.

On qualifying as a solicitor in 1993, Jenny was appointed as a Crown Counsel and spent her first year in the Prosecutions Division. In 1994, Jenny moved to the Civil Division where she has worked exclusively in the Civil Litigation Unit, apart from a short period at the Planning, Environment, Lands & Housing (Advisory) Unit. Jenny has handled a wide variety of cases involving administrative law, personal injuries, tax, town planning, and environmental law. Currently, she is acting in the post of Deputy Principal Government Counsel where she heads a team of counsel specialising in commercial litigation.

Over the years, Jenny has contributed substantially to training. She has acted as principal and mentor to legal trainees in the department and has given careers talks about the legal trainee scheme to

PCLL students at Hong Kong universities. Jenny has been an external examiner for the PCLL Civil Advocacy examination of the University of Hong Kong since 1997 and recently conducted a seminar on administrative law for Senior Administrative Officers in the government.

In March 2010, Jenny led a delegation to Guangzhou to present a paper on "The Administrative Disputes Resolution System Adopted by the Hong Kong Government" at an academic conference involving delegates from the Mainland, Taiwan, Macao and Hong Kong. In the same year, in a bid to improve herself, she qualified as an accredited mediator with the Centre for Effective Dispute Resolution.

Jenny is keen to serve the community and has served on the Free Legal Advice Scheme organised by the Duty Lawyer and Free Legal Advice Scheme since 1993.

"I find litigation work both dynamic and intellectually challenging. I have a lot of satisfaction in being able to apply my legal knowledge to solve the problems at work. I also find it gratifying that I am able to use my legal knowledge to help people."



SIU Wai-leong

Senior Law Clerk I, Civil Division

Siu Wai-leong joined the Civil Service in 1982 as a Clerical Officer II (now called Assistant Clerical Officer). His first posting was to the Law Drafting Division, where his major duty was to proof-read draft legislation, before moving to the District Court Unit of Prosecutions Division at the end of 1982.

Wai-leong became a Law Clerk in 1984 and was the clerk in-charge of the High Court Unit (now called the Court of First Instance Unit). In 1989, Wai-leong was promoted to Senior Law Clerk II and was transferred to the Appeals Unit in Prosecutions Division in 2001. A move to Civil Division came at the end of that year, when Wai-leong was posted to the Debt Collection Unit. He was promoted to Senior Law Clerk I in 2005, having acted at rank since 2002. His major duties now include conducting hearings and trials in the Small Claims Tribunal.

Wai-leong finished his Higher Diploma in Legal Studies at City Polytechnic (now City University) in 1992 and obtained a BSc (Business) degree from the University of London in 2008.

"It's a gift for me that I've been able to work and learn in these three major divisions", he says. "I've been working in the department for almost 30 years. The life in the department is the most important part of my life."



International Law Division

international law
to or affecting two or
relating to, or constituting
two or more nations
international ; one that is
organization of international
internationalise Brit
internationalism ; the
of cooperation
the world is
the world is

International Law Division



Counsel in the division

The International Law Division comprises the Treaties & Law Unit and the Mutual Legal Assistance Unit. It has three important roles: it provides legal advice on public international law to the government; it negotiates international agreements, or provides legal advisers for such negotiations; and it handles requests for legal co-operation between the HKSAR and other jurisdictions.

Advice

The subjects on which the Treaties & Law Unit gives advice include international trade law, privileges and immunities, civil aviation

and maritime matters, international labour conventions, human rights, environment and health, visa abolition and outer space. The unit also advises on the drafting and interpretation of co-operative agreements and arrangements which range from customs and police co-operation to cultural and education co-operation. The Mutual Legal Assistance Unit also performs an advisory role in relation to aspects of international criminal law and international legal co-operation in criminal matters. In addition, the division advises on the enactment of legislation to implement international agreements in the HKSAR. The subject matter includes United Nations

The division's Law Officer, Amelia Luk (third left), explains the division's work to a group of journalists from the USA



Security Council Resolutions, maritime matters, conservation, surrender of fugitive offenders and mutual legal assistance in criminal matters.

Negotiations

Bilateral agreements

Counsel in the division negotiate agreements on behalf of the HKSAR with foreign countries on the surrender of fugitive offenders, mutual legal assistance in criminal matters and the transfer of sentenced persons. The HKSAR has concluded 55 agreements on these three areas.

Apart from conducting negotiations, counsel in the division also provide legal support in bilateral negotiations as part of the HKSAR delegation. The subject matter of negotiations includes air services, avoidance of double taxation, customs co-operation, free trade agreements, agreements on investment promotion and protection and

visa abolition. The total number of bilateral agreements to which the HKSAR is a party now extends to 200.

Mutual legal assistance in criminal matters

These agreements provide for the rendering of assistance in relation to the investigation and prosecution of crimes, and proceedings related to criminal matters. The types of assistance include taking of evidence, executing requests for search



Counsel from the division negotiating with their Russian counterparts



Our negotiating team on transfer of sentenced persons attending negotiations in Teheran, Iran

and seizure, producing documents, restraining and confiscating proceeds of crime, transferring persons to give assistance and effecting service of legal process.

Surrender of fugitive offenders

The parties to an agreement for the surrender of fugitive offenders undertake to surrender to each other, subject to conditions, persons who are accused of serious offences, or who have absconded after conviction. The conduct constituting the crime must amount to an offence according to the laws of both parties. These agreements help to prevent the HKSAR from becoming a haven for criminals from abroad and facilitate the return to the HKSAR of criminals who have fled overseas.

Transfer of sentenced persons

These agreements enable foreign nationals serving

a sentence of imprisonment in the HKSAR to return to their home country so as to serve out the remainder of their sentence in an environment which is free from cultural and language barriers and where they will be able to receive family support. Similarly, people from the HKSAR who are serving sentences of imprisonment imposed in foreign jurisdictions may return to the HKSAR to serve the balance of their sentences in a familiar environment and thereby enhance their prospects of rehabilitation.

Air services

Air services agreements provide the framework for scheduled air services to operate between the HKSAR and its bilateral partners. They are negotiated on the basis of a balanced exchange of air traffic rights. Negotiations have also taken place to provide for overflight agreements with appropriate countries. The HKSAR has concluded 66 air services agreements with other jurisdictions.

Avoidance of double taxation

These agreements and arrangements provide for the avoidance of double taxation of persons carrying on cross-border economic activities. The agreements and arrangements may relate to specific income (such as income from international air and maritime traffic), or may provide for comprehensive double taxation avoidance. The HKSAR has concluded 28 comprehensive double taxation agreements and agreements in respect of shipping and air services income, and has reached substantial agreement with a number of jurisdictions on comprehensive agreements.

Investment promotion and protection

An investment promotion and protection agreement creates favourable conditions for greater investment by investors of one contracting party in the area of the other. Such an agreement includes provision for the investments of each party to be accorded fair and equitable treatment with no discrimination, and for compensation to be paid for losses caused by war or other armed conflict, revolution, national emergency or riot; and for deprivation of investments. Currently, the HKSAR has concluded 17 investment promotion and protection agreements with other jurisdictions.

Visa abolition

These agreements and arrangements provide for mutual dispensation of visa requirements and

facilitate travel between the HKSAR and other jurisdictions. These arrangements are especially important for businessmen and tourists. The number of agreements or arrangements which enable holders of HKSAR passports to enjoy visa-on-arrival or visa-free access to other jurisdictions has reached 143.

Multilateral agreements

Counsel in the division participate in international meetings and diplomatic conferences held by international organisations. Counsel may form part of the "Hong Kong, China" delegation, as in the case of the World Trade Organization of which the HKSAR is a member. They may also be members of the PRC delegation, as in the case of the Hague Conference on Private International Law or the International Civil Aviation Organization, where membership is limited to states.

Very often these meetings and conferences discuss the drafting and conclusion of multilateral agreements or matters arising from their implementation. Currently, over 240 multilateral treaties apply to the HKSAR.

Requests for assistance

The Mutual Legal Assistance Unit discharges the responsibilities of the Central Authority of the HKSAR for the purposes of mutual legal co-operation in criminal matters. The unit co-ordinates and processes requests to and from

the HKSAR for the surrender of fugitive offenders and for mutual legal assistance; and advises the government on applications for the transfer of sentenced persons to and from the HKSAR. The unit also handles letters of requests from overseas courts or tribunals pursuant to the Evidence Ordinance (Cap 8). The unit also acts as the Central Authority of the HKSAR under the Hague Convention on the Civil Aspects of International Child Abduction and the Child Abduction and Custody Ordinance (Cap 512) to process return and access applications to and from Convention countries.

Other work

Financial Action Task Force Against Money Laundering (FATF)

The Mutual Legal Assistance Unit provides legal support to the Financial Secretary and Secretary for Security in relation to the HKSAR's participation in the FATF as a full member, under the name "Hong Kong, China". Counsel attend international meetings of the FATF, participate in expert working groups and act as expert legal assessors in mutual evaluations of fellow members' implementation of measures to combat money laundering and terrorist financing.

International seminars

Counsel in the division contribute to maintaining the HKSAR's international profile by

regularly speaking and participating in regional and international seminars organised by other governments and international organisations such as the Hague Conference on Private International Law. Counsel also frequently conduct briefings for local and overseas law enforcement agencies on mutual legal assistance matters and deliver papers in the field of international co-operation in criminal matters such as asset recovery and other forms of mutual legal assistance.

Significant developments and events in 2010 and 2011

Hague Conference on Private International Law

The HKSAR currently applies eight conventions on private international law which were negotiated under the Hague Conference. Over the years, the department has established an excellent working relationship with the Hague Conference through active participation in its meetings.

The Hague Conference is currently considering the establishment of a regional office in the HKSAR and counsel in the division are liaising and working with their counterparts in relevant jurisdictions in relation to this. Counsel in the division actively participated in the Fourth Asia Pacific Conference of the Hague Conference held in Manila from 26 to 28 October 2011. The Asia Pacific Conference considered the



Counsel attending the Fourth Asia Pacific Conference of the Hague Conference in Manila

proposed establishment as an excellent measure to strengthen the presence of the Hague Conference in the region and encouraged the early establishment of the regional office as soon as practicable in 2012.

Free Trade Agreements (FTAs)

Counsel in the division serve as members of the HKSAR team in the consultations with Mainland authorities on the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA), and also advise the Trade and Industry Department on the implementation of CEPA and its supplements in conjunction with other divisions of the department.

Counsel in the division also actively participate in the government's programme of negotiating FTAs with the HKSAR's overseas trading partners.

The closer economic partnership agreement between the HKSAR and New Zealand was the first of these.

Another FTA with the member states of the European Free Trade Association (EFTA), namely, Iceland, Liechtenstein, Norway and Switzerland was signed on 21 June 2011 together with three bilateral agreements on agriculture with Iceland, Norway and Switzerland respectively. In addition, the HKSAR and the member states of EFTA also signed an agreement on labour.

Counsel in the division continue to provide full legal support in bringing the above agreements into force and in other upcoming negotiations on FTAs.

Air Services Negotiation Conference 2011

Counsel in the division participated in the Fourth Air Services Negotiation Conference held under the auspices of the International Civil Aviation Organization. The conference took place in Mumbai, India from 17 to 22 October 2011 and was hosted by the Indian Ministry of Civil Aviation. This conference was primarily organised for aviation negotiators of different jurisdictions to conduct air services negotiations or consultations in a central meeting place. Counsel in the division provided legal support in the bilateral consultations between the HKSAR and a number of countries which participated in this conference.



Amelia Luk

Law Officer, International Law Division

Amelia joined the then Legal Department as an articled clerk (called legal trainee nowadays) in 1979 after graduating from the University of Hong Kong. She was appointed as Assistant Crown Counsel in March 1981 after qualifying as a solicitor in Hong Kong and was "promoted" to Crown Counsel after just 11 days. (In fact the rank of "Assistant Crown Counsel" was abolished on 1 April 1981.) Amelia worked in the Civil Division from 1981 to 1996, with a short stint in the Law Reform Commission from 1982 to 1984. She was transferred to the International Law Division in 1996 and has been heading that division since 2008.

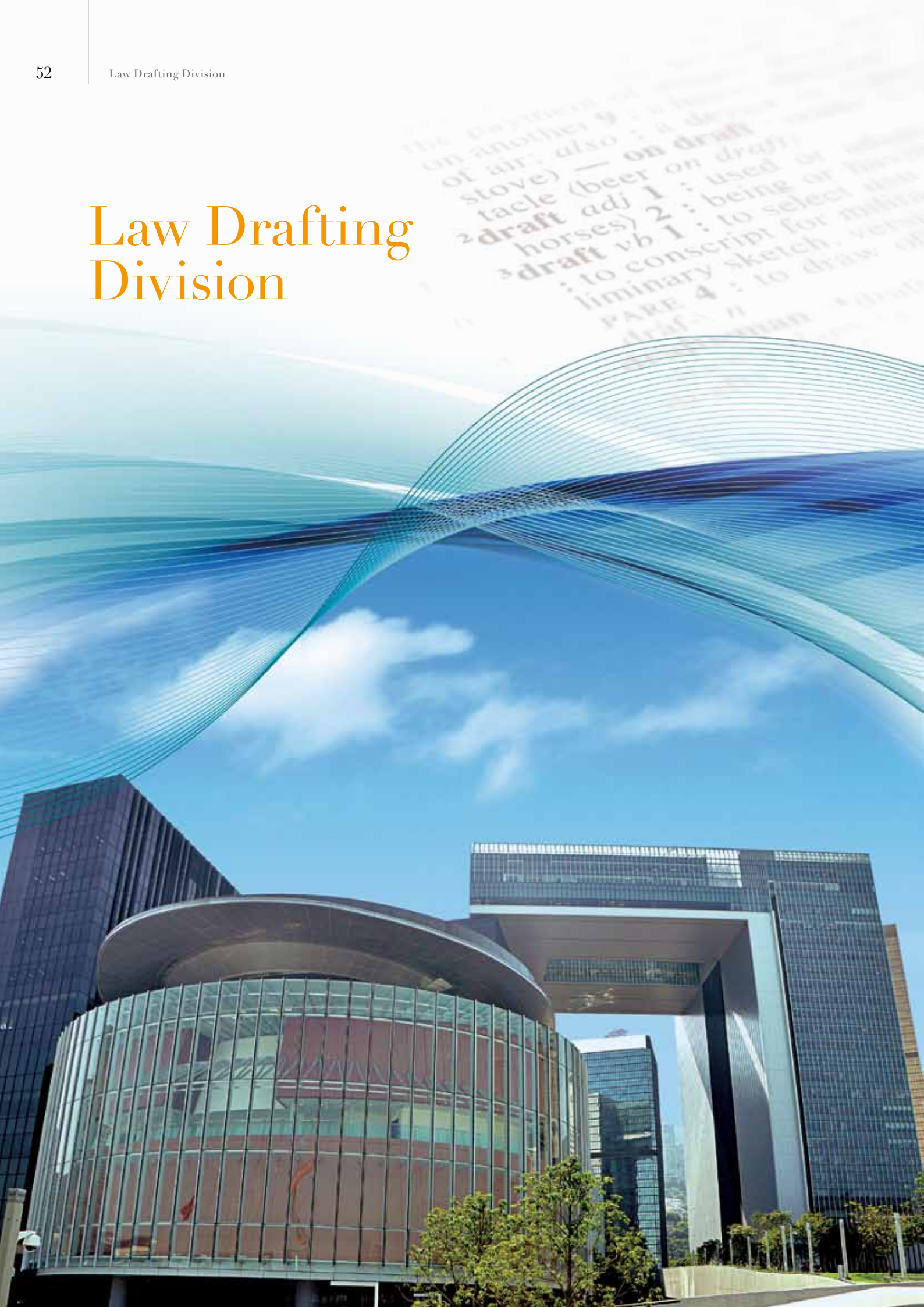
"Counsel in the International Law Division are not just jet-setters, as has been suggested by some!" Amelia says. *"They do serious and important work for the Hong Kong Government, such as representing the HKSAR in bilateral negotiations, participating as members of the Chinese or HKSAR delegation in international conferences, and so on. The division's work is an important facet of the conduct of the HKSAR's external affairs under the Basic Law and the principle of 'one country two systems'",* adds Amelia. She enjoys the work in the division as it brings her

into contact with counterparts in many different jurisdictions. The work also brings new challenges all the time. Mutual respect and understanding is the key to working with lawyers in countries with a different legal system.

Amelia is now the longest serving counsel in the whole department. *"I had to wait for the departure of the former DPP, Mr Grenville Cross, before I could make this claim,"* Amelia says.

For recreation, Amelia enjoys reading and stamp collecting. In the latter respect she proudly holds a complete collection of predominantly unused Australian stamps for the period 1913 to 1997. She assists her husband in running the stamp stall at the Michaelmas Fair at St. John's Cathedral every year. She also works as unpaid track cleaner for her husband's model railway layout at home which is believed to be the biggest O-gauge layout in Hong Kong.

Law Drafting Division



Law Drafting Division



Counsel in the division

Most major public policies are implemented through legislation. The task of keeping pace with the demands of a crowded legislative timetable falls on the Law Drafting Division which is responsible for drafting all legislation, both Ordinances and subsidiary legislation (such as rules and regulations), proposed by the government. It also vets all non-government Bills and all subsidiary legislation put forward by non-government bodies to make sure that they comply with the current drafting practice on format and style. The division is also responsible for ensuring that the published version of Hong Kong's legislation is up to date.

Legislation

Where a government proposal for new legislation is put forward, the drafting counsel will need to liaise with those making the proposal to gain a thorough understanding of the background and intended effect of the proposal. The drafting counsel must also analyse the drafting instructions carefully to ensure that the proposal is conceptually sound and legally effective. "Drafting instructions" refers to the document prepared for the drafting counsel by the responsible government policy bureau which sets out the background to the proposal and what the bureau

wishes to achieve with the new legislation. The drafting instructions also specify which existing provisions will need to be amended in order to achieve that end.

After the proposed legislation is drafted, the drafting counsel assists in steering it through the legislative process. In the case of government Bills and subsidiary legislation to be made by the Chief Executive, the legislation will be submitted to the Executive Council for consideration. Drafting counsel attend the Executive Council meetings to provide advice on general legal issues and on questions relating to drafting.

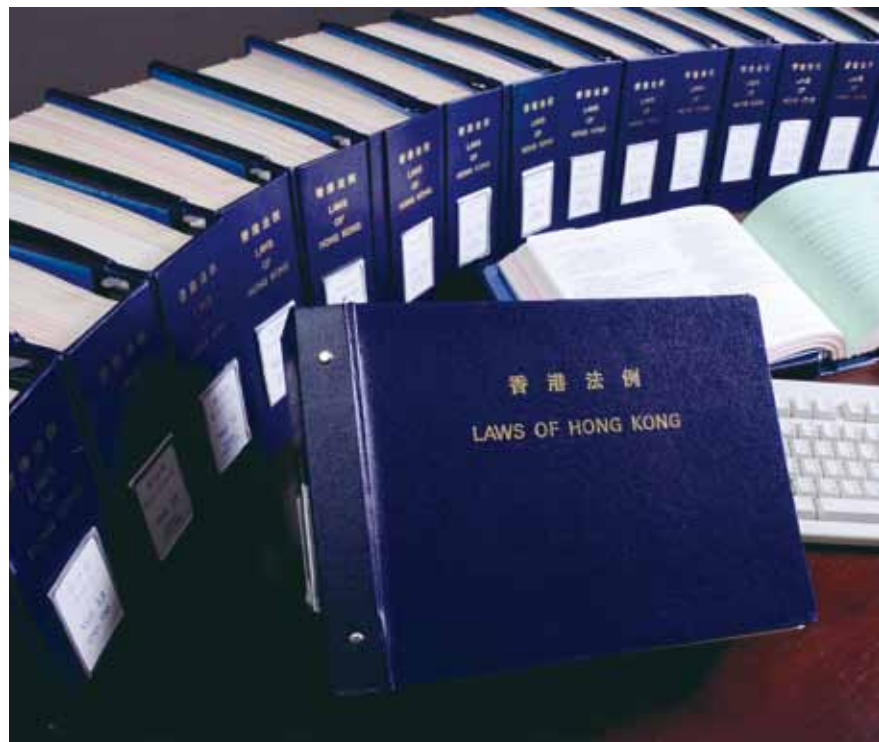
Usually, a Bills Committee (made up of members of the Legislative Council with an interest in the particular policy area or the subject of the Bill) will be established to consider a Bill after it has been introduced into the Legislative Council. The drafting counsel attends the Bills Committee meetings to advise on general legal issues and on drafting-related questions. (If the English text and Chinese text of the Bill are drafted by two different counsel, both drafting counsel will attend the Bills Committee meetings.) The drafting counsel also drafts all committee stage amendments which are proposed, or agreed to, by the government. These amendments are considered and decided upon



Drafting counsel bid farewell to the former Legislative Council Chamber

(at the stage when the Legislative Council sits as a Committee of the whole Council) before the Bill is put to the vote for its final reading in the Legislative Council meeting. Likewise, if an item of subsidiary legislation should be referred to a sub-committee after it has been laid on the table of the Legislative Council, the drafting counsel will attend the sub-committee meetings and draft any amendments which the government may require.

Apart from drafting legislation for policies initiated by the government, the division also undertakes any drafting work necessary to apply to Hong Kong relevant national laws of the PRC (that is, those listed in Annex III to the Basic Law), including the English translations of those laws.



Hong Kong's legislation is fully bilingual, with all new legislation being drafted and enacted in both Chinese and English. Both language versions of a piece of legislation are equally authentic, and drafting counsel must therefore ensure that the text in each language bears the same meaning and correctly reflects the policy intention.

Compilation and publication of laws

Loose-leaf edition of the Laws of Hong Kong

Hong Kong's legislation is published in both a hard copy loose-leaf edition and in electronic form freely available over the internet. For the hard copy version, which contains the bilingual texts of

all Ordinances and subsidiary legislation, periodic issues of new or replacement pages incorporating new legislation or amendments to the texts are sent to subscribers, who need only substitute them for the outdated pages. The hard copy version now comprises 50 volumes, containing 693 Ordinances and 1 425 items of subsidiary legislation. Volume 1 of the loose-leaf edition includes for reference the Basic Law and the national laws that apply to Hong Kong, as well as other constitutional instruments and related decisions.

Bilingual Laws Information System

The on-line legislation database, known as the Bilingual Laws Information System (BLIS), is available free to the public on the internet either

directly at www.legislation.gov.hk or through the department's homepage at www.doj.gov.hk. In addition to providing access to the current legislation of Hong Kong, the database also allows the public to retrieve the previous version of any statutory provision which has been repealed or amended since 1 July 1997. A marker placed against a section heading alerts the reader to the fact that that provision has been amended or repealed (and the amendment or repeal has taken effect) but the changes have not yet been incorporated in the text of the database. Changes to the text of the database are usually made within two to three weeks of the commencement of the amendment or repeal.

New look for legislation

With the belief that good document design helps clearer communication, the division has made changes to the format and look of Hong Kong's legislation. These changes include larger font size for the main text, wider spacing between paragraphs and restructuring and rephrasing the provisions which amend existing legislation. With these changes, the reader can identify the location of, and relationship between, provisions more easily. The new design also helps reduce eye strain, provides a more modern appearance and makes Hong Kong's legislation more user-friendly and attractive. The first piece of legislation adopting the new design was the Western Harbour Crossing Ordinance (Amendment of

Schedule 1) Notice 2010 published in the Gazette on 30 July 2010.

Drafting counsel: a challenging role

The drafting counsel has become more involved at the initial stages of formulating a legislative scheme. Increasing globalisation, ever more intense global competition and technological advances all call for prompt government responses to changing circumstances. To cope with the shorter time available for drafting legislation, the drafting counsel now takes an earlier opportunity to study and understand the policy thinking behind a proposal, even before it has become definitive, and to raise his or her concerns on it from the drafting perspective.

Further, as legislative items are scrutinised more vigorously, the drafting counsel spends more time on assisting in the legislative process as a Bill progresses to enactment. The drafting counsel often has to work closely with policy bureaus and other divisions of the Department of Justice, either in the preparation of papers dealing with issues raised by members of the Legislative Council, or when attending briefing sessions for members of the Executive or Legislative Councils as part of the government team promoting the Bill. Occasionally, the drafting counsel may need to provide papers to a Bills Committee, explaining drafting issues in which the committee has shown particular interest.

To reflect more fully the role of drafting counsel, the division has adopted from 2004 onwards new performance indicators to measure work undertaken by drafting counsel as the legislative scheme is formulated and in the legislative process. These new indicators are in addition to the indicators that the division has been using for years, namely, the volume of legislation, as represented by the number of pages of legislation published in the Gazette. The statistics compiled under the various indicators (shown in the statistics section at the back of this review) reflect the different facets of the legislative drafting work undertaken by the division.

New Ordinances enacted in 2010 and 2011

In 2010 and 2011, the following new principal Ordinances giving effect to a wide range of government policy initiatives were enacted:

- **Genetically Modified Organisms (Control of Release) Ordinance (Cap 607)**
To implement the Cartagena Protocol on Biosafety to the Convention on Biological Diversity to control the release into the environment, and the import and export, of genetically modified organisms
- **Minimum Wage Ordinance (Cap 608)**
To provide for a minimum wage at an hourly rate for certain employees and to establish a Minimum Wage Commission

- **Arbitration Ordinance (Cap 609)**

To reform Hong Kong's arbitration law by abolishing the two separate regimes for domestic arbitrations and international arbitrations under the repealed Arbitration Ordinance (Cap 341) and by establishing instead a unitary arbitration regime

- **Buildings Energy Efficiency Ordinance (Cap 610)**

To require compliance with codes of practice concerning the energy efficiency of air-conditioning installations, electrical installations, lift and escalator installations and lighting installations and energy audits in respect of several types of buildings

- **Motor Vehicle Idling (Fixed Penalty) Ordinance (Cap 611)**

To set fixed fines for running a motor vehicle's engine while the vehicle is stationary

- **Food Safety Ordinance (Cap 612)**

To strengthen the control of food import and distribution by establishing a registration scheme and requiring the keeping of records by persons who acquire, capture, import or supply food

- **Residential Care Homes (Persons with Disabilities) Ordinance (Cap 613)**

To establish a licensing scheme to monitor the residential care services for persons with disabilities

- **Legislation Publication Ordinance (Cap 614)**

To establish an online consolidated legislation database with a legal status and to expand public access to Hong Kong legislation

- **Anti-Money Laundering and Counter-Terrorist Financing (Financing Institutions) Ordinance (Cap 615)**
To improve the compliance of Hong Kong's anti-money laundering regime with the prevailing international standards
- **Communications Authority Ordinance (Cap 616)**
To establish the Communications Authority to unify the functions of the Broadcasting Authority and the Telecommunications Authority in order to keep pace with the convergence of the two markets
- **Pyramid Schemes Prohibition Ordinance (Cap 617)**
To tackle objectionable pyramid selling schemes
- **Companies Bill**
To rewrite the existing Companies Ordinance (Cap 32) to further enhance Hong Kong's status as a major international business and financial centre
- **Lifts and Escalators Bill**
To strengthen the registration regime of personnel engaged in lift and escalator works and to improve the existing regulatory scheme
- **Mediation Bill**
To provide a regulatory framework in respect of various aspects of mediation

Evolving drafting styles and practices

The following Bills which will become new principal Ordinances if enacted were also introduced into the Legislative Council in 2010 and 2011, and they are expected to be passed by the Legislative Council in the 2011-2012 legislative session:

- **Adaptation of Laws (Military References) Bill**
To adapt military-related references to conform with the Basic Law and Hong Kong's status as a Special Administrative Region of the PRC
- **Competition Bill**
To prohibit and deter abusive or other anti-competitive conduct

The division remains strongly committed to plain language drafting and to making the statute book more user-friendly. The division's Drafting Techniques and Legislative Styles Committee, established in 2008, examines the division's drafting styles and practices regularly to improve the comprehensibility and quality of the English and Chinese texts of legislation. Gender-neutral language, model clauses, use of words and expressions, numbering of legislative provisions and other issues relating to drafting styles and practices are all discussed by members of the committee. Decisions of the committee form the basis of guidelines and rules for drafting counsel after consultation. As a result, a number of changes to our drafting styles and practices have been introduced.

Examples of the more important changes are: first, “must” is used to impose an obligation in place of “shall” and “must not” is used to impose a prohibition instead of “shall not” and “no person shall”. The word “must” is preferred because it denotes an obligation in ordinary usage whereas “shall” is commonly understood in ordinary language as referring to the future. (Several common law jurisdictions, including Australia and New Zealand, have embraced “must”. The United Kingdom is using it increasingly.) Secondly, the division has now officially adopted a policy of gender-neutral drafting. Thirdly, archaic words (eg “hereby”) are avoided as far as possible, and modern alternatives or plain language equivalents are adopted for certain words and expressions (eg “despite” instead of “notwithstanding”).

In the Chinese text of legislation, we seek to avoid long sentences and, for that purpose, practise greater flexibility as regards sentence structure so that Chinese provisions are more readily comprehensible.

Professional development of drafting counsel

Overseas training

In 2011, two Government Counsel from the division completed a four-week legislative drafting course held by the Institute of Advanced Legal Studies at the University of London. The course provided a systematic approach to the theory and practice of legislative drafting and discussed the recent trends in this specialised area of the legal profession.



Drafting counsel with their classmates at a legislative drafting class in London

Counsel exchange programme

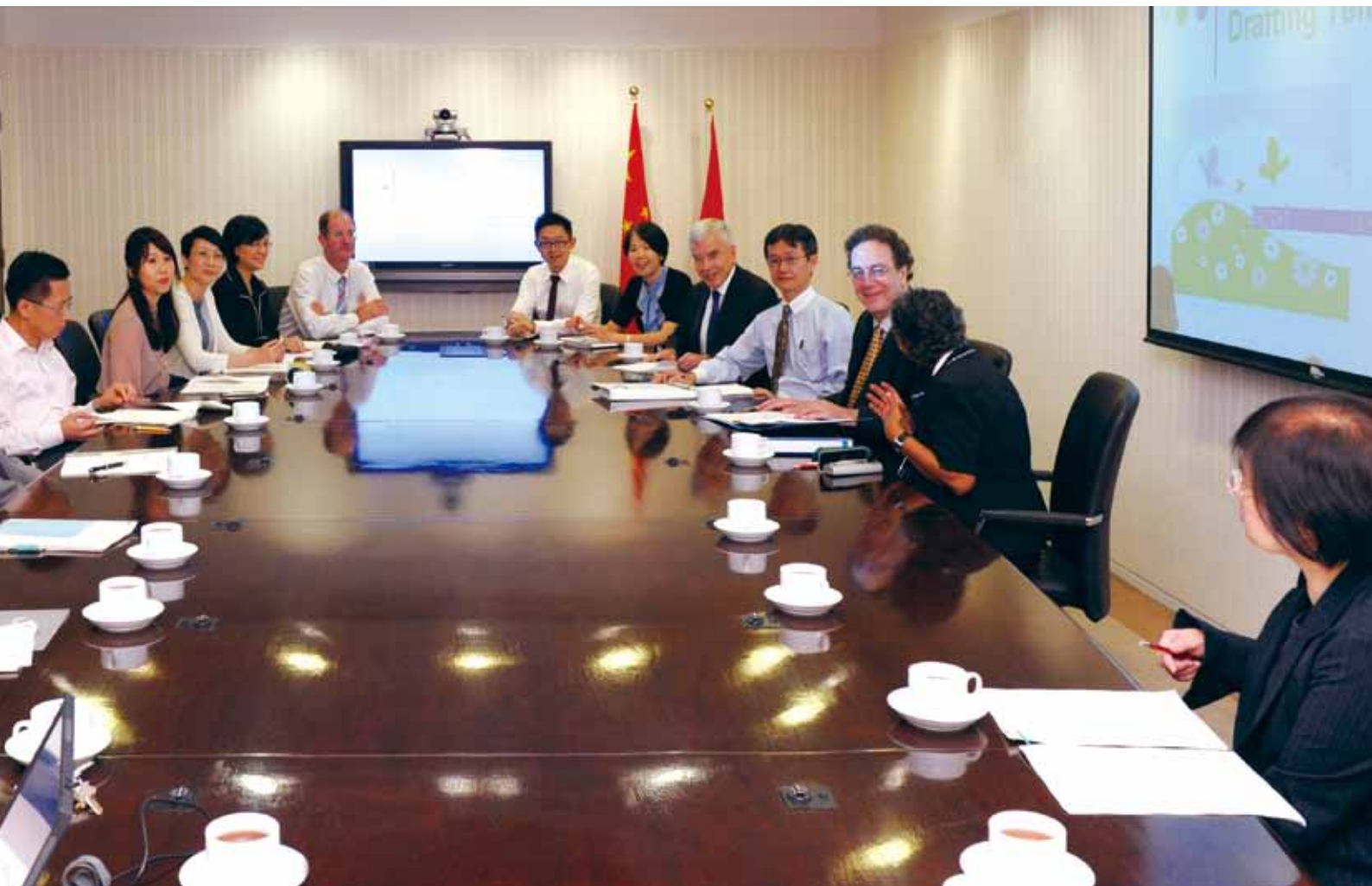
Under a reciprocal exchange arrangement, an Assistant Parliamentary Counsel from the Australian Government's Office of Parliamentary Counsel and a Government Counsel from the division undertook training attachments in each other's jurisdiction from January to April 2011. During her attachment to the division, the young law drafter from Australia held a briefing for counsel of the division and shared her knowledge and experience about the personnel, working methods and procedures of her office. Our counsel also conducted a briefing on the legislative process in Hong Kong for her Australian counterparts.



▲ Drafting counsel hold monthly meetings to share experiences



◀ The Law Draftsman presenting a souvenir to an Australian participant in an exchange programme



Knowledge sharing

The division has been holding meetings of counsel on a monthly basis since January 2011 to provide updates on the progress of the division's work. At these meetings counsel briefly talk about the items on which they are currently working, drawing attention to any particular problems or interesting points. These meetings provide counsel with opportunities to share their experiences and views on a regular basis.

In-house workshops and seminars

In-house talks and workshops are regularly held for the sharing of drafting skills. Since January 2011, 11 in-house talks and workshops have been held for counsel of the division. Those sessions covered a wide range of topics, including legislative drafting in Chinese, statutory interpretation, human rights, international law, the formulation of offence provisions and the implementation of recommendations made by the Law Reform Commission.



Elizabeth Grindey

English Legislative Editor, Law Drafting Division

Elizabeth Grindey joined the department at the end of 2009 in the newly

created post of editor of English legislation. Elizabeth has a professional background in English and personal background in Hong Kong. She spent her childhood years here before leaving for school in England. In 1991, she graduated with an honours degree in English from Lancaster University with a foundation in linguistics, textual critical analysis and English literature.

Elizabeth returned to Hong Kong in 1997 and joined the British Council, where she taught grammar and advanced level classes, gaining some familiarity with common errors in Hong Kong English. In 2003 she began working with Pearson Longman publishers, co-writing a series of English-language text books for Hong Kong secondary schools.

From 2004 to 2008 Elizabeth was editor of Positive News, an international magazine with a Hong Kong edition which reported on, and promoted awareness of, green and sustainability issues, especially amongst local schools. Alongside this, Elizabeth was involved in Hong Kong's burgeoning organic movement, helping to establish two vegetarian restaurants. She moved into specialised editing of academic texts, including for the

City University and the Asia Art Archive, before taking up her present post in the Law Drafting Division.

Elizabeth is sure that the fact she has no background in law has been a valuable asset *"It's given me the opportunity to approach, with a beginner's mind and without preconceptions, the tricky task of articulating the law in plain English. I've also become something of a sounding board for drafters as to how ordinary citizens might understand our laws"*, she says. As a legislative editor, Elizabeth gives linguistic support to drafters, both native-English speakers and native-Chinese speakers. *"As well as researching complex grammatical issues, my role involves teasing out matters of style and convention from grammatical rights and wrongs. No easy task given how much grammar itself has changed in the last 30 years!"*

Elizabeth thinks it is a stimulating time to be working in the Law Drafting Division, as the division has been modernising its practices across the board to improve accessibility to Hong Kong's laws. *"I work with drafters to bring a plainer style of language into our laws to make them more readable to non-lawyers. I think this important task is summed up by the Irish poet WB Yeats: 'Think like a wise man but communicate in the language of the people.'"*



Peter Sze Chun-fai

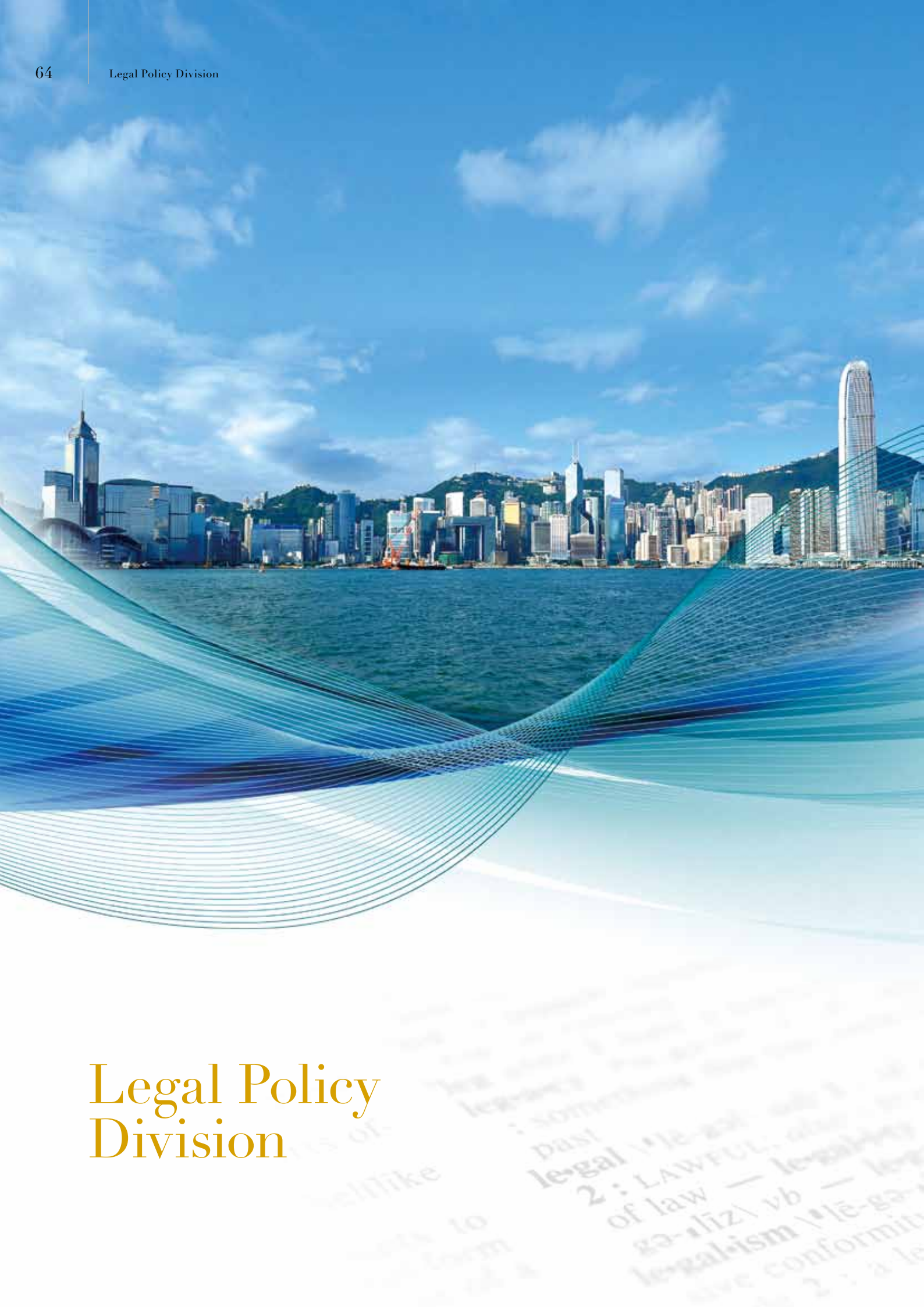
Government Counsel, Law Drafting Division

On finishing his LLB and PCLL studies at the University of Hong Kong, Peter Sze joined the department as a legal trainee in 2007 and, after his admission as a solicitor in 2009, stayed with the department as a Government Counsel in the Law Drafting Division.

Despite the relatively short time since he joined the division, Peter has had the opportunity to be exposed to a wide range of work and experiences. Apart from drafting legislation in the two official languages, Peter has also assisted in various information technology initiatives, including an ongoing project to establish a legislation database of Hong Kong with a legal status. He also attended a conference of Commonwealth legislative drafters in Hyderabad and completed a legislative drafting course at the University of London, both in 2010.

"Legislative drafting is not as dull as one would usually think," says Peter. "There are always new policy initiatives that need to be achieved through legislation, and you can make a difference by helping build a comprehensive framework within which our society functions and evolves."

Outside work, Peter is a very amateur player of badminton, softball and er-hu. He also enjoys spending his spare time hiking and volunteering. While most of these activities are done with his fellow Castlers (residents and alumni of University Hall, the residential hall at which Peter stayed while an undergraduate at HKU), Peter is particularly pleased to have volunteered with his colleagues in the department to take part in an elderly home visit organised by the department's Staff Club.



Legal Policy Division

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Legal Policy Division



Counsel in the division

The Legal Policy Division advises government departments and bureaus on whether proposed legislation, or a particular policy, is consistent with the Basic Law, international human rights standards, and established principles underlying the legal system. It also has a specialist unit that provides advice on (and promotes understanding of) the law on the Mainland. In addition, the division plays an active part in law reform, both through its responsibility for any new legislation promoted by the Secretary for Justice, and because the lawyers who serve in the Secretariat of the Law Reform Commission are part of the division.

General legal policy

As well as advising on the legality of policies established by the government, the division also assists in formulating policy, particularly in relation to the legal system and the legal profession. The division has assisted the legal profession in exploring the opportunities that China's accession to the World Trade Organization will offer and in enhancing its opportunities in the Mainland under the Closer Economic Partnership Arrangement (CEPA).

Where the Secretary for Justice has responsibility for a particular piece of new legislation, counsel in the division will take an active part in the preparation of the Bill and its presentation to the Executive and Legislative Councils. This will often include extensive consultation with those with an interest in the matter, both inside and outside the government.

Apart from preparing new legislation, the work of the division includes advising on:

- petitions from prisoners seeking remission of sentences or referral of their cases to the Court of Appeal
- public enquiries and complaints referred to the division
- petitions to the Chief Executive under Article 48(13) of the Basic Law
- statutory appeals to the Chief Executive or the Chief Executive in Council made by members of the public
- statutory appeals or representations from civil servants

The division is also responsible for advising the government on the powers and procedures of the Legislative Council.

Human rights

The division provides specialised advice and assistance on human rights law within the Department of Justice and to other government

bureaus and departments, reflecting the human rights provisions of the Basic Law. Apart from advising other divisions of the department on human rights law and issues arising from litigation, the division also advises government bureaus and departments on the human rights implications of legislative proposals and practices arising from the implementation of legislation to ensure their consistency with the human rights provisions of the Basic Law.

The division provides advice and assistance to government bureaus in the preparation of reports to the United Nations under various human rights instruments that have been extended to Hong Kong, namely the International Covenant on Civil and Political Rights (implemented by the Hong Kong Bill of Rights Ordinance (Cap 383)), the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of Persons with Disabilities. Counsel in the division also attend UN committee hearings on the HKSAR's periodic reports.

The division also advises government bureaus and departments extensively on the interpretation, implementation and implications of the Sex Discrimination Ordinance (Cap 480), the Disability

Discrimination Ordinance (Cap 487), the Family Status Discrimination Ordinance (Cap 527) and the Race Discrimination Ordinance (Cap 602).

Mainland law and co-operation with the Mainland

Promoting Hong Kong's legal services in the Mainland and legal exchanges

The department continues to work closely with the legal profession in seeking greater access to the legal services market in the Mainland within the framework of CEPA and in promoting Hong Kong legal and arbitral services in the Mainland. In July 2010, the department, together with the Hong Kong legal and arbitration professional

bodies, jointly organised a forum on Hong Kong legal services in Shanghai as part of Hong Kong's participation in the Shanghai Expo 2010. The forum showcased the strengths of Hong Kong as a legal and dispute resolution centre in the region.

In November 2010, the Secretary for Justice visited Guangzhou and Shenzhen and exchanged views with senior local government officials on fostering exchanges between the legal profession and co-operation on legal matters. In July 2011, the Secretary for Justice visited Beijing and discussed a range of matters with central government officials, including mutual legal assistance, the implementation of CEPA, the development of Hong Kong as a dispute resolution centre and co-operation with the legal profession.



The then Deputy Solicitor General, Mr Frank Poon, speaks at the Legal Services Forum in Shanghai

A delegation led by the Secretary for Justice visiting Beijing in July 2011



The department continues to run programmes to facilitate Mainland officials' better understanding of Hong Kong's common law system. These include the Common Law Training Scheme, where participating Mainland officials attend an LLM programme either at the University of Hong Kong or the Chinese University of Hong Kong and undertake short-term attachments to different government departments or law-related organisations in Hong Kong for practical training. As at August 2011, a total of 165 Mainland officials had completed the training scheme.

Co-operation in cross-boundary legal matters

The department continues to provide assistance to policy bureaus and departments on legal issues arising from cross-boundary projects such as the construction of the Hong Kong – Zhuhai – Macao

Bridge, the Guangzhou – Shenzhen – Hong Kong Express Rail Link and the development of the Lok Ma Chau Loop and Qianhai in Shenzhen.

Co-operation under the Framework Agreement

The Framework Agreement on Hong Kong/ Guangdong Co-operation was signed in April 2010. The agreement seeks to promote greater co-operation between government organs and among legal professional bodies. It provides for the establishment of a communication mechanism on legal affairs and the strengthening of channels for the exchange of legal documents. It also encourages the legal and notarial professions to strengthen their co-operation. The department has discussed with Guangdong officials and the Hong Kong professional bodies ways to enhance exchanges and co-operation.

Co-operation on legal matters with Macao and Taiwan

In addition to pursuing closer legal co-operation with the Mainland, the department is also exploring ways to strengthen legal co-operation with our counterparts in Macao and Taiwan. The department has held preliminary discussions with the Macao SAR Government on an arrangement for the reciprocal enforcement of arbitral awards, along the lines of a similar arrangement that was concluded with the Mainland in 1999.

The department has begun considering ways to improve co-operation in legal affairs that would be mutually beneficial to Hong Kong and Taiwan. The department will explore ways to enhance legal co-operation in discussions with the relevant Taiwan authorities through the Hong Kong-Taiwan Economic and Cultural Co-operation and Promotion Council and the Taiwan-Hong Kong Economic and Cultural Co-operation Council.

Basic Law

The division provides advice to the government on the interpretation of the Basic Law, both in ensuring consistency of existing legislation with the Basic Law and in the formulation of new policies and legislation. Questions concerning the interpretation of provisions of the Basic Law have arisen in a number of important lawsuits. In

such cases, counsel in the division work closely with other divisions in the preparation of the government's case, and provide advice and research on the Basic Law and other related issues.

The division plays a key role in promoting understanding of the Basic Law. It provides support to other government departments and public authorities including the Civil Service Training & Development Institute and the Civil Service Bureau both by providing counsel to give lectures and seminars on the Basic Law and by assisting in the production and revision of self-learning booklets and other training materials for use throughout the civil service. In 2011, the division (in conjunction with the Civil Service Training & Development Institute, the Civil Service Bureau and the Constitutional and Mainland Affairs Bureau) published one issue of the Basic Law Bulletin. The Bulletin was first published in 2001 and is intended to promote greater awareness and knowledge of the Basic Law among civil servants.

The division maintains a collection of research materials relevant to the Basic Law and constitutional law generally. This includes reference books and articles, relevant decisions and interpretations of the Standing Committee of the National People's Congress, reports of the Basic Law Consultative Committee and court judgments. The collection is regularly added to and updated as more case precedents and other literature on the Basic Law become available.

Significant initiatives and reforms in 2010 and 2011

Review of legal education

The department continues to play an active role in legal education and training and, in particular, in the work of the Standing Committee on Legal Education and Training (established by law under the Legal Practitioners Ordinance (Cap 159)). The Standing Committee's functions include keeping under review, evaluating and assessing the system and provision of legal education and training in Hong Kong, as well as monitoring the provision of vocational training of prospective legal practitioners in Hong Kong by organisations other than the Law Society of Hong Kong or the Hong Kong Bar Association. A representative from the department serves on the Standing Committee.

In 2010 and 2011, the Standing Committee continued to keep under review the LLB, JD and PCLL programmes offered by the University of Hong Kong, the City University of Hong Kong and the Chinese University of Hong Kong. Specific issues considered by the Standing Committee included practising law in Chinese, the JD degree, and the implications of the "3+3+4" academic structure for the three LLB and PCLL providers.

Legislation

During 2010 and 2011, counsel in the division worked on a number of legislative items for which the department had policy responsibility:



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1. *The then Solicitor General, Mr Ian Wingfield, at a sitting of the Legislative Council*

2. *Counsel attending the Mainland Legal Studies at Peking University in October 2011*

- Legal Practitioners (Amendment) Ordinance 2010 - The Ordinance was enacted in January 2010. It amended the Legal Practitioners Ordinance (Cap 159) to enable solicitors having at least five years' post-qualification experience and satisfying further eligibility requirements to apply to an assessment board for higher rights of audience before the High Court and the Court of Final Appeal. After the Ordinance is put into full operation, the public will have access to a wider choice of capable advocates in the higher courts.
- Arbitration Ordinance – This Ordinance was enacted in November 2010 and came into force in June 2011. The new Ordinance has reformed the arbitration law in Hong Kong through the creation of a single regime for all types of arbitration on the basis of the Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law. The Ordinance

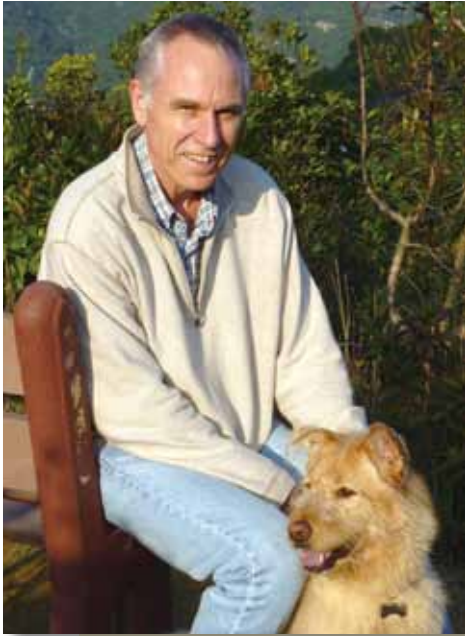


further strengthens Hong Kong's appeal as an attractive place to conduct arbitration.

- Matrimonial Proceedings and Property (Amendment) Ordinance 2010 – The Ordinance was enacted in December 2010 and came into effect on 1 March 2011. The High Court and the District Court are empowered to order financial relief for a former spouse whose marriage has been dissolved or annulled, or who has been legally separated, in judicial or other proceedings outside Hong Kong. The Ordinance addresses the hardship encountered by such a party in cases where no, or insufficient, financial provisions have been ordered by a foreign court.
- Legal Practitioners (Amendment) Bill 2010 – This Bill was introduced into the Legislative Council in June 2010. It proposes amendments to the Legal Practitioners Ordinance (Cap 159) in order to introduce limited liability partnerships (LLPs)

as a business model for solicitors' practices in Hong Kong. LLP status would confer limited liability on innocent partners of an LLP firm so that they would not, solely by reason of being partners, be held personally liable for professional negligence committed by other partners of their firm.

- Enduring Powers of Attorney (Amendment) Ordinance 2011 – This Ordinance was enacted in December 2011. The Ordinance implements the recommendations of the Law Reform Commission report on "Enduring Powers of Attorney" so as to relax the existing requirement that an enduring power of attorney be signed at the same time before a medical practitioner and a solicitor as well as to replace the existing Schedule to the Enduring Powers of Attorney (Prescribed Form) Regulation by a form and explanatory notes which are drafted in clear and plain language.



Stuart M I Stoker

Principal Government Counsel, Legal Policy Division

Stuart Stoker began his career as a Procurator Fiscal Depute (prosecuting lawyer) in Glasgow in Scotland, at that time Europe's busiest criminal court, having graduated from Edinburgh University in 1974. Postings followed to Linlithgow and Edinburgh before in 1980 he joined the Legal Aid Department in Hong Kong. In 1981, Stuart moved to the then Legal Department (now the Department of Justice), first as a prosecutor and subsequently in 1984 as Assistant to the Solicitor General in the forerunner of what is now the Legal Policy Division.

He was promoted to the directorate in 1985 as Assistant Solicitor General and has been a Principal Government Counsel since 1992, when he was appointed Secretary to the Law Reform Commission, the post he currently holds. He is the longest serving of the three lawyers who have held that post since the Commission was established in 1980.

Stuart was elected as Hong Kong's first (and still the only) member of the American Law Institute in 2003, the USA's premier law reform body. *"I suspect I'm also the only lawyer in the department with a qualification in interior design, but that's another story!"* In 2010, his extensive experience in law reform was recognised when he was invited to undertake a consultancy in Malawi to review the operation of the Law Commission there as part of an EU-funded project on the rule of law. *"It was," he says, "a great opportunity to engage with the law reform process and its practitioners in another jurisdiction, and one I very much valued. Learning from what's been done in other jurisdictions is particularly important in law reform work."*

Outside the office, Stuart maintains a wine cellar, several casks of whisky, two cats and a dog – not necessarily in that order of importance.



Chandar Li Chui-mei

Personal Secretary I, Legal Policy Division

Chandar Li joined the Civil Service in 1983 as a Stenographer in the then Royal Hong Kong Police Force. On completion of her initial three years' probation, she was transferred to the then Legal Department in 1987, where she joined the International Law Division. Chandar moved to the Law Drafting Division in 1988 and worked there until 1995. From then until 2007 Chandar worked in a number of different government bureaus and departments, including the unit within the Protocol Division dealing with matters related to the handover on 30 June 1997. A highlight for Chandar was being tasked to receive "VVIPs" on that day in pouring rain at Tamar.

Chandar was promoted to Personal Secretary I in 1997. Following a posting to the Hong Kong Police Force in 2007, Chandar was posted to the HKSAR Beijing Office to act as Senior Personal Secretary from 2008 to 2010. *"I was so lucky that during those three years I was able to attend different big events like the Beijing Olympics in 2008 and the 60th Anniversary National Day Event",* she says. Taking advantage of living in Beijing, Chandar spent some of her leisure time travelling through most of the north-western and north-eastern parts of China.

Chandar returned to the Department of Justice in 2011 and is now a Personal Secretary in the Legal Policy Division's Human Rights Unit.

高等法院 THE HIGH COURT



...cutting 1 : to
 ... 2 : to seek legal
 ... prosecution \ 'prā-
 ... convert to a religion.
 ...

Prosecutions Division

Prosecutions Division



Counsel in the division

The role of the Prosecutions Division is to prosecute trials and appeals on behalf of the HKSAR, to provide legal advice to law enforcement agencies upon their investigations, and generally to exercise on behalf of the Secretary for Justice the discretion whether or not to bring criminal proceedings in the HKSAR. In addition, counsel in the division provide advice and assistance to government bureaux and departments in relation to any criminal law aspects of proposed legislation.

The prosecution of offences

A criminal case may be prosecuted in the Magistrates' Courts (for relatively minor offences) or in the District Court or the Court of First Instance where the offence is more serious. The decision whether or not to prosecute, and on what charges, is taken by the Secretary for Justice or by

counsel acting on behalf of the Secretary in the Prosecutions Division. The Secretary is ultimately responsible for all prosecution decisions. In the decision-making process, the prosecution policy guidelines (which were first published in 1993 and updated in 1998, 2002 and 2008) are applied.

The majority of prosecutions in the Magistrates' Courts are conducted by public prosecutors, called Court Prosecutors. They are appointed by the Secretary for Justice under section 13 of the Magistrates Ordinance (Cap 227) and have rights





of audience in the Magistrates' Courts. Every Court Prosecutor attends an initial nine-month training course run by counsel in the Department of Justice before starting work. Throughout their careers thereafter as Court Prosecutors, they will participate in a programme of continuing legal education.

Counsel in the Prosecutions Division will sometimes prosecute in the Magistrates' Courts, particularly in cases of significance or where complex points of law are expected to arise. Counsel in the division handle almost all appeals, the majority of prosecutions in the Court of First Instance, and a considerable number of cases in the District Court. Counsel from the private bar and solicitors in private practice are regularly employed to prosecute on behalf of the division (referred to as a counsel or solicitor "on fiat").

Before a case goes to trial, there is considerable work to be done by counsel in the division in marshalling and evaluating the evidence and carrying out any necessary legal research. While some counsel in the division specialise in presenting cases at trial, or on appeal, other counsel appear in court less often and instead specialise in the vital work of preparing cases for trial in either the District Court or the Court of First Instance.

Sir Ken Macdonald's report

In January 2010, with a view to modernising the Prosecutions Division and to further improving its efficiency as a world class prosecution service, the division commissioned Sir Ken Macdonald, QC, (now Lord Macdonald) the former Director of Public Prosecutions of England and Wales, to review the operations of the division. Having interviewed a wide range of individuals, in February 2010 Sir Ken submitted a review report recommending a line of changes in relation to the Prosecutions Division's organisational structure, internal practices and procedures, the division and distribution of work, the nature and provision of training and the functions and duties of legal and paralegal staff and the division's relationships and dealings with outside agencies. Pursuant to the recommendations made by Sir Ken, a number of reforms and new initiatives have been put in place.

The restructuring of the Prosecutions Division

A key element of this restructuring exercise was the creation of a new Office of the Director of Public Prosecutions (ODPP). The ODPP is headed by the Chief of Staff and is responsible for all management and policy development of the division. The areas of responsibility covered by the ODPP are wide, namely media relations, administration and management, policy research and training and complaints and feedback. The operational work of the division is conducted by the other four

sub-divisions: (a) Sub-division I Advisory, which is responsible for providing advice on and preparing for trial cases which are prosecuted in the Court of First Instance, District Court and Magistrates Court; (b) Sub-division II Advocacy, responsible for conducting advocacy work at all levels; (c) Sub-division III Appeals, responsible for advising and conducting appellate advocacy work including Basic Law, Bills of Rights and Judicial Review; and (d) Sub-division IV Commercial Crime, responsible for dealing with cases involving commercial fraud, bribery, dutiable commodities, technology crimes, securities and revenue fraud and breach of copyright and trade descriptions.

Proceeds of crime

As part of the restructuring of the division, the Proceeds of Crime Section has been brought directly under the control of the head of Sub-division I because of the wide application and relevance of proceeds of crime and its significance as a law enforcement initiative.

The Proceeds of Crime Section advises law enforcement agencies on the feasibility of applying for restraint orders and confiscation orders. In 2011, the section successfully confiscated a total of about \$1.8 billion.

Apart from court work, the section also gives full support internationally on anti-money laundering measures by giving lectures and workshops to assist law enforcers, both local and overseas, and

other interested parties to understand the law and practice in this area. Some of the section members are also qualified assessors of the Asia/Pacific Group on Money Laundering.

The creation of the rank of Assistant Principal Government Counsel

In view of the continuous increase in the complexity of work and the higher level of responsibilities undertaken by some of the experienced senior public prosecutors, a total of seven new posts at the rank of Assistant Principal Government Counsel were created within the Prosecutions Division in 2011. Five were attached to sub-division II (Advocacy), one was assigned to head a team dealing specifically with Customs and Excise cases and the remaining one was posted to the proceeds of crime unit, solely responsible for recovery action in relation to the proceeds of crime and advising on terrorist financing matters.

Significant initiatives and reforms in 2010 and 2011

The Prosecutions Division has also taken forward a series of initiatives to modernise the division and enhance its efficiency and effectiveness. Major initiatives include:

- The introduction of the quick advisory system known as "FAST" to deal promptly with relatively simple and straightforward cases

- The establishment of a new advocacy subdivision to reflect the importance of advocacy expertise and to allow specialisation
- The establishment of a staff training unit and of a continuing legal education programme
- The creation of a Joint Training Programme with the Hong Kong Bar Association and the Law Society of Hong Kong for newly qualified lawyers
- The holding in selected cases of “case review meetings” between prosecutors and relevant officers of the law enforcement agency to see what lessons can be learned and how improvements can be made for the future

Looking ahead, the Prosecutions Division will continue to pursue a policy of transparency and ensure that prosecution decisions are made fairly and properly in accordance with established prosecution policy and practice. The division is also considering effective ways to enhance the public’s understanding of the prosecution service and the criminal justice system.

As regards communications at the professional level, the division has engaged in active dialogue with the private legal profession and interested groups on a variety of issues and has fostered a partnership with the private legal profession in improving professional standards and addressing matters of common interest in relation to the criminal justice system.

A mock-up courtroom for criminal advocacy courses



The Prosecutions Division has also fostered close links with its counterparts in other jurisdictions. Prosecutors have actively participated in various international fora and events, as well as experience-sharing with other jurisdictions by way of video conferencing. Efforts will continue to be made to enhance the co-operation with other jurisdictions, in particular to combat cross-border crimes and for the restraint and confiscation of proceeds of crime.

▼ *The then Director of Public Prosecutions, Mr Ian McWalters, SC, with the Deputy Procurator General of the Supreme People's Procuratorate, Mr Sun Qian (September 2010)*



The Director of Public Prosecutions, Mr Kevin Zervos, SC, addresses the World Summit of Prosecutors General, Attorneys General and Chief Prosecutors in Seoul



Wesley Wong Wai-chung

Principal Government Counsel, Prosecutions Division

When Wesley Wong featured in the department's biennial report in 2000 he was a Senior Government Counsel in the Civil Litigation Unit. Wesley said then, *"Working as a Government lawyer has given me opportunities to experience a range of work unparalleled elsewhere and it is particularly satisfying to be involved in Government at a time when Hong Kong is witnessing the development of its new constitutional framework."*

Wesley believes the same is still true to this day. Wesley, from the department's first crop of legal trainees, has never regretted joining the government legal service in 1993 to start his pupillage in the then Attorney General's Chambers after graduating from the University of Hong Kong. Having spent 11 years in the Civil Division, during which time he was promoted to the rank of Deputy Principal Government Counsel, he returned to the Prosecutions Division in 2010 and was put in charge of the section dealing with appeals to the Court of Appeal and the Court of Final Appeal. Since January 2011, he has headed the sub-division responsible for commercial crime and corruption.

As an in-house advocate, Wesley has regularly appeared before all levels of courts and tribunals, both civil and criminal, from early in his career and worked with or against top local and London silks in landmark cases.

"The DoJ provides fertile ground for any practitioner who looks for challenge and variety. It's precisely because the spot light is on every case in court that I'm given the impetus to carry on despite the strains and stresses of work. Acting for the government means that one can't settle for anything less than what the court can rightly expect in terms of the assistance it deserves in deciding every case that comes before it," says Wesley. *"I also find time to act as a mentor for local law schools and teach part-time on short courses. It gives me enormous satisfaction to meet and do what I can for students and practitioners from different disciplines."* On top of all that, Wesley has a passion for history and visits museums (of all sorts).



Polly Wan Shuk-fong

Deputy Principal Government Counsel, Prosecutions Division

Polly Wan joined the department in 1986 as a Court Prosecutor. Having graduated from Wolverhampton University with an LLB degree and passed the English Bar Final Examination, she was called to the Hong Kong Bar in 1994 and became a Crown Counsel the same year.

Polly has worked in the Prosecutions Division throughout her time in the department, undertaking a wide range of duties. She has worked in a number of different advisory teams and at one stage specialised in giving immigration advice. She has prosecuted many sexual offences and, as a member of the division's Vulnerable Witness Team, is accustomed to handling child witnesses and other vulnerable witnesses. Before her present posting in January 2011 to head one of the two ICAC teams in the Commercial Crime sub-division, Polly had spent three years as part of the division's Court Specialist team.

Outside work, Polly likes reading and is interested in knowing more about psychology. *"It helps if we can understand what a victim and a defendant had been thinking at the time of the offence. We can better formulate the way we present our case and cross-examine the defendant,"* she says.



Jonathan Lin Po-hei

Public Prosecutor, Prosecutions Division

After graduating with a BSocSci degree from the Chinese University of Hong Kong in 2001, Jonathan Lin joined the civil service as an executive officer working in the Customs and Excise Department and then the Home Affairs Department. He left the civil service in 2007 after obtaining an LLB degree from the University of London and obtained the Postgraduate Certificate in Laws from the University of Hong Kong in 2008. Jonathan joined a sizable local law firm as a trainee solicitor the same year, primarily specialising in civil litigation and commercial law. After admission as a solicitor in 2010, Jonathan decided to join the department as a Public Prosecutor and was posted to the Prosecutions Division's Advocacy Sub-division to polish his advocacy skills. Jonathan was recently posted to the ICAC (Public Sector) Team in the Commercial Crime Sub-division.

As an advocate, Jonathan was responsible for conducting magistracy and District Court trials covering a wide range of offences. In 2011, he acted as a Coroner's Officer in a high-profile death inquest in which 52 witnesses were called. He also gave legal advice to law enforcement agencies.

"I find the core qualities of a Public Prosecutor appealing: to be impartial, objective, fair and fearless", Jonathan says. "To be a Public Prosecutor is a tremendous honour. We are entrusted to maintain an uncompromising insistence on the fair administration of justice."

Jonathan has been an active volunteer for a charitable organisation providing multi-lingual active listening services to depressed and suicidal people. *"The importance of empathy can never be over-emphasised, especially in a metropolitan city like Hong Kong. Also, it is a privilege to be able to give rather than to receive."*



Teresa Tang Yee-wan

Senior Law Clerk I, Prosecutions Division

Teresa Tang joined the government as a Clerical Officer II (now re-named as Assistant Clerical Officer) in 1982 and was posted to the Judiciary, where she worked as a magistrate's clerk for two years before joining the then Legal Department in 1984 as a law clerk in the Prosecutions Division. *"I think my experience of working in court is the reason why I was posted to the Fixed Penalty Unit, as a major part of the unit's work is to conduct fixed penalty proceedings in magistrates' courts,"* Teresa says.

Teresa was promoted to Senior Law Clerk II in 1994 and in 1998 she was transferred to the District Court Unit in which her major duty was the drafting of bilingual charges for District Court cases. *"I'm the first law clerk who undertook the drafting of charge sheets in Chinese",* she says. *"It was a completely new experience for me but, at the same time, very challenging."* After four years in the District Court Unit, Teresa moved to the Costs Unit in 2002 to handle costs claims in criminal cases. She was promoted to Senior Law Clerk I in 2006 and since then has been responsible for the management and administrative work of para-legal staff. *"My work history in various units of the division helps me to understand and appreciate the needs of my law clerks when exercising my supervisory duties."*

Due to her interest in law, Teresa completed a higher diploma in legal studies with the City University of Hong Kong in 1993 and an external LLB degree from Manchester Metropolitan University in 1996. She then took one year study leave to complete the PCLL course at the University of Hong Kong in 1998. She was called to the Bar in 1999 and completed her pupillage with the department in 2000.

Reviewing her life in the department, Teresa says: *"It's a privilege for me to be able to work in the department which plays a major role in the administration of justice in Hong Kong."*

Administration & Development Division



Administration & Development Division

As with any other large organisation, the ability of the Department of Justice to function effectively depends on the work of its administrative staff, who provide essential support services to its professional officers. The department's many administrative requirements are the responsibility of the Administration & Development Division. The administrative staff of the department includes managers, accounting and translation officers, library staff, secretaries and clerical officers, providing services ranging from human resources management to information technology.

Human resources

The people who work for the Department of Justice are its most valuable resource. An important aspect of the division's human resource function is to ensure that the high calibre of the department's staff is maintained. This objective is achieved through:

- effective recruitment of new staff
- continuous training
- proper career planning
- effective performance management
- long-term succession planning for the senior posts in the department
- minimal wastage or loss of experienced staff
- good staff relations

A key part of this is the department's successful programme of recruitment and training of law graduates. The programme enables graduates from the University of Hong Kong, the Chinese

University of Hong Kong (which has provided a PCLL course since 2008) and the City University of Hong Kong to complete within the department the period of practical training required before qualifying as barristers or solicitors. In 2010, 11 law graduates took up trainee places in the department. A total of 11 trainees were taken on in 2011. The number of applications on each occasion greatly exceeded the number of places.

In addition to direct recruitment of law graduates as legal trainees, the department conducted open recruitment exercises in 2009 and 2010 to recruit new counsel on civil service terms to meet service needs. Seventeen and 20 counsel were successfully recruited in the 2009 and 2010 exercises respectively. In 2010, the department also conducted a recruitment exercise for Senior Government Counsel to fill some vacancies in the rank and recruitment exercises were conducted in 2011 to fill vacancies in the Law Translation Officer and Law Clerk grades.

Financial management

Effective financial management is important to ensure that the available financial resources are put to the best use in enabling the department to carry out its various functions. Annual estimates are prepared taking into account the different needs of the various divisions and financial performance is closely monitored. The exercise

of prudent financial principles ensures that the department's services are delivered within budget.

Training

The division plays an important part in organising a wide range of training activities to equip staff with the necessary knowledge and skills to discharge their duties more effectively and to prepare them for career advancement. During 2010 and 2011, a total of 4 740 places on various kinds of training and development programmes were taken up by staff in the department. Legal, management and communication training was organised in-house, as well as being provided by local institutes and the Civil Service Training & Development Institute. Counsel and para-legal officers were also sponsored to attend law-related courses outside office hours on a course-fee refund basis.

In 2010 and 2011, a total of six counsel undertook training attachments to justice bureaus in the Mainland. In 2010, one counsel was posted to the Hong Kong Economic and Trade Office in Geneva for two years to widen her experience.

To keep abreast of the latest legal developments, counsel and para-legal officers participated in a range of law seminars, conferences and law-related training programmes. Continuous efforts were made to strengthen understanding of the law and the legal environment in the Mainland. Counsel were nominated to attend national studies courses at Tsinghua University, Peking University and the

Chinese Academy of Governance and foreign affairs study programmes and thematic study programmes in the Mainland. In 2010 and 2011, a total of 15 counsel attended the Mainland Legal Studies Course for Government Lawyers of the HKSAR at Peking University.

Library services

A vital resource in any legal practice is the law library and the Department of Justice library has one of the most extensive legal research collections in Hong Kong. It houses over 96 000 volumes and acquires, on average, a further 1 000 volumes each year. The new Millennium Integrated Library System was launched successfully in June 2010. This web-based library catalogue is more user-friendly for browsing and searching and allows users to check their borrowing records, and renew/reserve library materials. The library also has a wide range of legal reference materials available in electronic form, either on CD-ROM or on-line databases. To facilitate legal research work, a Directory of Subscribed Electronic Resources is available in the Library Homepage so that counsel and para-legal officers can access these electronic databases from their desk-top computers in the office and at home.

Information technology

The Information Technology (IT) Management Unit is responsible for the management of the department's IT systems and information resources. This includes the maintenance and periodic

upgrade of existing IT systems, implementation of new projects and planning for future IT needs. The unit is also responsible for providing help-desk services for handling all kinds of IT related services and requests from users, and training staff in the proficient use of the department's IT systems.

The department's information technology facilities

The department's network links around 1 200 users across 27 different floors or separate locations. All permanent staff in the department have access to either dedicated or shared personal computers equipped with modern office automation functions for word-processing, document management, printing, fax, electronic mail, and internet access. Remote access to the department's network and facilities is also available.

Bilingual Laws Information System (BLIS). This system enables users to view and search Hong Kong's legislation in both Chinese and English. BLIS is available free to the public on the internet, including in a simplified Chinese character version. BLIS has proved very popular since its introduction and now has an average of around 4 500 "hits" per day. The contents of BLIS can also be displayed in a user-friendly way on popular mobile devices.

Bilingual Document Management and Archival System. This system allows documents created on the system to be easily located, by reference

to criteria such as the author's name, the title of the document, its date of creation, or by using the system's full text search facility.

Integrated Library System. This system automates and integrates all the acquisitions, cataloguing and circulation functions, and allows users to access the library catalogue to search and reserve items over the network from their computers.

Work Management System. This system provides up-to-date information about work assignments, workload and work progress of the cases handled by the department. The system enables counsel more efficiently to adjust work priorities and keep track of the different cases and tasks for which they are responsible. It also provides effective tools for managers to monitor the work of the units under their charge. This system has been extended to allow the progress and fees of the cases briefed out to private practitioners and experts to be monitored, which facilitates the integration and generation of management and accounting information. A complaints register has also been set up in the Work Management System to facilitate the recording of complaint cases, the tracking and monitoring of case progress, and the generation of management and statistical reports.

Administration System. The system provides improved automated processes and monitoring functions for the management of human resources, personnel records, training, inventory and supplies procurement.

Social activities

Two popular organisations within the department, the Staff Club and the Mess, provide staff with an opportunity to enjoy a range of social activities with their colleagues.

Department of Justice Staff Club

The Staff Club aims to promote friendship and a sense of belonging among serving and former staff of the department. It is open to both lawyer and non-lawyer members of the department.

The Staff Club is run by an Executive Committee composed of representatives from different ranks of officers in the department. It organises various activities every year, including classes covering a range of interests from tai-chi to yoga, as well as outdoor activities and annual events such as a Christmas lunchtime party and a spring dinner, usually for two to three hundred participants.



Staff participating in the "Lifeline Express Kung Fu for Brightness" charity performance in June 2010



In June 2010 and June 2011, around 20 colleagues from the Tai Chi Workshops participated in a charity performance show organised by Lifeline Express to raise funds for impoverished cataract sufferers in the Mainland.

The Department of Justice Mess

The Mess provides a place for counsel to discuss cases with their colleagues during the working day, and to relax in friendly surroundings after office hours. Membership is confined to counsel and senior officers in the department.



There is an active Mess Committee which organises various functions and activities to foster an environment of collegiate support. The Mess premises have recently undergone some modest refurbishment with improved facilities.

A tradition has been maintained by departing counsel members that they entertain their colleagues to drinks and light refreshments in the Mess and are presented with a personally engraved mug. From time to time, the Prosecutions Division also hosts Mess Nights, to which judges and lawyers in private practice are invited.



1. Staff taking part in the Tree Planting Challenge organised by Friends of the Earth in April 2011

2. The winning team from the department at the Dragon Boat races 2011



Siu Lai-kuen

Motor Driver, Administration & Development Division

Siu Lai-kuen joined the then Government Land Transport Agency (now part of the Government Logistics Department) in 1982 as a Workman I and was posted to the then Legal Department after transferring to the Government Driver grade in 1995. Lai-kuen's major duties include acting as driver for the Director of Public Prosecutions and providing transport services (including sometimes the transport of goods) for other staff of the department.

Lai-kuen is a careful driver who takes pride in the service he provides. In recognition of his excellent service, he was presented with the Safe Driving Award by the Government Logistics Department in 2006 and his exemplary service was also commended in writing by one of his users in 2011.

Lai-kuen says that it gives him great pleasure to get his passengers to their destinations on time and to see their grateful smiles. If there was one unforgettable event during his career, it was the experience of driving one day in 2008 when the Black Rainstorm Warning had been issued. Lai-kuen found that Queensway was flooded with knee-deep water as he passed Harcourt Garden in Queensway but he had no choice but to keep driving. Thanks to his great driving skill, Lai-kuen was able to get his passenger safely to his destination but on his way back to the car-park he had to stop his car suddenly in Hennessy Road when a lorry came to an abrupt halt in front of him. The lorry restarted but Lai-kuen's car could not be restarted and he had to seek help from the emergency centre of the Electrical and Mechanical Services Department.

Lai-kuen will retire in mid-2012 and hopes to keep in touch with his colleagues in the department after his retirement.



Kan Chi-tat

Workman II, Administration & Development Division

Kan Chi-tat joined the then Legal Department as a Contract Workman II in 1990 and joined the permanent staff as a Workman II the following year. Working under the General Registry of the Administration and Development Division, Chi-tat is mainly engaged in outdoor duties, including despatching documents to various government departments, police stations, hospitals, prisons and law firms across the territory. Sometimes he is required to move furniture and equipment and to help prepare venues for meetings or training or other purposes.

Chi-tat says that his duties have given him the chance to meet people from all walks of life and have helped him to develop better communication and problem-solving skills. The outdoor nature of his work has also enabled him to improve his physique, broaden his horizons and get to know all parts of Hong Kong. Chi-tat is an optimist and gets along well with his colleagues. In his spare time, he likes to join them for singing and dancing and every week he and colleagues from different divisions play ball games. Chi-tat says, *"During my 20 years' service in the department, my biggest gain is a strong and healthy physique. I weighed around 45 kg when I joined the service but through regular exercise I've built myself up to my present 59 kg."*

Chi-tat enjoys his work and completes every task to the best of his ability. After his long years of service, Chi-tat is looking forward to his retirement in late 2012 and will cherish his memories of working for the department.

The department's links with other jurisdictions



The department's links with other jurisdictions

Hong Kong's legal system has the same roots and applies many of the same principles as other common law systems around the world. Just as lawyers in Hong Kong refer to case law from jurisdictions from Singapore to South Africa, so decisions of Hong Kong's courts can assist lawyers researching overseas.

Since 1997, Hong Kong's status as a Special Administrative Region of the PRC has meant that, in addition to continuing to foster strong links with the common law world, mutual understanding with the Mainland of our two legal systems is also important.

The sharing of experience with lawyers in other jurisdictions plays an important role in legal life, a

fact reflected in the composition of Hong Kong's Court of Final Appeal, which at every full hearing has included one judge from another common law jurisdiction.

Visits

The Secretary for Justice and the Law Officers regularly meet visitors from the Mainland and overseas, both lawyers and non-lawyers. The Secretary for Justice personally met 31 visitors or delegations from overseas and 20 from the Mainland during 2010 and 2011. Those from overseas included delegations led by the Ministers of Justice / Attorney Generals of Bangladesh, the Republic of Korea, Malaysia, Mauritius, New Zealand, Slovenia and the United



The Secretary for Justice promotes Hong Kong's legal services in Paris (October 2011)



The Secretary for Justice is briefed by Mr Zheng Hongjie, Director General of the Qianhai Authority, on Qianhai's development

States of America. Visitors from the Mainland included senior judges from the Supreme People's Court and senior officials from the Supreme People's Procuratorate, the Ministry of Justice, the Department of Treaties and Law of the Ministry of Foreign Affairs, and Departments of Justice at the provincial and municipal levels.



The Law Draftsman meets Mr Zhang Xiaoming, Vice-Minister of the Hong Kong and Macao Affairs Office of the State Council, in Beijing

Other members of the department met a wide range of visitors to the department during 2010 and 2011. These included a delegation from Macao of 11 legislative drafters and legal translators from the Legal Affairs Bureau and the Law Reform and International Law Bureau and a delegation from the Ministry of Law, Justice and Parliamentary Affairs of the Government of the People's Republic of Bangladesh.

Members of the department also gave briefings on Hong Kong's legal system to many distinguished visitors from the Mainland and overseas, including lawyers, legislators, journalists and consular officials.

The Secretary for Justice and the Law Officers themselves from time to time visit their counterparts or undertake duties in other jurisdictions. For instance, in 2010 and 2011, the Secretary for Justice met officials from the Ministry of Justice, the Supreme People's Court, and other law departments in Beijing, Guangzhou, Shenzhen and Qingdao to discuss measures to further enhance legal co-



The Secretary for Justice meeting the Korean Minister of Justice, Mr Kwon Jae-jin (December 2011)



The Secretary for Justice and the Deputy Law Draftsman (Bilingual Drafting and Administration) (third left) meeting an official delegation from Korea

operation between Hong Kong and the Mainland. The Secretary for Justice also visited Brussels, Kuala Lumpur, Paris, Seoul, Singapore and Tokyo, meeting senior government officials, legal practitioners and important contacts in each jurisdiction. He also visited The Hague, where he met the Secretary General of The Hague Conference on Private International Law and the President of the International Court of Justice.

In January 2011, the Law Draftsman led a delegation of counsel on a legal study visit to Beijing and Chongqing. Organisations which the delegation visited included the Ministry of Justice, the Legislative Affairs Commission of the National People's Congress and the Legislative Affairs Office of the State Council.

In June 2011, the Director of Public Prosecutions (DPP) led a delegation of counsel from the Prosecutions

and International Law Divisions to Macao to meet Dr Ho Chio-meng, Prosecutor General of Macao, and members of his office. In November 2011, the DPP led a delegation of prosecutors to Beijing, where those the delegation met included Professor Cao Jianming, Procurator General of the Supreme People's Procuratorate, Professor Hu Yunteng, Director General of the Research Office of the Supreme People's Court, Mr Wang Wei, Acting Chief Prosecutor of the People's Procuratorate, Haidian District, Beijing, and Professor Wang Xixin, Vice Dean of Peking University.

Conferences and seminars in the Mainland and overseas

The Secretary for Justice and the Law Officers also regularly attend conferences and seminars in the Mainland or overseas to keep abreast of legal developments and law reform in other

jurisdictions and to learn from the experience of others.

In July 2010, the Secretary for Justice officiated at the opening of the Hong Kong Legal Services Forum in Shanghai and in October 2011 attended the 9th Chinese Lawyers' Forum in Qingdao and delivered a speech on Hong Kong's role in, and contribution to, the PRC's 12th Five-Year Plan.

The Law Draftsman and other counsel from the Law Drafting Division participated in the Conference of the Commonwealth Association of Legislative Counsel (CALC) held in Hyderabad, India in February 2011, the Australian Drafting Conference held in Adelaide, Australia in August 2011 and the Asian Region Conference of CALC held in Colombo, Sri Lanka in September 2011. The Law Draftsman also

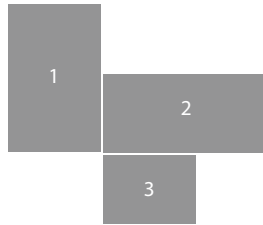
attended the Clarity 2010 Conference held in Lisbon, Portugal. That was the 4th international conference organised by Clarity, which is an international organisation promoting plain legal language.

In November 2010, the DPP attended the 4th International Association of Anti-Corruption Authorities' Annual Conference and General Meeting in Macao, along with a number of counsel from the Prosecutions Division.

Other major international conferences attended by counsel of the department during 2010 and 2011 included the Canadian Institute for the Administration of Justice Conference on Re-imagining the Law in Ottawa, the 15th Annual Conference of the International Association of Prosecutors in The Hague and the 17th Commonwealth Law Conference in Hyderabad.



Our drafting counsel meeting an official delegation from Macao



1. The Director of Public Prosecutions, Mr Kevin Zervos, SC, meeting Dr Ho Chio-meng, Prosecutor General of Macao at the Public Prosecutions Office of Macao
2. The Hong Kong Legal Services Forum in Shanghai (July 2010)
3. Our drafting counsel attending the CALC 2011 Asian Region Conference in Sri Lanka



Day-to-day links with other jurisdictions

While the majority of lawyers in the department have completed their legal qualifications in Hong Kong, some have qualified in overseas jurisdictions, including Australia, Canada, England and New Zealand. In addition to this in-house experience of other jurisdictions, every counsel has online access to the wealth of legal resources from around the world available via the internet. The department receives on a regular reciprocal basis reports and papers from law reform agencies and other legal

bodies around the world. The department also makes use of the Commonwealth Legal Advisory Service when researching aspects of comparative law, in addition to the regular contacts which members of the department maintain with their counterparts overseas.



Statistics

station wagon *n*; an automobile with a rear compartment which extends behind the trunk
statistic *\stə-ˈtɪs-tɪk \ n* 1 a collection of statistical data 2 a statistical fact
statistics *-tɪks* 1 a collection of statistical data 2 statistical facts

Statistics

Staff establishment of the Department of Justice

(as at 31 December 2011)

Division	Directorate counsel	Non-directorate counsel	Para-legal staff #	Other staff	Total
Secretary for Justice's Office	–	1	–	12	13
Civil	23	124	39	111	297
International Law	7	14	2	11	34
Law Drafting	15	22	17	53	107
Legal Policy	10	26	7	28	71
Prosecutions	27	101	133	203	464
Administration & Development	–	1	–	185	186
Total number of posts	82	289	198	603	1 172

Court Prosecutors, Law Translation Officers and Law Clerks

Rank and post title of senior legal staff

Rank \ Post title	Civil Division	International Law Division	Law Drafting Division	Legal Policy Division	Prosecutions Division
Law Officer	Law Officer (Civil Law)	Law Officer (International Law)	Law Draftsman	Solicitor General	Director of Public Prosecutions
Principal Government Counsel	Deputy Law Officer	Deputy Law Officer	Deputy Law Draftsman	Deputy Solicitor General	Deputy Director of Public Prosecutions
Deputy Principal Government Counsel	Senior Assistant Law Officer	Deputy Principal Government Counsel	Senior Assistant Law Draftsman	Senior Assistant Solicitor General	Senior Assistant Director of Public Prosecutions
Assistant Principal Government Counsel	Assistant Law Officer	–	–	Assistant Solicitor General	Assistant Director of Public Prosecutions

Total expenditure on departmental activities

	2010 (HK\$ million)	2011 (HK\$ million)
Personal emoluments and personnel related expenses	584.1	620.3
Departmental expenses	74.8	89.2
Court costs	90.1	130.8
Hire of legal services and related professional fees	204.6	229.3
General non-recurrent account	0.2	0.1

Training

(a) Courses attended by Department of Justice staff

	Number of participants (2010)	Number of participants (2011)
Law-related training and conferences		
• Legal trainee scheme	19	17
• Law seminars/talks organised by divisions	511	394
• Legal courses and workshops by the Law Society of Hong Kong, Advocacy Institute and other local institutes	319	328
• Courses on criminal law, evidence, procedure & advocacy	191	383
• Workshops and in-house seminars for Court Prosecutors	101	66
• Seminars on Chinese drafting	0	51
• Seminars on English drafting and the work of drafting counsel	0	268
• International law conferences	44	65
• Law courses and attachments outside Hong Kong	13	23
• Part-time law studies sponsored by the department	6	10
Total	1 204	1 605

Training (Continued)

(a) Courses attended by Department of Justice staff (Continued)

	Number of participants (2010)	Number of participants (2011)
National Studies, Foreign Affairs Studies and China Law		
• National Studies courses for senior staff at Peking University, Tsinghua University and the Chinese Academy of Governance and thematic study programmes in the Mainland	8	11
• National Studies courses for middle managers at Sun Yat-sen University, Guangzhou, and Peking University, Shenzhen	4	6
• National Studies course for expatriate officers at Peking University, Beijing	4	0
• Mainland legal studies course for government lawyers	8	7
• National Studies seminars	30	67
Total	54	91
Management training (including training courses outside Hong Kong)		
• Management development programmes for directorate counsel	2	0
• General management courses	86	134
• Directorate seminars	71	42
• Leadership in Action Programme	5	6
• Advanced Leadership Enhancement Programme	3	4
• Innovative Managers Programme	3	2
Total	170	188
Communication and language training		
• Putonghua courses	27	21
• Written Chinese courses	7	6
• English and communication courses	26	11
Total	60	38

Training (Continued)

(a) Courses attended by Department of Justice staff (Continued)

	Number of participants (2010)	Number of participants (2011)
Others		
• Induction courses for Government Counsel and legal trainees	26	11
• Computer training courses	482	728
• Visits to government departments and organisations	28	18
• Vocational/induction training for non-counsel grades	5	32
Total	541	789
Grand total	2 029	2 711

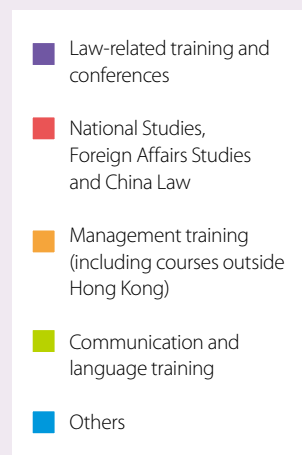
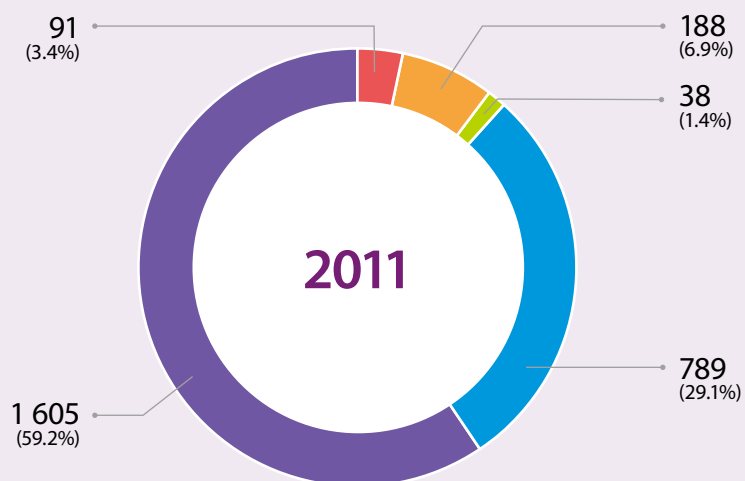
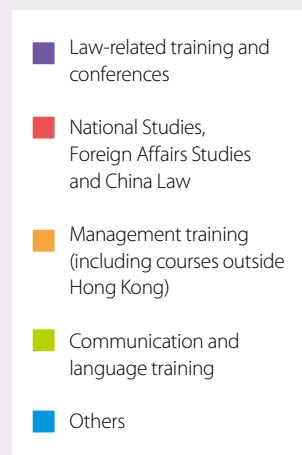
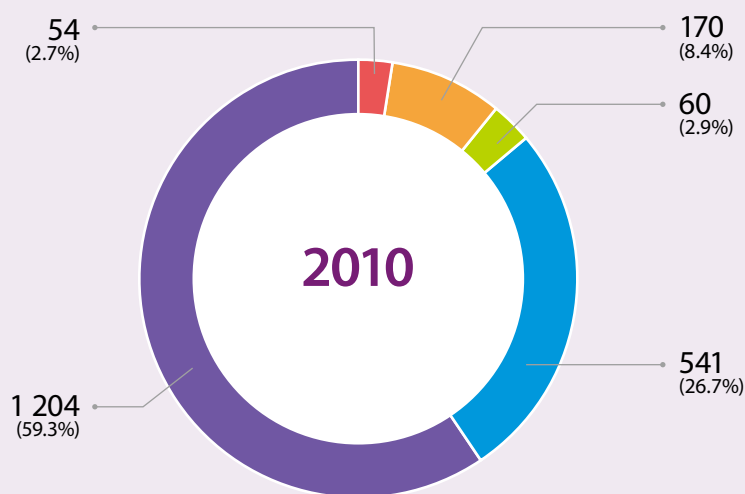
(b) Courses provided by Department of Justice staff to others

Legal training seminars arranged by divisions for other Government departments	Number of participants (2010)	Number of participants (2011)
Civil Division	539	322
International Law Division	160	212
Law Drafting Division	163	86
Legal Policy Division	709	233
Prosecutions Division	2 356	1 258
Total	3 927	2 111

Distribution of Department of Justice participants in training courses

(a) Distribution of participants by content of training

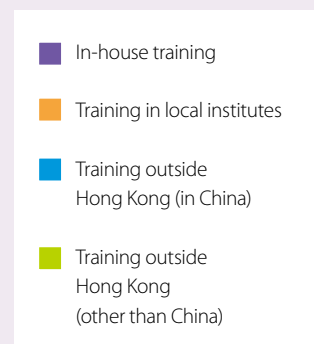
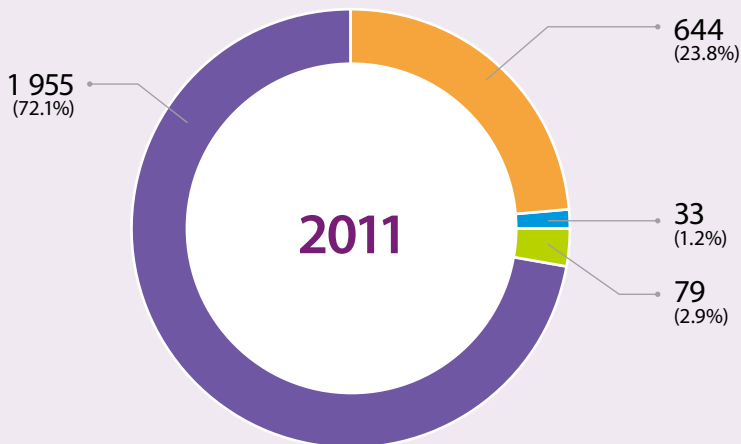
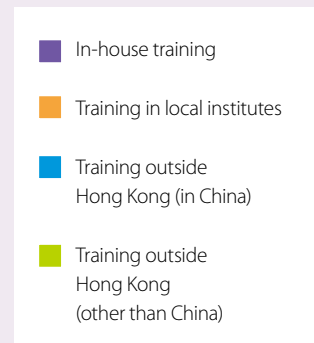
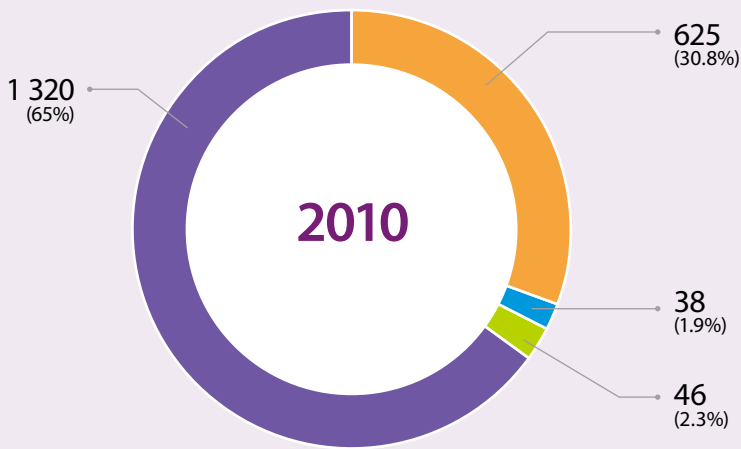
	2010		2011	
Law-related training and conferences	1 204	59.3%	1 605	59.2%
National Studies, Foreign Affairs Studies and China Law	54	2.7%	91	3.4%
Management training (including courses outside Hong Kong)	170	8.4%	188	6.9%
Communication and language training	60	2.9%	38	1.4%
Others	541	26.7%	789	29.1%
Total	2 029	100%	2 711	100%



Distribution of Department of Justice participants in training courses (Continued)

(b) Distribution of participants by place of training

	2010		2011	
In-house training	1 320	65.0%	1 955	72.1%
Training in local institutes	625	30.8%	644	23.8%
Training outside Hong Kong (in China)	38	1.9%	33	1.2%
Training outside Hong Kong (other than China)	46	2.3%	79	2.9%
Total	2 029	100%	2 711	100%



Civil Division

Advisory units

Number of pieces of legal advice given	2010	2011
(a) Planning, Environment, Lands & Housing Unit	2 248	1 869
(b) Civil Advisory Unit	9 390	9 783
(c) Commercial Unit	2 844	3 357

	2010	2011
Number of commercial tenders, consultancy briefs, contracts, licences and franchises drafted / vetted by the Commercial Unit	389	460
Number of tenders, contracts and permits drafted / vetted by the Civil Advisory Unit	118	152
Number of contract documents drafted / vetted by the Planning, Environment, Lands & Housing Unit	21	22

Civil Division (Continued)

Civil Litigation Unit

	2010	2011
Number (and percentage) of civil litigation cases in respect of which one or more outside professionals were briefed	1 205 (4.7%)	1 492 (5.3%)
Total number of current civil litigation cases	25 556	28 128

Selected categories of current civil litigation cases	2010	2011
Tax, Stamp Duty, Estate Duty, Rating & Government rent appeals	4 278	4 000
Judicial review / habeas corpus proceedings	522	551
Building, planning, environmental appeals	383	611
Personal injuries proceedings	305	320
Medical Council, Dental Council, Supplementary Medical Professions Council, Veterinary Surgeons Board and Chinese Medicine Practitioners Board	324	368
Land related cases (other than land resumption)	68	70
Land resumption	227	218

	2010	2011
Number of civil proceedings instituted by government	2 068	2 337
Amount claimed / involved	\$299 million	\$771 million
Number of civil proceedings instituted against government	1 286	1 176
Amount claimed / involved	\$66 716 million*	\$240 million

*Including a claim in the amount of \$66 500 million in a case which has been dismissed by the court.

	2010	2011
Number of Court of Appeal cases with substantive hearings	54	33
Number of Court of Final Appeal cases with substantive hearings	2	9

International Law Division

	2010	2011
Number of international agreements initialled	2	6
Number of pieces of legal advice provided	8 620	8 378
Number of new requests dealt with in various categories of mutual legal assistance	250	279

Law Drafting Division

Legislative drafting work	2010	2011
Drafts of legislation released ¹	2 563	2 644
Number of pieces of legal/professional advice given (including written and oral advice)	5 998	7 880
Papers prepared ²	637	369
Papers commented on ³	1 327	1 663
Drafting conferences attended	510	583
ExCo and LegCo attendances	397	585

¹ This includes all drafts of legislation (whether gazetted or not), including draft Committee Stage Amendments.

² This includes all drafts (other than legislation) prepared by Law Drafting Division counsel (whether issued in the name of individual counsel or otherwise) for consideration by parties outside the administration. Examples are papers explaining legal points submitted to Bills Committees, legal reports to the Standing Committee of the National People's Congress and Law Draftsman's certificates for private Bills, etc.

³ This includes all documents sent to the division by parties outside the department for consideration and comments. Examples are drafts of ExCo Memos, LegCo Briefs, speeches by bureau secretaries, private Bills, replies, press releases, papers submitted to Bills Committees or LegCo's panels or ExCo's subcommittees, etc.

Law Drafting Division (Continued)

Volume of legislation gazetted	2010	2011
Number of Bills gazetted	24	27
Number of pages of bilingual text (as gazetted)	1 838	4 618
Number of pieces of subsidiary legislation	176	186
Number of pages of bilingual text (as gazetted)	2 062	4 948

Volume of legislation enacted	2010	2011
Number of Ordinances enacted	20	25
Number of pages of bilingual text of Committee Stage Amendments incorporated into Ordinances	255	366

Legal Policy Division

Visits (and visitors) to and from the Mainland handled by the division	2010	2011
Number of visits (and visitors) from the Mainland	27 (410)	34 (615)
Number of visits (and visitors) to the Mainland	3 (17)	5 (10)
Total	30 (427)	39 (625)

Number of pieces of legal advice given	2010	2011
General legal policy	790	925
Basic Law and constitutional matters	1 110	1 280
Human rights	1 011	1 665
Mainland law	304	321
Total	3 215	4 191

Prosecutions Division

	2010	2011
Number of pieces of legal advice given	15 133	12 067
Criminal cases / appeals at all levels of court		
<i>Court of Final Appeal and related applications</i>		
Number of appeals concluded	153	131
(including number of prosecution appeals)	(9)	(8)
<i>Court of Appeal</i>		
Number of appeals heard	471	458
(including number of prosecution appeals - case stated)	(1)	(1)
(Including number of prosecution appeals - review of sentence)	(9)	(14)
<i>Court of First Instance (Magistracy appeals)</i>		
Number of appeals heard	982	866
(including number of prosecution appeals - case stated)	(4)	(1)
<i>Court of First Instance</i>		
Number of indictments	272	278
<i>District Court</i>		
Number of charge sheets	1 418	1 388
<i>Magistrates' Court</i>		
Number of applications for review under section 104 of the Magistrates Ordinance (Cap 227)	44	24
Caseload of Court Prosecutors	180 363	171 026
<i>High Court</i>		
Number of bail applications	789	802
<i>Death inquests</i>		
Number of inquests	43	46

Prosecutions Division (Continued)

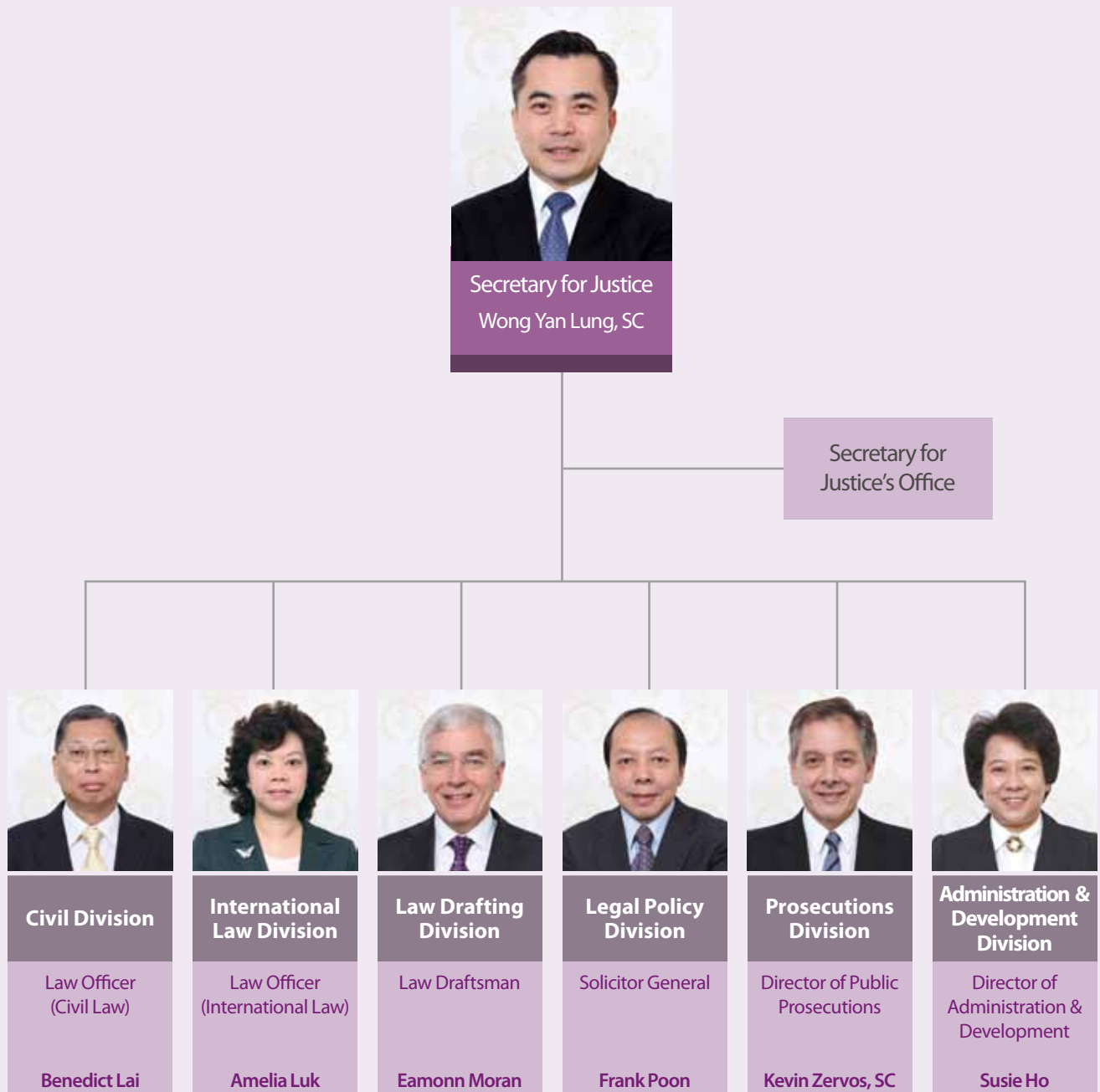
Percentage of criminal cases conducted in Chinese	2010	2011
Court of Final Appeal and related applications	33.3%	34.6%
Court of Appeal (criminal appeals)	41.8%	32.1%
Court of First Instance (Magistracy appeals)	67.1%	79.1%
Court of First Instance (criminal trials)	25.5%	26.8%
District Court (criminal trials)	46.2%	32.9%
Magistrates' Courts (criminal trials)	80.9%	78.6%

Briefing out	2010		2011	
	No of cases	No of court days	No of cases	No of court days
Appeals				
Court of Final Appeal and related appeals	18	15	16	12
Other appeals	11	28	15	27
Court of First Instance (criminal trials)	87	691	153	1 019
District Court (criminal trials)	414	2 551	441	2 288
Magistrates' Court (criminal trials)				
In place of Government Counsel	633	1 570	336	879
In place of Court Prosecutor *	–	2 668	–	3 014

*Lawyers instructed in place of Court Prosecutors are briefed to attend to all cases on the basis of the daily cause list before a particular magistrate.

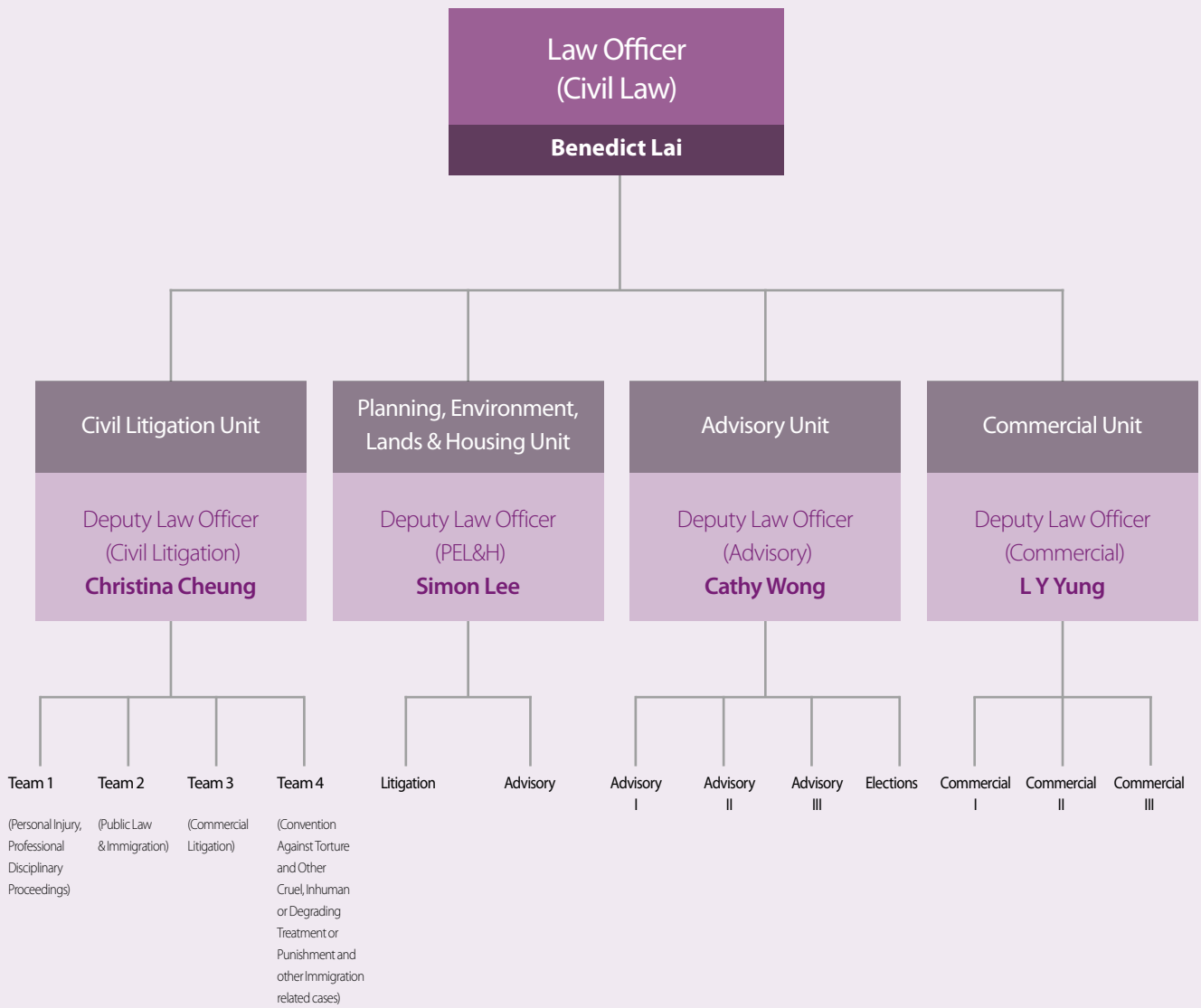
Organisation chart of the Department of Justice

(as at 31 December 2011)



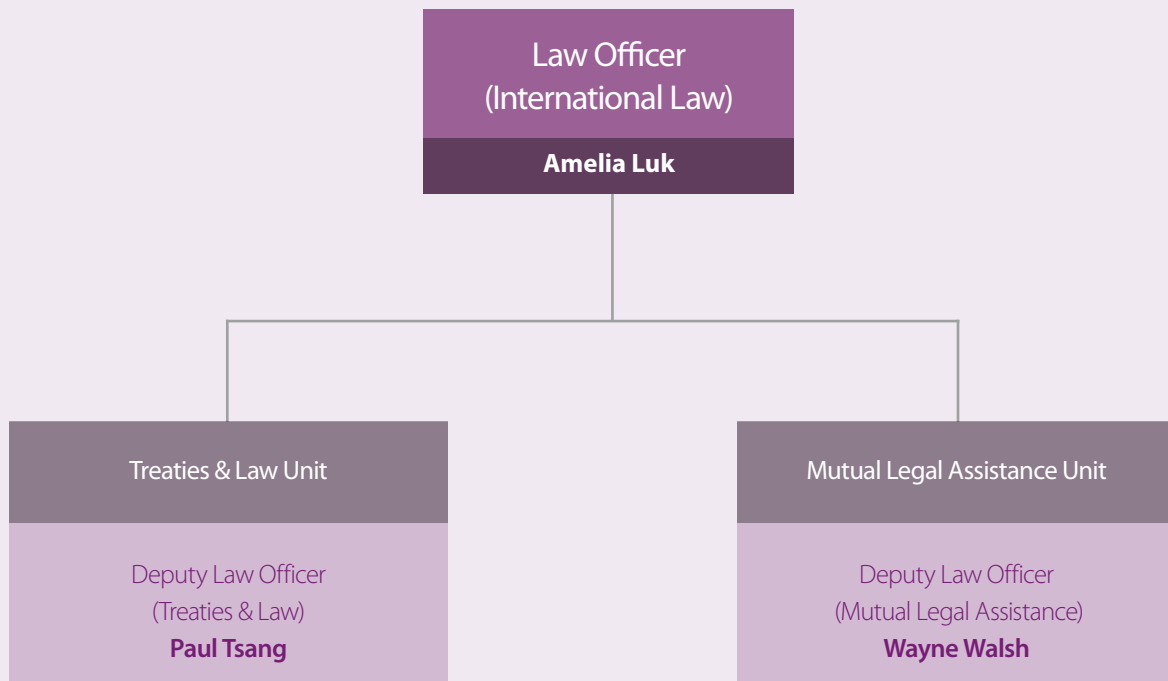
Organisation chart of the Civil Division

(as at 31 December 2011)



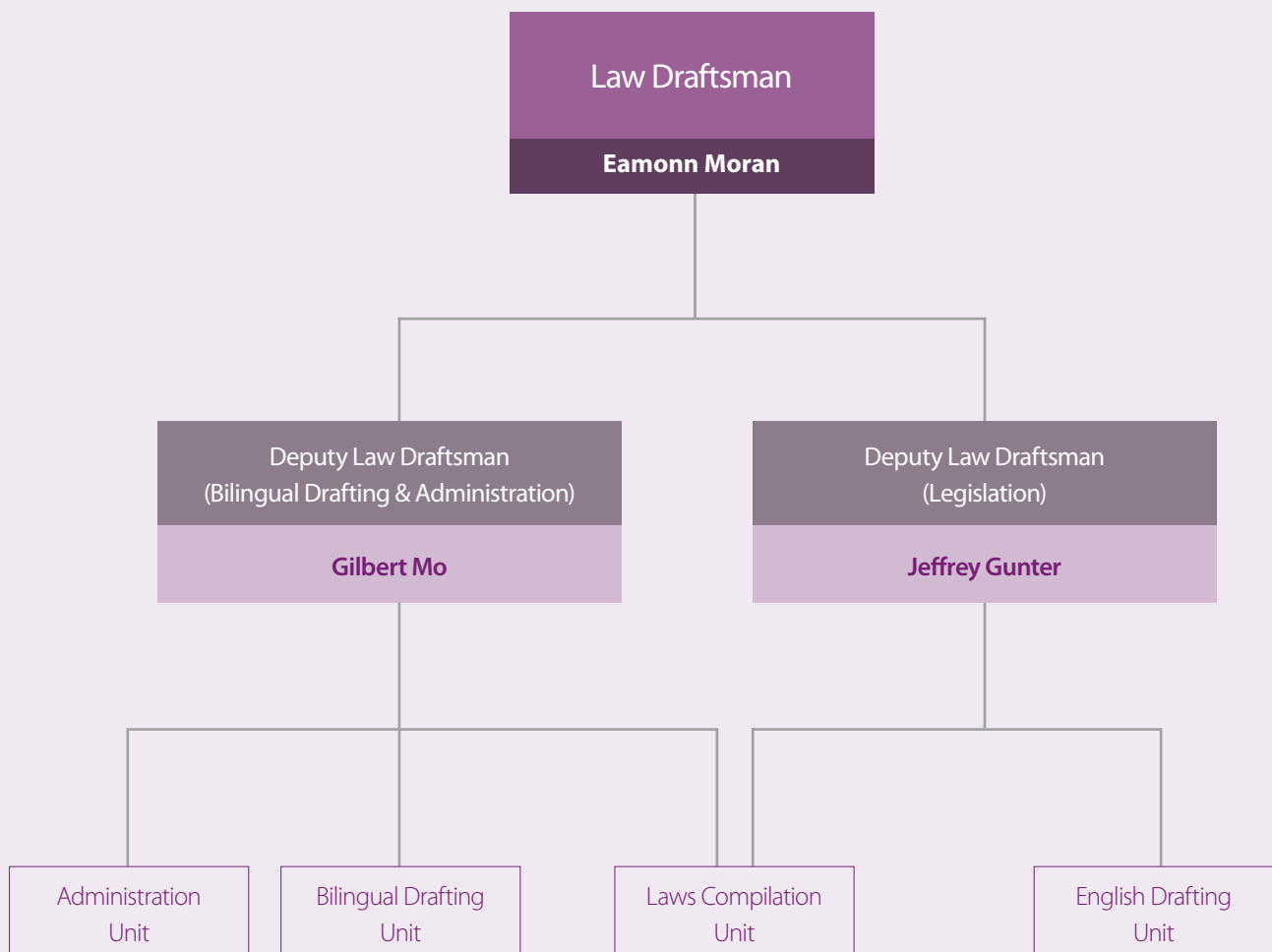
Organisation chart of the International Law Division

(as at 31 December 2011)



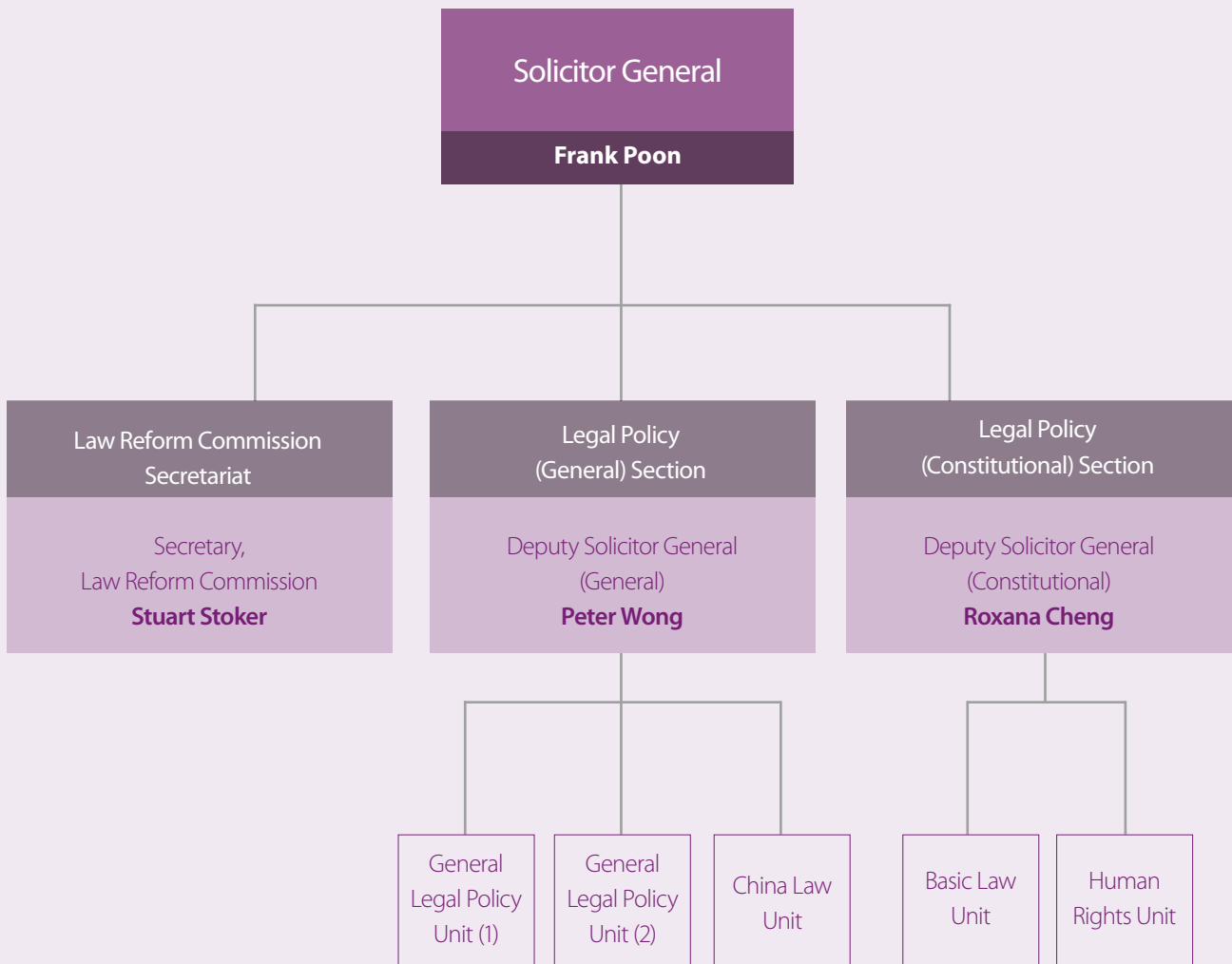
Organisation chart of the Law Drafting Division

(as at 31 December 2011)



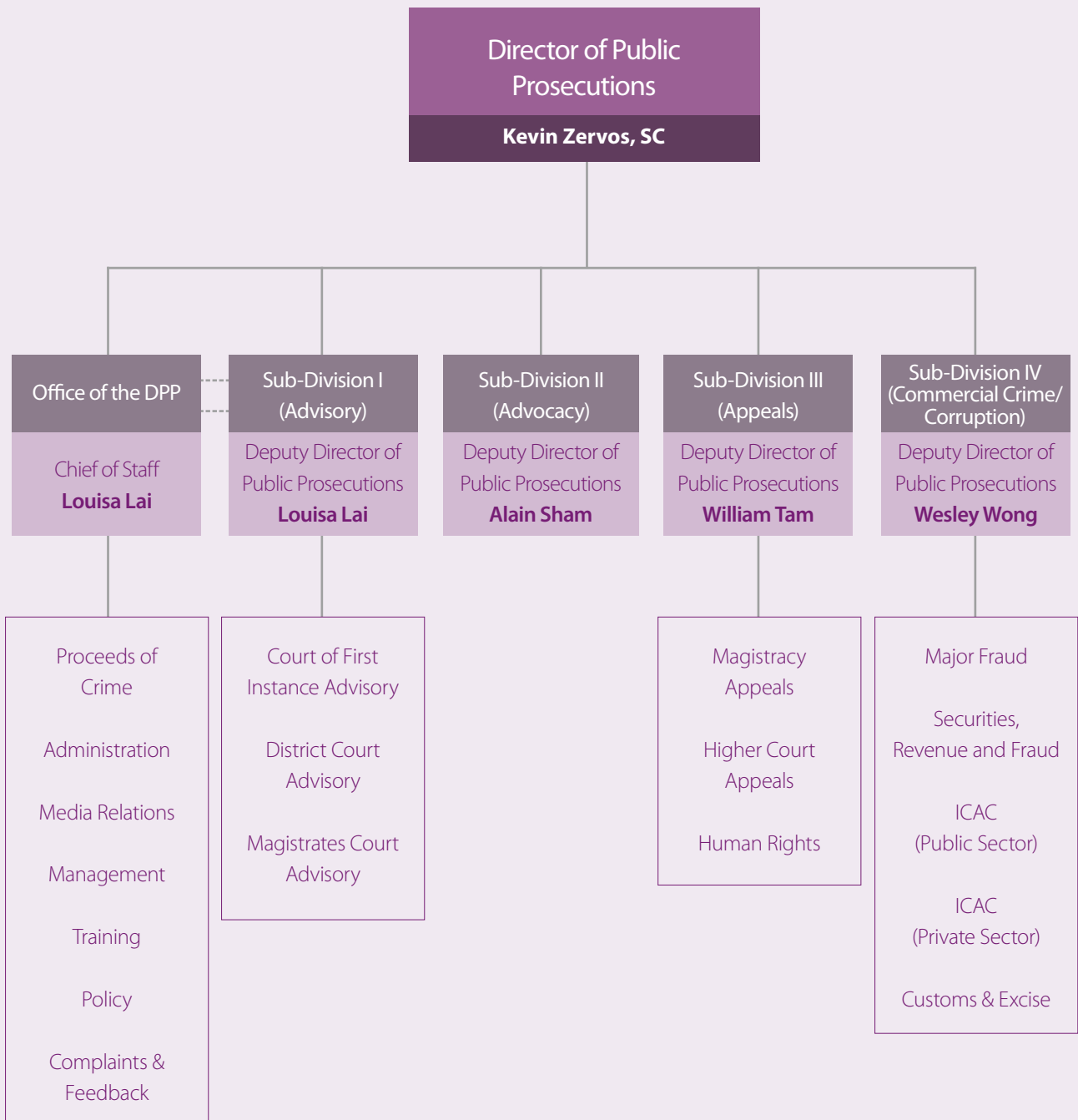
Organisation chart of the Legal Policy Division

(as at 31 December 2011)

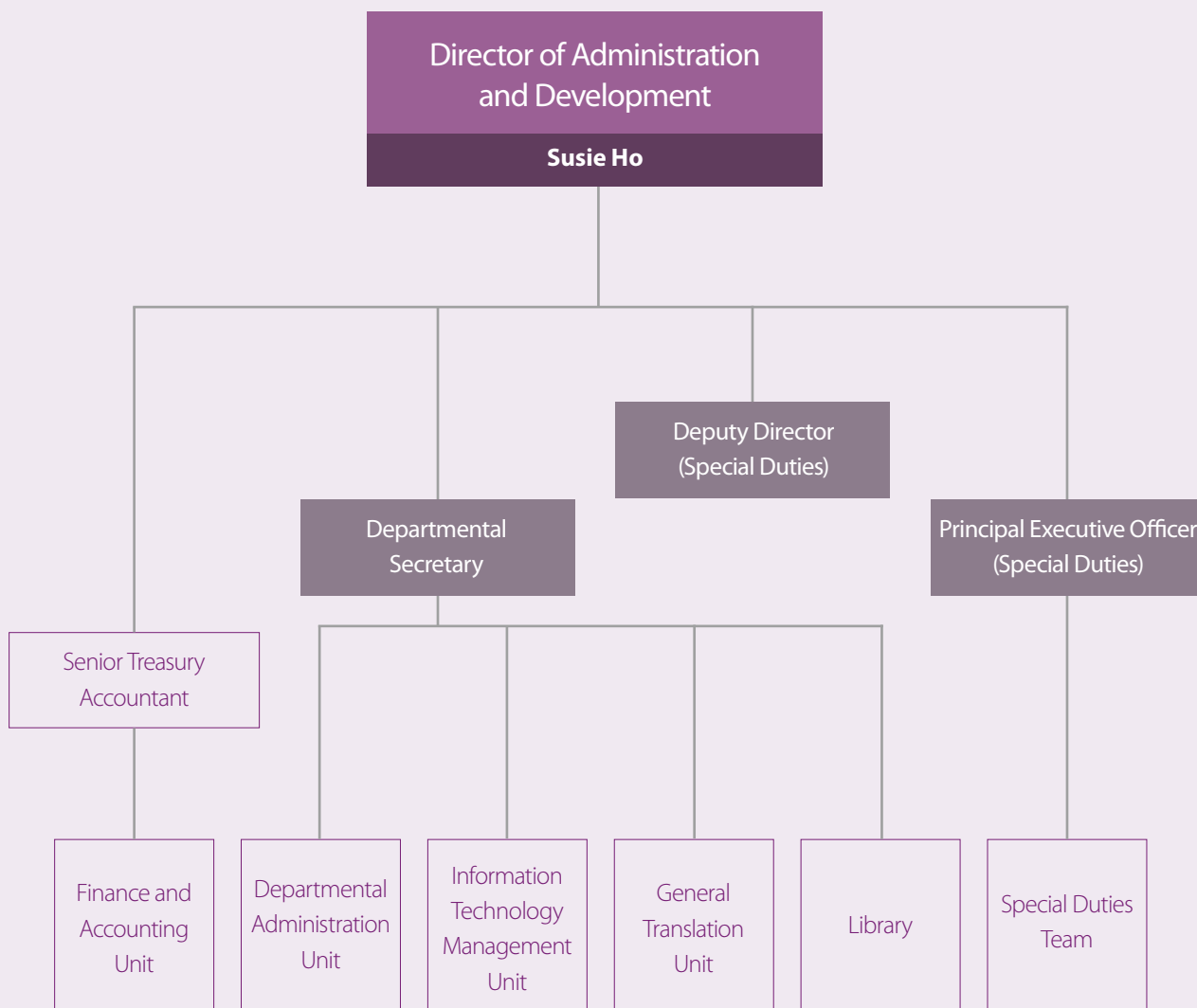


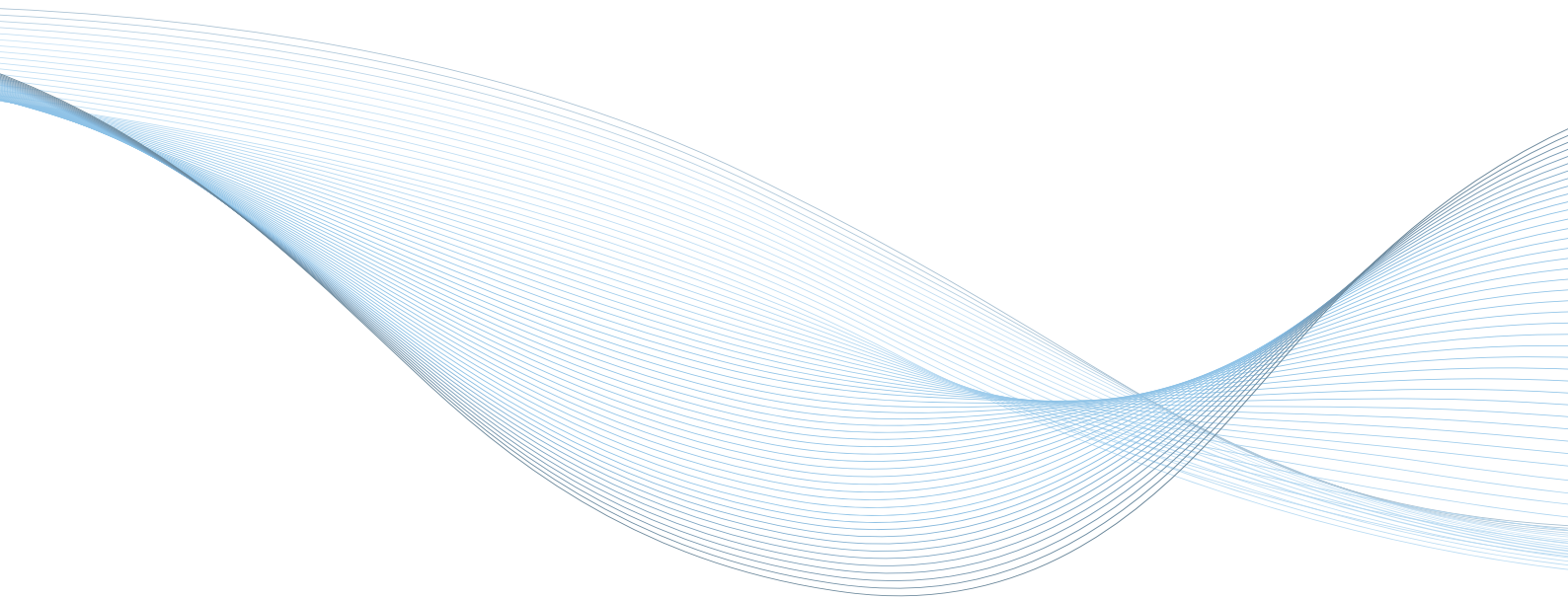
Organisation chart of the Prosecutions Division

(as at 31 December 2011)



Organisation chart of the Administration and Development Division (as at 31 December 2011)





律政司
Department of Justice

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