

Head 92 — DEPARTMENT OF JUSTICE

Controlling officer: the Director of Administration and Development will account for expenditure under this Head.

Estimate 2001–02	986.7m
Establishment ceiling 2001–02 (notional annual mid-point salary value) representing an estimated 1 072 non-directorate posts at 31 March 2001 reducing by ten posts to 1 062 posts at 31 March 2002.....	\$421.8m
In addition there will be an estimated 76 directorate posts at 31 March 2001 reducing by one post to 75 posts at 31 March 2002.	
Capital Account commitment balance	\$7.9m

Controlling Officer's Report

Programmes

<p>Programme (1) Prosecutions Programme (2) Civil Programme (3) Legal Policy Programme (4) Law Drafting Programme (5) International Law</p>	<p>These programmes contribute to Policy Area 11: Legal Administration (Secretary for Justice).</p>
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Detail

Programme (1): Prosecutions

	1999–2000 (Actual)	2000–01 (Approved)	2000–01 (Revised)	2001–02 (Estimate)
Financial provision (\$m)	316.5	409.8 (+29.5%)	381.9 (–6.8%)	389.1 (+1.9%)

Aim

2 The aim is to advise and decide whether or not criminal proceedings should be undertaken and to prosecute cases in the courts.

Brief Description

3 The Prosecutions Division advises on and prosecutes criminal cases in all the courts in Hong Kong. In most appeals to the Court of Final Appeal and the Court of Appeal, a senior member of the Prosecutions Division appears in court to represent the prosecution. In many cases in the Court of First Instance and some in the District Court, the prosecution is conducted by Government Counsel. Most of the cases in the Magistrates' Court are prosecuted by Court Prosecutors. Some cases are briefed out to members of the private Bar and solicitors in private practice. The Division also advises the law enforcement agencies generally on criminal law and practice and the effect of legislation.

4 These advocacy and advisory functions are performed by various specialist sections within the Prosecutions Division. These sections deal with trial preparation, trials, training and developing bilingualism, vice, obscenity and gambling cases, complaints against Police, appeals, the Basic Law and human rights, immigration cases, coroners' inquests, labour cases, domestic proceeds of crime and Inland Revenue cases, computer crime and copyright cases, ICAC cases, Customs & Excise cases, commercial crime cases, and miscellaneous advice.

5 In 2000, the aim of the programme was generally met and the overall performance of the programme as reflected by the key indicators is satisfactory.

6 The key performance measures are:

Indicators

	1999 (Actual)	2000 (Actual)	2001 (Estimate)
cases conducted by Government Counsel.....	4 125	4 338	4 350
cases conducted by Counsel instructed to prosecute.....	776	768	770
average number of court days for court specialists	94	96	96
number of court days undertaken by Government Counsel who are not court specialists	5 638	4 552	4 560
number of court days undertaken by Court Prosecutors in Magistrates' Court.....	15 230	14 852	14 860

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	1999 (Actual)	2000 (Actual)	2001 (Estimate)
number of court days undertaken by Counsel instructed to prosecute in Magistrates' Court in place of Court Prosecutors	73	140	160
number of trials prepared in the Court of First Instance.....	415	416	420
number of trials prepared in the District Court.....	586	562	570
items of legal advice provided.....	12 974	15 545	15 550
number of appeals conducted.....	1 995	1 761	1 765

7 The conviction rates for 1999 and 2000 are:

	1999 (Actual)	2000 (Actual)
Magistrates' Court.....	75.8%	75.1%
District Court.....	87.6%	89.9%
Court of First Instance.....	90.4%	93.2%

It should be noted that while it is the duty of Counsel and Court Prosecutors to prosecute vigorously in courts, they have to act in a fair and objective manner. It is wrong to strive to secure a conviction at all costs. The question of guilt or innocence is a matter for the court to decide. Therefore, conviction rates in criminal cases are not and should not be taken as performance indicators. They are published regularly for reference only.

Matters Requiring Special Attention in 2001–02

8 During 2001–02, the Division will:

- put in place measures aimed at enhancing the performance of departmental prosecutors;
- prepare a set of standard forms and precedents for proceedings in the Court of Final Appeal in criminal matters;
- produce a new Prosecution Manual to assist prosecutors and law enforcement personnel in the discharge of their duties;
- continue efforts to improve our capacity to process and to conduct cases which go to the Court of Final Appeal; and
- continue to provide training for counsel to conduct court proceedings in Chinese.

Programme (2): Civil

	1999–2000 (Actual)	2000–01 (Approved)	2000–01 (Revised)	2001–02 (Estimate)
Financial provision (\$m)	362.4	323.7 (–10.7%)	347.8 (+7.4%)	392.7 (+12.9%)

Aim

9 The aim is to provide legal advice to the Government in civil matters, to undertake civil litigation and to draft contracts on commercial and other matters.

Brief Description

10 The work of the Civil Division involves:

- representing the Government and other public bodies in courts and tribunals in all forms of civil litigation and dispute resolution (including arbitration and mediation);
- providing legal advice on planning, environment, housing and land law matters;
- providing legal advice on commercial law matters and drafting commercial contracts, licences and franchises; and
- providing legal advice on legislation and civil law matters to the Government.

11 In 2000, the aim of the programme was generally met and the overall performance of the programme as reflected by the key indicators is satisfactory.

12 The key performance measures are:

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Indicators

	1999 (Actual)	2000 (Actual)	2001 (Estimate)
civil proceedings (including non-construction arbitration) brought by Government§	1 608	1 470	1 900
civil proceedings (including non-construction arbitration) brought against Government§	1 241	2 949	3 100
number of person days of court appearances	814	1 041	1 570
number of civil litigation cases current on 31 December	10 426	12 389	13 910
items of legal advice provided.....	13 212	14 904#	15 000#
commercial tenders, consultancy briefs, contracts, licences and franchises drafted/vetted.....	373	390	400

§ With effect from 2000, the basis for compiling figures on civil proceedings brought by and against Government has been revised to exclude proceedings which were not actually brought by or against Government but only involved Government. Such cases include interpleader proceedings, charitable trust cases and child abduction cases. Such cases account for eight cases brought by Government and 94 cases brought against Government in 1999. The figures for 1999 would have been 1 600 for civil proceedings by Government and 1 147 for civil proceedings against Government if the revised basis had been used.

The figures for 2000 and 2001 have taken account of the transfer of routine legal advisory work on implementation of electoral legislation from the Legal Policy Division in September 2000.

Matters Requiring Special Attention in 2001–02

13 During 2001–02, the Division will:

- advise on proceedings against the Government, in particular those involving right of abode claims and compensation claims on land resumption related to the West Rail project;
- draft, vet and advise on the English and Chinese texts of contracts, undertakings, tender documents, public franchises, licences and other legal documents for the Government;
- advise on a wide range of land related matters, including town planning, environmental protection, landlord and tenant matters, control of building operations, resumption and reclamation, sewage and flood control, new road and railway schemes and the proposed Tung Chung cable car system;
- advise on the regulation of companies, securities, insurance, information technology, electronic transactions, e-commerce (including the Certification Authority Recognition Office), transportation, television broadcasting and telecommunications (including anti-competitive provisions) as well as proposals for reform;
- provide Counsel to the Insider Dealing Tribunal;
- advise on privatisation, corporatisation and outsourcing of Government's commercial activities;
- advise on occupational retirement and provident fund schemes;
- advise on the proposed composite Securities and Futures Bill; and
- advise on the implementation of the Walt Disney Theme Park.

Programme (3): Legal Policy

	1999–2000 (Actual)	2000–01 (Approved)	2000–01 (Revised)	2001–02 (Estimate)
Financial provision (\$m)	52.9	67.2 (+27.0%)	63.2 (–6.0%)	67.9 (+7.4%)

Aim

14 The aim is to advise the Government on matters raising questions of legal policy; to assist in formulating policy, particularly in relation to the legal system and the legal profession; to provide support to the Secretary for Justice in relation to the discharge of her duties; to provide advice in respect of the Basic Law, human rights and constitutional affairs as well as the law and legal developments in the Mainland, and to review chosen areas of the law and provide secretariat support for the Law Reform Commission.

Brief Description

15 The work of the Secretary for Justice's Office and the Legal Policy Division includes:

- advising whether proposed legislation or particular policy is contrary to established principles underlying the legal system;

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- providing support for the Secretary for Justice in relation to her duties as a member of the Executive Council, a designated officer attending meetings of the Legislature and as legal adviser to the Chief Executive;
- advising on legal issues arising out of prisoners' petitions for remission, references of cases to the Court of Appeal under the Criminal Procedure Ordinance and responses to public enquiries and complaints;
- providing specialised human rights advice to ensure the consistency of policy and legislation with the human rights requirements of the Basic Law and of international treaties extended to Hong Kong;
- promoting Adaptation Bills in relation to ordinances concerning the legal system;
- providing advice and information on the laws of the Mainland and developing working relationships with counterparts in the Mainland;
- providing advice to the Administration on procedures of the Legislature;
- providing advice on the Basic Law and promoting knowledge of the Basic Law; and
- giving advice and providing research and support to facilitate the work of the Law Reform Commission.

16 In 2000, the aim of the programme was generally met and the overall performance of the programme as reflected by the key indicators is satisfactory.

17 The key performance measures are:

Indicators

	1999 (Actual)	2000 (Actual)	2001 (Estimate)
number of Bills being promoted per session of the Legislature.....	5	1	2
number of petitions handled.....	83	66	70
items of written advice given on general legal policy issues ...	1 450	1 101§	600§
items of legal advice given on human rights issues	939	859	860
number of law reform projects being handled.....	10	9	9
number of speeches prepared (both for the Legislature and elsewhere).....	98	93	90
items of legal advice given on Mainland law and related matters	357	259	240
items of legal advice given on the Basic Law and constitutional matters	920	845	1 000
number of Basic Law seminars conducted.....	17	29	20

§ The figures for 2000 and 2001 have taken account of the transfer of routine legal advisory work on implementation of electoral legislation to the Civil Division in September 2000.

Matters Requiring Special Attention in 2001–02

18 During 2001–02, the Secretary for Justice's Office and the Legal Policy Division will continue to:

- take forward the comprehensive review of legal education and training;
- explore opportunities for the legal profession to provide services in the Mainland;
- provide legal advice in respect of the implementation of the Basic Law and the development of our new constitutional order;
- provide prompt and reliable human rights advice including advice in respect of anti-discrimination legislation;
- develop expertise in respect of legislative powers, procedures and practices in the context of the Basic Law;
- develop working relationships with counterparts in the Mainland in particular areas which call for co-operation between the Hong Kong Special Administrative Region (HKSAR) and the Mainland; and
- organise talks, seminars and visits in order to develop and enhance mutual understanding of the legal systems in HKSAR and the Mainland.

Programme (4): Law Drafting

	1999–2000 (Actual)	2000–01 (Approved)	2000–01 (Revised)	2001–02 (Estimate)
Financial provision (\$m)	105.0	119.9 (+14.2%)	115.2 (–3.9%)	98.5 (–14.5%)

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Aim

19 The aim is to draft legislation and to make the texts of legislation readily accessible.

Brief Description

20 The work of the Law Drafting Division involves:

- drafting of legislation in the English and Chinese languages and steering such draft legislation through the law-making process;
- adapting Hong Kong laws to conform with the Basic Law;
- compiling the loose-leaf edition of the Laws of Hong Kong; and
- maintaining the Bilingual Laws Information System database.

21 In 2000, the aim of the programme was generally met and the overall performance of the programme as reflected by the key indicators is satisfactory.

22 The key performance measures are:

Indicators

	1999 (Actual)	2000 (Actual)	2001 (Estimate)
number of bills gazetted.....	107	52	60
number of subsidiary legislation gazetted	332	368	360
pages of bills/subsidiary legislation gazetted (English).....	3 274	3 224	2 600
pages of bills/subsidiary legislation gazetted (Chinese).....	3 274	3 224	2 600
pages of legislation published in the loose-leaf edition	15 586	16 516	16 000
Chinese-English Glossary of Legal Terms (number of entries)@	11 440	—	—

@ Compilation of the Chinese-English Glossary of Legal Terms was completed in December 1999.

23 On the Adaptation of Laws Programme, drafting work has been finished in respect of 90% of the ordinances that required adaptation. The Law Drafting Division is liaising with the Administration on the way forward as to how to deal with the remaining ordinances that require further deliberation on policy implications arising from adaptation.

Matters Requiring Special Attention in 2001–02

24 During 2001–02, the Division will:

- continue to meet the Government's requirements for the drafting of legislation in an effective manner; and
- continue efforts to work out the way forward together with the Administration in respect of the remaining ordinances that have not yet been adapted.

Programme (5): International Law

	1999–2000 (Actual)	2000–01 (Approved)	2000–01 (Revised)	2001–02 (Estimate)
Financial provision (\$m)	35.6	35.0 (–1.7%)	35.8 (+2.3%)	38.5 (+7.5%)

Aim

25 The aim is to provide advice on international law issues to the Government and to handle requests for international legal co-operation efficiently.

Brief Description

26 The work of the International Law Division involves:

- providing advice on all aspects of public international law including the application to HKSAR of multilateral and bilateral international agreements, maritime and aviation law, consular privileges and immunities and the resolution of trade disputes;
- negotiating and advising on international agreements, including those for surrender of fugitive offenders, mutual legal assistance, transfer of sentenced persons, investment promotion and protection and air services;
- providing advice on the international legal aspects of HKSAR's laws; and
- handling requests to and from HKSAR for surrender of fugitive offenders, mutual legal assistance in criminal matters and transfer of sentenced persons and advising on matters involving international legal co-operation.

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27 The key performance measures are:

Indicators

	1999 (Actual)	2000 (Actual)	2001 (Estimate)
number of international agreements initialled.....	9	6	6
briefings, negotiation and discussion (number of working sessions).....	346	459	400
number of items of advice provided.....	5 700	5 671	5 500
number of new requests dealt with in various categories of mutual legal assistance	132	137	120
number of court appearances	125	87	100

Matters Requiring Special Attention in 2001–02

28 During 2001–02, the Division will continue to:

- provide timely and accurate advice on international law issues and on issues relating to mutual legal assistance;
- negotiate international agreements or contribute as legal advisers in these negotiations; and
- handle requests for international legal co-operation effectively.

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ANALYSIS OF FINANCIAL PROVISION

Programme	1999–2000 (Actual) (\$m)	2000–01 (Approved) (\$m)	2000–01 (Revised) (\$m)	2001–02 (Estimate) (\$m)
(1) Prosecutions	316.5	409.8	381.9	389.1
(2) Civil.....	362.4	323.7	347.8	392.7
(3) Legal Policy.....	52.9	67.2	63.2	67.9
(4) Law Drafting	105.0	119.9	115.2	98.5
(5) International Law.....	35.6	35.0	35.8	38.5
	872.4	955.6 (+9.5%)	943.9 (–1.2%)	986.7 (+4.5%)

Analysis of Financial and Staffing Provision

Programme (1)

Provision for 2001–02 is \$7.2 million (1.9%) higher than the revised estimate for 2000–01. This is mainly due to salary increments for existing staff, full-year provision for vacancies filled in 2000–01 and a net creation of eight posts in 2001–02 mainly for improving para-legal and administrative support.

Programme (2)

Provision for 2001–02 is \$44.9 million (12.9%) higher than the revised estimate for 2000–01. This is mainly due to salary increments for existing staff, full-year provision for posts created and vacancies filled in 2000–01, a net creation of two posts mainly for improving professional support as well as the additional provision for hire of legal services and related professional fees in connection with land resumption cases arising from the West Rail project and right of abode cases.

Programme (3)

Provision for 2001–02 is \$4.7 million (7.4%) higher than the revised estimate for 2000–01. This is mainly due to salary increments for existing staff, full-year provision for posts created and vacancies filled in 2000–01 and a net creation of two posts in 2001–02 mainly for improving para-legal support.

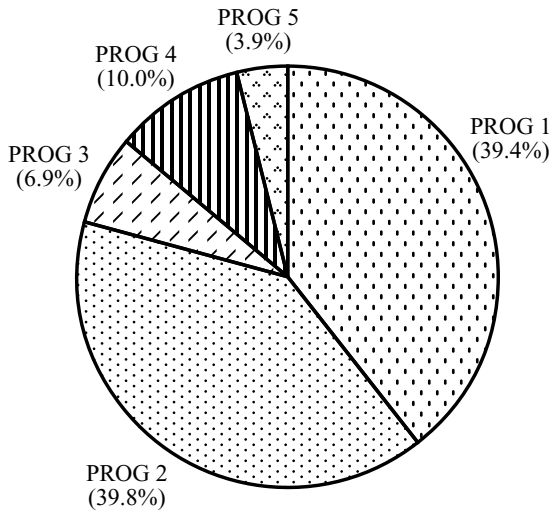
Programme (4)

Provision for 2001–02 is \$16.7 million (14.5%) lower than the revised estimate for 2000–01. This is mainly due to the deletion of 22 posts and the lapse of two supernumerary posts in 2001–02 upon completion of projects on electoral legislation and general review of legislation.

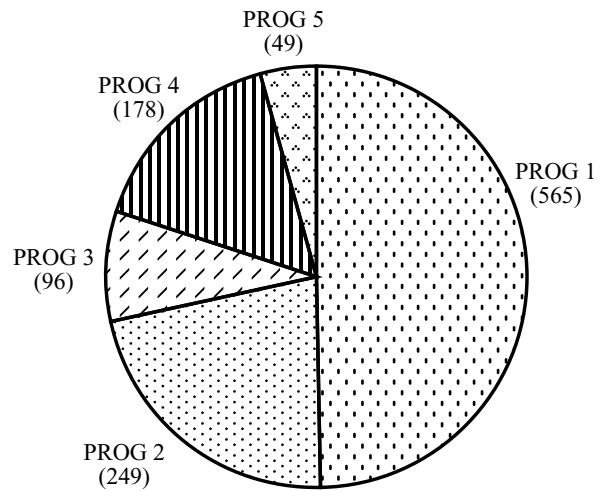
Programme (5)

Provision for 2001–02 is \$2.7 million (7.5%) higher than the revised estimate for 2000–01. This is mainly due to salary increments for existing staff and the creation of one post for improving professional support.

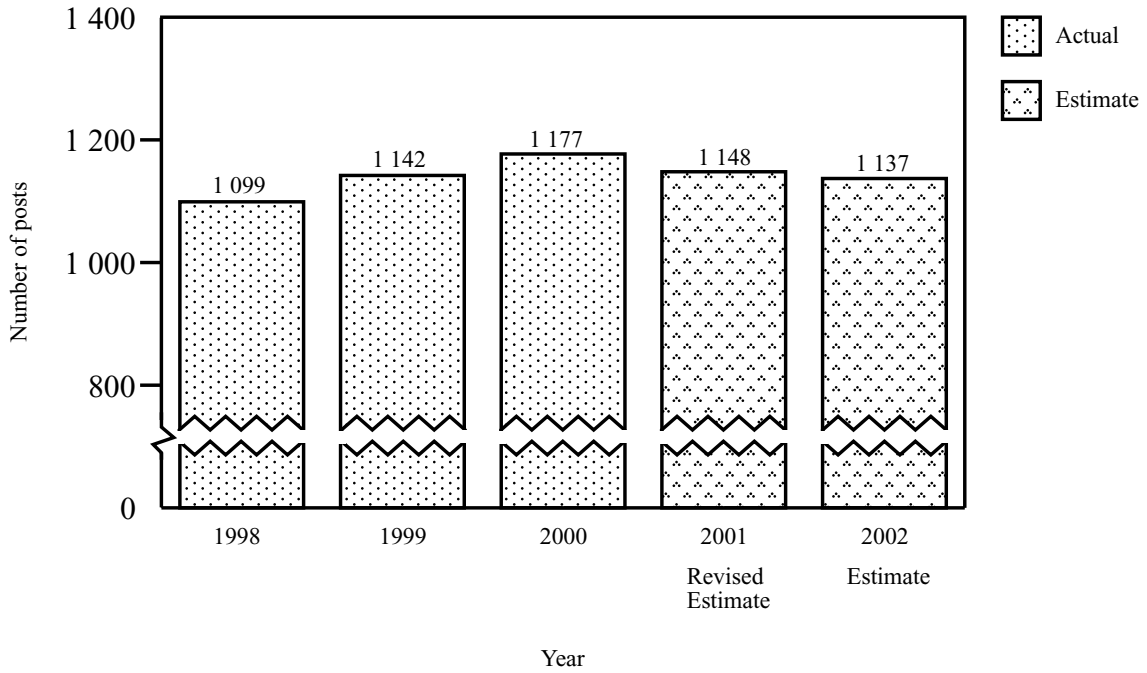
Allocation of provision to programmes (2001-02)



Staff by programme (as at 31 March 2002)



Changes in the size of the establishment (as at 31 March)



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Sub-head (Code)		Actual expenditure 1999–2000	Approved estimate 2000–01	Revised estimate 2000–01	Estimate 2001–02
		\$ 000	\$ 000	\$ 000	\$'000
Recurrent Account					
I — Personal Emoluments					
001	Salaries.....	520,803	540,701	536,503	538,408
002	Allowances.....	13,841	19,184	12,494	12,289
007	Job-related allowances.....	22	37	34	35
	Total, Personal Emoluments	<u>534,666</u>	<u>559,922</u>	<u>549,031</u>	<u>550,732</u>
III — Departmental Expenses					
149	General departmental expenses.....	57,527	70,321	67,000	68,672
	Total, Departmental Expenses	<u>57,527</u>	<u>70,321</u>	<u>67,000</u>	<u>68,672</u>
IV — Other Charges					
234	Court costs	73,303	130,558	100,000	102,000*
243	Hire of legal services and related professional fees	176,226	169,107	204,107	199,569
287	Legal services for construction dispute resolution.....	27,700	18,000	18,000	61,718
	Total, Other Charges.....	<u>277,229</u>	<u>317,665</u>	<u>322,107</u>	<u>363,287</u>
	Total, Recurrent Account	<u>869,422</u>	<u>947,908</u>	<u>938,138</u>	<u>982,691</u>
Capital Account					
II — Other Non-Recurrent					
700	General other non-recurrent.....	3,016	7,655	5,753	4,004
	Total, Other Non-Recurrent.....	<u>3,016</u>	<u>7,655</u>	<u>5,753</u>	<u>4,004</u>
	Total, Capital Account.....	<u>3,016</u>	<u>7,655</u>	<u>5,753</u>	<u>4,004</u>
	Total Expenditure	<u><u>872,438</u></u>	<u><u>955,563</u></u>	<u><u>943,891</u></u>	<u><u>986,695</u></u>

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Details of Expenditure by Subhead

The estimate of the amount required in 2001–02 for the salaries and expenses of the Department of Justice is \$986,695,000. This represents an increase of \$42,804,000 over the revised estimate for 2000–01 and of \$114,257,000 over actual expenditure in 1999–2000.

Recurrent Account

Personal Emoluments

2 Provision of \$550,732,000 for personal emoluments represents an increase of \$1,701,000 over the revised estimate for 2000–01. This includes provision of \$200,800 for a non-accountable entertainment allowance for the Secretary for Justice.

3 The establishment at 31 March 2001 will be 1 144 permanent posts and four supernumerary posts. Taking into account the creation of 22 posts mainly for improving professional and para-legal support and the deletion of 31 posts as well as the lapse of two supernumerary posts upon completion of various projects, it is expected that a net nine permanent posts will be deleted and two supernumerary posts will lapse in 2001–02.

4 Subject to certain conditions, the controlling officer may under delegated powers create or delete non-directorate posts during 2001–02, but the notional annual mid-point salary value of all such posts must not exceed \$421,833,000.

5 Provision of \$12,289,000 under *Subhead 002 Allowances* is for standard allowances and the following non-standard allowances —

	<i>Rank</i>	<i>Rate per month</i> \$	
consolidated overtime allowance for domestic staff at the residence of the Secretary for Justice	No. 2 Chef	3,720	
	Domestic Servant	2,805	
	<i>Rank</i>	<i>Master Pay Scale point</i>	<i>Rate per month</i> [†] \$
consolidated overtime allowance for Chauffeur grade	Personal	11	7,590
	Chauffeur	12	8,060

[†] These rates are payable for the first 1–100 hours overtime per month. Overtime performed in excess of 100 hours will be compensated at 1% of the monthly rate per hour.

6 Provision of \$35,000 under *Subhead 007 Job-related allowances* is for standard job-related allowances.

Other Charges

7 Provision of \$102,000,000 under *Subhead 234 Court costs* is for the payment of costs awarded against the Government in criminal and civil cases.

8 Provision of \$199,569,000 under *Subhead 243 Hire of legal services and related professional fees* is to meet the costs for engaging:

- (a) lawyers (local or overseas) to advise on, or act for the Government of the HKSAR in any matter or proceeding whether criminal or civil (including arbitration) or to appear in such connection in any Hong Kong court, commission of inquiry, inquiry, tribunal or board;
- (b) lawyers for overseas work;
- (c) expert witnesses and consultants;
- (d) accountants and arbitrators; and
- (e) other services directly related to legal matters or proceedings.

Due to the expansion of the scope of *Subhead 287* to include legal services for construction dispute resolution other than those relating to the Port and Airport Development Strategy, the relevant provision for construction-related cases has been transferred from this Subhead to *Subhead 287* from 2001–02 onwards.

9 Provision of \$61,718,000 under *Subhead 287 Legal services for construction dispute resolution* (retitled from “Legal services for projects relating to the Port and Airport Development Strategy”) is for the payment of fees to private practitioners engaged to undertake specialised work relating to construction dispute resolution. Private practitioners include lawyers (local or overseas), expert witnesses, consultants, accountants and arbitrators. Engagement of other services directly related to construction dispute resolution is also included. The increase of \$43,718,000 (242.9%) over

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the revised estimate for 2000–01 is mainly due to the transfer of provision for construction-related cases from *Subhead 243* to this Subhead upon revision of its ambit in 2001–02.

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Capital Account

Commitments

Sub-head (Code)	Item (Code)	Ambit	Approved commitment	Accumulated expenditure to 31.3.2000	Revised estimated expenditure for 2000-01	Balance
			\$ 000	\$ 000	\$ 000	\$ 000
700		<i>General other non-recurrent</i>				
	512	Hire of service for translation and Chinese typing	5,100	1,283	500	3,317
	513	Conducting mock trials in the Mainland	2,400	444	700	1,256
	514	Promotion of rule of law and Hong Kong's legal system.....	6,300	5,266	300	734
	515	Updating of the loose-leaf edition of the Laws of Hong Kong (adaptation amendments).....	1,900	151	450	1,299
	516	Production of publicity materials to promote the awareness of the rule of law	5,000	500	3,250	1,250
		Total	<u>20,700</u>	<u>7,644</u>	<u>5,200</u>	<u>7,856</u>