

Head 92 — DEPARTMENT OF JUSTICE

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

Estimate 2005–06	\$888.2m
Establishment ceiling 2005–06 (notional annual mid-point salary value) representing an estimated 979 non-directorate posts as at 31 March 2005 reducing by one post to 978 posts as at 31 March 2006	\$382.6m
In addition, there will be an estimated 73 directorate posts as at 31 March 2005 and as at 31 March 2006.	
Commitment balance	\$13.6m

Controlling Officer's Report

Programmes

Programme (1) Prosecutions
Programme (2) Civil
Programme (3) Legal Policy
Programme (4) Law Drafting
Programme (5) International Law

These programmes contribute to Policy Area 11: Legal Administration (Secretary for Justice).

Detail

Programme (1): Prosecutions

	2003–04 (Actual)	2004–05 (Original)	2004–05 (Revised)	2005–06 (Estimate)
Financial provision (\$m)	345.6	379.0	373.7 (-1.4%)	363.4 (-2.8%)
				(or -4.1% on 2004–05 Original)

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 upon and prosecutes criminal cases in all the courts of Hong Kong. Apart from the Court Specialists, whose work is primarily advocacy, and who prosecute the more serious cases, Government Counsel across the Division prosecute in trials; appear in appeals, applications for bail and asset recovery cases; and assist the coroner in inquests. Most cases in the Magistrates' Courts are prosecuted by Court Prosecutors. Some cases are briefed out to members of the bar and solicitors in private practice. The Division also advises the law enforcement agencies and other government departments and agencies on criminal law and procedure and the effects of legislation.

4 The advisory function of the Division is performed by Government Counsel in various sections. One section is involved in the Division's training and management matters; other sections are involved in the preparation of cases for trial; whilst specialist sections advise on areas as diverse as corruption, fraud, labour and immigration, vice, obscenity, gambling, anti-terrorism, triads and organised crime, human rights and the Basic Law, complaints against the Police, narcotics, the recovery of the proceeds of crime, customs and excise, computer crime, copyright, and market misconduct.

5 In 2004, the aim of the programme was generally met and the overall performance under the programme was satisfactory.

6 The key performance measures are:

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Targets

	Target %	2003 (Actual) %	2004 (Actual) %	2005 (Plan) %
advice for law enforcement agencies on whether charges should be laid given within 14 working days upon receipt of request, or for a complex case, interim reply within 14 working days.....	100	95.3	95.5	100
preparation and filing of indictments in the Court of First Instance within seven days of committal of the accused in the Magistrate's Court	100	99.5	98.6	100
preparation and delivery of charge sheets to the Registrar of the District Court within 14 days after the date of the order of transfer of the case from the Magistrate's Court to the District Court	100	99.9	99.9	100

Indicators

	2003 (Actual)	2004 (Actual)	2005 (Estimate)
cases conducted by Government Counsel	4 436	4 474	4 475
cases conducted by Counsel instructed to prosecute in all courts	726	849	850
average no. of court days for court specialists	93	97	100
court days undertaken by Government Counsel who are not court specialists	4 513	3 649	3 650
court days undertaken by Court Prosecutors in Magistrates' Court	13 851	13 743	13 745
court days undertaken by Counsel instructed to prosecute in Magistrates' Court in place of Court Prosecutors.....	78	355	360
trials prepared in the Court of First Instance.....	337	377	380
trials prepared in the District Court	608	658	660
items of legal advice provided	16 820	16 034	16 040
appeals conducted	1 607	1 795	1 795

7 The conviction rates for 2003 and 2004 are:

	2003 (Actual) %	2004 (Actual) %
Magistrates' Court	77.3	77.3
District Court	87.5	90.1
Court of First Instance	88.6	89.1

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 2005–06

- 8 During 2005–06, the Division will implement measures to:
- improve the advisory system of the Trial Preparation Units; and
 - enhance levels of appeal preparation.

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Programme (2): Civil

	2003–04 (Actual)	2004–05 (Original)	2004–05 (Revised)	2005–06 (Estimate)
Financial provision (\$m)	315.0	326.9	333.9 (+2.1%)	344.2 (+3.1%)
				(or +5.3% on 2004–05 Original)

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 various other bodies in courts and tribunals in all forms of civil litigation and dispute resolution (including non-construction 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.

11 In 2004, the aim of the programme was generally met and the overall performance under the programme was satisfactory.

12 The key performance measures are:

Targets

	Target %	2003 (Actual) %	2004 (Actual) %	2005 (Plan) %
to take appropriate follow-up actions on civil litigation cases within seven working days upon referral by client departments.....	100	100	100	100
to provide legal advice within 14 working days upon receipt of instructions/requests#	92	93.7	92.6	92

If that is not possible due to complexity of cases, the client department will be advised of the estimated time within which the advice will be provided.

Indicators

	2003 (Actual)	2004 (Actual)	2005 (Estimate)
civil proceedings (including non-construction arbitration) brought by the Government.....	1 297	1 313	1 557
civil proceedings (including non-construction arbitration) brought against the Government.....	2 049	1 962	1 458
person days of court appearances	1 341	1 127	1 391
civil litigation cases current on 31 December	13 587	14 942	16 136
items of legal advice provided	16 454	15 284	15 400
commercial tenders, consultancy briefs, contracts, licences and franchises drafted/vetted.....	637	603	610

Matters Requiring Special Attention in 2005–06

13 During 2005–06, the Division will continue to advise on the legal aspects of :

- proceedings involving the Government, in particular those involving civil service matters, telecommunications disputes, bid challenges under the World Trade Organization, land disputes, decontamination, town planning and infrastructure projects;

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- the English and Chinese texts of contracts, undertakings, tender documents, public franchises, licences and other legal documents for the Government, in addition to drafting and vetting such texts;
- amendments to the Buildings, Waste Disposal and Building Management Ordinances to effect changes to the relevant administrative and operational processes under those legislation;
- claims made under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- issues arising from personalised motor vehicle registration plates and the co-location exercise including the proposed Hong Kong Management Area Bill;
- 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-competition provisions) as well as proposals for reform;
- the implementation of the Hong Kong Disneyland project;
- privatisation and outsourcing of the Government's commercial activities;
- occupational retirement and provident fund schemes;
- amendments to the securities and futures legislation; and
- various projects and initiatives, including the West Kowloon Cultural District Project, the proposed Hong Kong-Zhuhai-Macao bridge, public private partnership and private sector involvement projects, deposit protection scheme, regulation of utilities under the respective schemes of control and legislation providing for bank mergers.

Programme (3): Legal Policy

	2003–04 (Actual)	2004–05 (Original)	2004–05 (Revised)	2005–06 (Estimate)
Financial provision (\$m)	61.4	63.8	61.4 (–3.8%)	62.5 (+1.8%)
				(or –2.0% on 2004–05 Original)

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 policy is contrary to established principles underlying the legal system;
- 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 Legislative Council and as the principal 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 the Hong Kong Special Administrative Region (HKSAR);
- promoting bills related to the legal system or effecting law reform or miscellaneous amendments to various ordinances;
- providing advice and information on the laws of the Mainland and on arrangements with Mainland authorities concerning legal services, and developing working relationships with counterparts in the Mainland;
- providing advice to the Government on procedures of the Legislative Council;
- providing advice on the Basic Law and promoting knowledge of the Basic Law; and
- giving advice and providing research and secretariat support to facilitate the work of the Law Reform Commission.

16 In 2004, the aim of the programme was generally met and the overall performance under the programme was satisfactory.

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17 The key performance measures are:

Indicators

	2003 (Actual)	2004 (Actual)	2005 (Estimate)
bills promoted by the Legal Policy Division in each session of the Legislative Council	2	0 [#]	1
petitions handled	58	54	54
items of legal advice given on:			
general legal policy issues	476	642	642
human rights issues	796	793	793
Mainland law and related matters	201	201	200
Basic Law and constitutional matters	1 164	1 011	1 110
ongoing Law Reform Commission projects	11	10	10
speeches prepared (both for the Legislative Council and elsewhere)	110	112	110
Basic Law seminars conducted	11	10	10

During the year, substantial work was undertaken in the preparation of the Statute Law (Miscellaneous Provisions) Bill 2005, which will be introduced into the Legislative Council in March 2005.

Matters Requiring Special Attention in 2005–06

18 During 2005–06, 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 with Mainland authorities further opportunities for the legal profession to provide services in the Mainland and assist in the implementation of arrangements, including the Mainland and Hong Kong Closer Economic Partnership Arrangement;
- 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, as well as attending hearings before the United Nations treaty monitoring bodies;
- 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 HKSAR and the Mainland; and
- organise talks, seminars, visits and training programmes for Mainland officers in order to develop and enhance mutual understanding of the legal systems and professional practices in HKSAR and the Mainland.

Programme (4): Law Drafting

	2003–04 (Actual)	2004–05 (Original)	2004–05 (Revised)	2005–06 (Estimate)
Financial provision (\$m)	89.1	92.3	85.7 (-7.2%)	82.3 (-4.0%)
				(or -10.8% on 2004–05 Original)

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;
- compiling the loose-leaf edition of the Laws of Hong Kong; and
- maintaining the Bilingual Laws Information System database.

21 In 2004, the aim of the programme was generally met and the overall performance under the programme was satisfactory.

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22 The key performance measures are:

Indicators

	2003 (Actual)	2004 (Actual)	2005 (Estimate)
bills gazetted	41	18	40
subsidiary legislation gazetted	279	224	270
pages of bills/subsidiary legislation gazetted (English)	2 215	1 398	2 100
pages of bills/subsidiary legislation gazetted (Chinese).....	2 215	1 398	2 100
pages of legislation compiled for publication in the loose- leaf edition.....	10 346	6 174	9 000
pages of Committee Stage Amendments (English).....	530	923	400
pages of Committee Stage Amendments (Chinese)	470	646	320

Matters Requiring Special Attention in 2005–06

23 During 2005–06, the Division will continue to:

- meet the Government's requirements for the drafting of legislation and incidental professional service in an effective manner;
- compile replacement pages for the loose-leaf edition of the Laws of Hong Kong; and
- update the Bilingual Laws Information System database in a timely and accurate manner.

Programme (5): International Law

	2003–04 (Actual)	2004–05 (Original)	2004–05 (Revised)	2005–06 (Estimate)
Financial provision (\$m)	35.5	35.9	35.9 (—)	35.8 (–0.3%)
				(or –0.3% on 2004–05 Original)

Aim

24 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

25 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, air services and avoidance of double taxation;
- participating in the activities of the Hague Conference on Private International Law and negotiating multilateral agreements relating to private international law;
- 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, transfer of sentenced persons and enforcement of confiscation orders and advising on matters involving international legal co-operation.

26 The key performance measures are:

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Indicators

	2003 (Actual)	2004 (Actual)	2005 (Estimate)
international agreements initialled	2	5	3
briefings, negotiation and discussion (no. of working sessions)	288	342	350
items of advice provided.....	8 534	8 333	8 000
new requests dealt with in various categories of mutual legal assistance.....	127	190	160
court appearances	69	97	70

Matters Requiring Special Attention in 2005–06

27 During 2005–06, 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	2003-04 (Actual) (\$m)	2004-05 (Original) (\$m)	2004-05 (Revised) (\$m)	2005-06 (Estimate) (\$m)
(1) Prosecutions	345.6	379.0	373.7	363.4
(2) Civil.....	315.0	326.9	333.9	344.2
(3) Legal Policy	61.4	63.8	61.4	62.5
(4) Law Drafting	89.1	92.3	85.7	82.3
(5) International Law	35.5	35.9	35.9	35.8
	846.6	897.9	890.6 (-0.8%)	888.2 (-0.3%)
				(or -1.1% on 2004-05 Original)

Analysis of Financial and Staffing Provision

Programme (1)

Provision for 2005-06 is \$10.3 million (2.8%) lower than the revised estimate for 2004-05. This is mainly due to a net reduction in salary provision after taking into account the full-year effect of the 2005 civil service pay cut and anticipated decrease in briefing out expenses and court costs.

Programme (2)

Provision for 2005-06 is \$10.3 million (3.1%) higher than the revised estimate for 2004-05. This is mainly due to the anticipated increase in briefing out expenses and general departmental expenses.

Programme (3)

Provision for 2005-06 is \$1.1 million (1.8%) higher than the revised estimate for 2004-05. This is mainly due to the anticipated increase in cash flow requirements for non-recurrent items, partly offset by anticipated decrease in general departmental expenses.

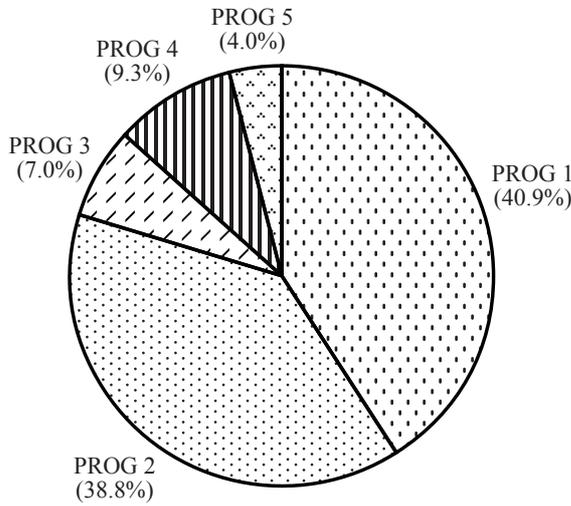
Programme (4)

Provision for 2005-06 is \$3.4 million (4.0%) lower than the revised estimate for 2004-05. This is mainly due to a net reduction in salary provision after taking into account the full-year effect of the 2005 civil service pay cut and the anticipated decrease in general departmental expenses.

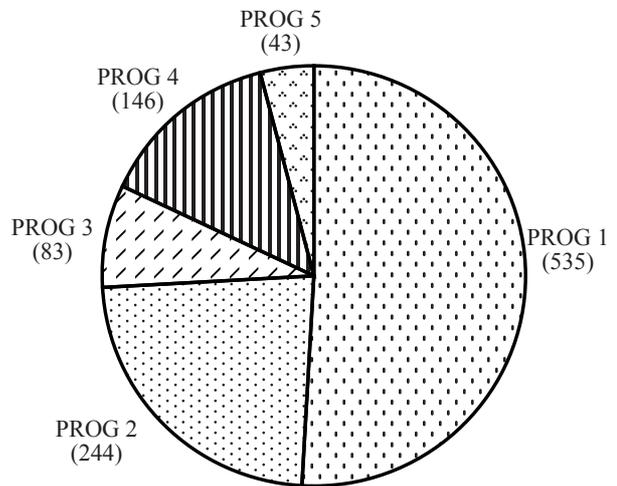
Programme (5)

Provision for 2005-06 is \$0.1 million (0.3%) lower than the revised estimate for 2004-05. This is mainly due to a net reduction in salary provision after taking into account the full-year effect of the 2005 civil service pay cut and net deletion of one post, partly offset by anticipated increase in general departmental expenses.

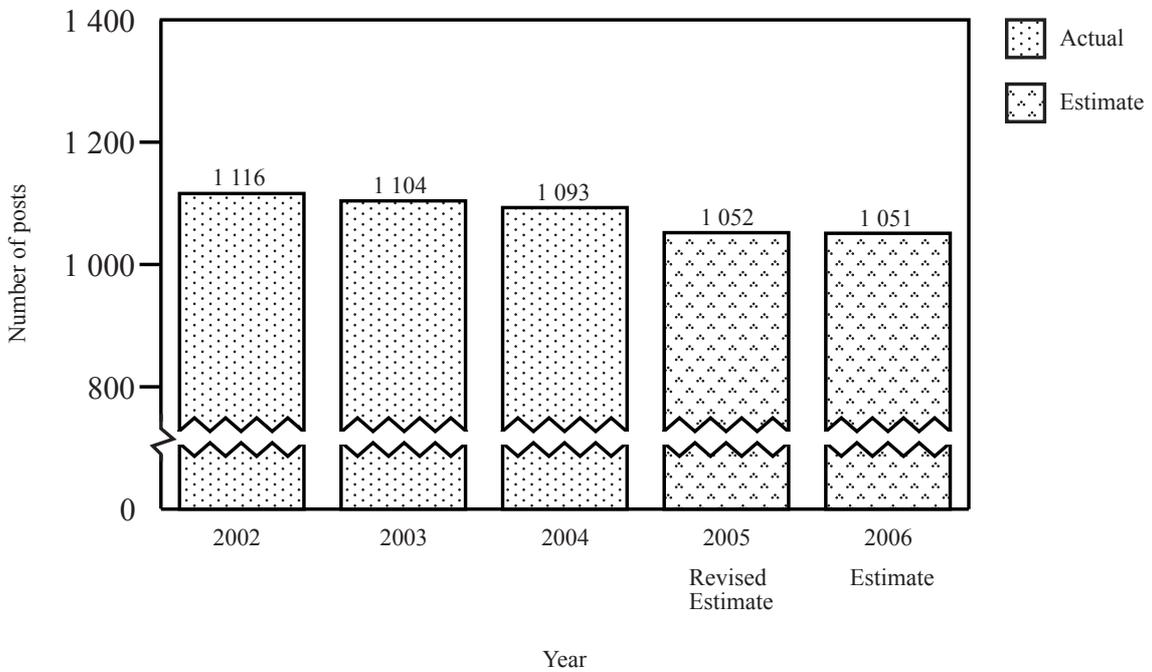
Allocation of provision to programmes (2005-06)



Staff by programme (as at 31 March 2006)



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



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Sub-head (Code)		Actual expenditure 2003–04	Approved estimate 2004–05	Revised estimate 2004–05	Estimate 2005–06
		\$'000	\$'000	\$'000	\$'000
Operating Account					
Recurrent					
000	Operational expenses	786,800	795,577	780,270	781,790
234	Court costs	59,213	98,561	106,030	99,841*
	Total, Recurrent	846,013	894,138	886,300	881,631
Non-Recurrent					
700	General non-recurrent	559	3,804	4,256	6,520
	Total, Non-Recurrent	559	3,804	4,256	6,520
	Total, Operating Account	846,572	897,942	890,556	888,151
Total Expenditure					
		846,572	897,942	890,556	888,151

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Details of Expenditure by Subhead

The estimate of the amount required in 2005–06 for the salaries and expenses of the Department of Justice is \$888,151,000. This represents a decrease of \$2,405,000 against the revised estimate for 2004–05 but an increase of \$41,579,000 over actual expenditure in 2003–04.

Operating Account

Recurrent

2 Provision of \$781,790,000 under *Subhead 000 Operational expenses* is for the salaries, allowances and other operating expenses of the Department of Justice. This includes provision of \$182,300 for a non-accountable entertainment allowance for the Secretary for Justice.

3 The establishment as at 31 March 2005 will be 1 051 permanent posts and one supernumerary post. It is expected that there will be a net deletion of one permanent post in 2005–06. Subject to certain conditions, the controlling officer may under delegated power create or delete non-directorate posts during 2005–06, but the notional annual mid-point salary value of all such posts must not exceed \$382,618,000.

4 An analysis of the financial provision under *Subhead 000 Operational expenses* is as follows:

	2003–04 (Actual) (\$'000)	2004–05 (Original) (\$'000)	2004–05 (Revised) (\$'000)	2005–06 (Estimate) (\$'000)
Personal Emoluments				
- Salaries	548,057	533,323	528,647	521,929
- Allowances	3,959	4,972	4,945	5,187
- Job-related allowances	3	6	6	6
Personnel Related Expenses				
- Mandatory Provident Fund contribution	660	700	674	646
Departmental Expenses				
- Remuneration for special appointments ...	3,536	3,530	3,530	3,530
- General departmental expenses	55,453	69,285	70,382	72,286
Other Charges				
- Hire of legal services and related professional fees	147,303	143,761	137,783	142,316
- Legal services for construction dispute resolution	27,829	40,000	34,303	35,890
	786,800	795,577	780,270	781,790

5 Provision of \$99,841,000 under *Subhead 234 Court costs* is for the payment of costs awarded against the Government in criminal and civil cases. The decrease of \$6,189,000 (5.8%) against the revised estimate for 2004–05 is mainly due to the higher level of payments in 2004–05 following the deferment of some payments from 2003–04 as a result of protracted negotiations.

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Commitments

Sub-head (Code)	Item (Code)	Ambit	Approved commitment	Accumulated expenditure to 31.3.2004	Revised estimated expenditure for 2004–05	Balance
			\$'000	\$'000	\$'000	\$'000
<i>Operating Account</i>						
700	<i>General non-recurrent</i>					
512	Hire of service for translation and Chinese typing.....		5,100	2,549	530	2,021
513	Conducting mock trials in the Mainland		2,400	1,609	166	625
514	Promotion of rule of law and Hong Kong's legal system		6,300	5,805	200	295
516	Production of publicity materials to promote the awareness of the rule of law.....		5,000	4,510	100	390
517	Development of a community legal information website in Hong Kong ...		3,180	—	1,060	2,120
518	Consultancy study on the demand for and supply of legal and related services.....		6,000	—	1,575	4,425
519	Development of Mainland-related legal services in Hong Kong		4,335	—	625	3,710
	Total		<u>32,315</u>	<u>14,473</u>	<u>4,256</u>	<u>13,586</u>