

Head 92 — DEPARTMENT OF JUSTICE

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

Estimate 2006–07 **\$879.6m**

Establishment ceiling 2006–07 (notional annual mid-point salary value) representing an estimated 977 non-directorate posts as at 31 March 2006 reducing by four posts to 973 posts as at 31 March 2007 **\$392.7m**

In addition, there will be an estimated 72 directorate posts as at 31 March 2006 and as at 31 March 2007.

Commitment balance **\$8.4m**

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

	2004–05 (Actual)	2005–06 (Original)	2005–06 (Revised)	2006–07 (Estimate)
Financial provision (\$m)	343.6	363.4	361.0 (–0.7%)	376.7 (+4.3%)
				(or +3.7% on 2005–06 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 2005, the aim of the programme was generally met and the overall performance under the programme was satisfactory.

Head 92 — DEPARTMENT OF JUSTICE

6 The key performance measures are:

Targets

	Target %	2004 (Actual) %	2005 (Actual) %	2006 (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	95.5	95.2	100
preparation and filing of indictments in the Court of First Instance within seven days of committal of the accused in the Magistrates' Court	100	98.6	99.5	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 Magistrates' Court to the District Court	100	99.9	100	100

Indicators

	2004 (Actual)	2005 (Actual)	2006 (Estimate)
cases conducted by Government Counsel	4 474	4 463	4 465
cases conducted by Counsel instructed to prosecute in all courts	849	950	950
court days undertaken by Government Counsel#	4 919	5 456	5 460
court days undertaken by Court Prosecutors in Magistrates' Court	13 743	13 705	13 705
court days undertaken by Counsel instructed to prosecute in Magistrates' Court in place of Court Prosecutors	355	549	550
trials prepared in the Court of First Instance	377	326	330
trials prepared in the District Court	658	613	615
items of legal advice provided	16 034	14 707	14 710
appeals conducted	1 795	1 720	1 720

We have combined the two indicators on "average number of court days for court specialists" and "court days undertaken by Government Counsel who are not court specialists" because court specialists who were previously deployed exclusively to conduct complex trials have also taken up advisory duties in particular those relating to complex criminal matters.

7 The conviction rates for 2004 and 2005 are:

	2004 (Actual) %	2005 (Actual) %
Magistrates' Court	77.3	73.5
District Court	90.1	87.5
Court of First Instance	89.1	90.4

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 2006–07

8 During 2006–07, the Division will implement measures to:

- review the arrangements of the law enforcement agencies for disclosing to the defence relevant material in accordance with the law of disclosure; and
- promote co-operation amongst prosecutors at the global level in the combat of crime.

Head 92 — DEPARTMENT OF JUSTICE

Programme (2): Civil

	2004–05 (Actual)	2005–06 (Original)	2005–06 (Revised)	2006–07 (Estimate)
Financial provision (\$m)	324.8	344.2	319.1 (–7.3%)	323.5 (+1.4%)
				(or –6.0% on 2005–06 Original)

Aim

9 The aim is to provide legal advice to the Government on 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 2005, 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 %	2004 (Actual) %	2005 (Actual) %	2006 (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	92.6	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

	2004 (Actual)	2005 (Actual)	2006 (Estimate)
civil litigation cases current on 31 December.....	14 942	16 188	17 704
new proceedings (including non-construction arbitration and mediation) brought by the Government	1 313	1 258	1 412
new proceedings (including non-construction arbitration and mediation) brought against the Government.....	1 962	1 345	1 315
person days of court appearances	1 127	907	1 150
items of legal advice provided	15 284	16 220	16 220
commercial tenders, consultancy briefs, contracts, licences and franchises drafted/vetted	603	565	570

Matters Requiring Special Attention in 2006–07

13 During 2006–07, the Division will continue to advise on the legal aspects of:

- proceedings involving the Government, in particular those involving Basic Law issues, civil service matters, right of abode claims and other immigration matters, land disputes, government rent appeals and miscellaneous claims for damages;
- 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;
- contingency plans/implementation of an action plan for Avian influenza (H5N1) pandemic/epidemic;
- exercise of powers by the Secretary for Home Affairs after the abolition of estate duty;
- the re-organisation plan for the food and safety regulatory framework;
- the regulation of companies, securities, insurance, information technology, electronic transactions, e-commerce, 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;
- insider dealing and market misconduct proceedings; and
- various projects and initiatives, including the West Kowloon Cultural District Project, the proposed Hong Kong-Zhuhai-Macao bridge, the proposed merging of the railway corporations, new Cruise Terminal facilities, public private partnership and private sector involvement projects, deposit protection scheme and regulation of utilities under the respective schemes of control and legislation providing for bank mergers.

Programme (3): Legal Policy

	2004–05 (Actual)	2005–06 (Original)	2005–06 (Revised)	2006–07 (Estimate)
Financial provision (\$m)	59.3	62.5	59.7 (–4.5%)	57.4 (–3.9%)
				(or –8.2% on 2005–06 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 his 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 his 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;

Head 92 — DEPARTMENT OF JUSTICE

- 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, negotiating and consulting the Mainland authorities on co-operation, arrangements on civil/commercial matters, 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 2005, the aim of the programme was generally met and the overall performance under the programme was satisfactory.

17 The key performance measures are:

Indicators

	2004 (Actual)	2005 (Actual)	2006 (Estimate)
bills promoted by the Legal Policy Division in each session of the Legislative Council	0#	1	2
petitions handled	54	53	53
items of legal advice given on:			
general legal policy issues	642	616	616
human rights issues	793	1 120	1 120
Mainland law and related matters	201	262	240
Basic Law and constitutional matters	1 011	1 286	1 150
ongoing Law Reform Commission projects	10	8	8
speeches prepared (both for the Legislative Council and elsewhere)	112	112	110
Basic Law seminars conducted	10	16	16
briefings given in the Mainland and to Mainland delegations in Hong Kong^	87	66	64

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

^ To enhance mutual understanding, the Secretary for Justice's Office and Legal Policy Division are often invited to give briefings on the Basic Law, legal system (including legal services), cross-boundary co-operation in legal matters, and the role of the Secretary for Justice/Department of Justice when attending forums, seminars and talks in the Mainland. Similar briefings will also be conducted for delegations from Mainland Justice Bureaux/Departments, other governmental organs, legal professional bodies and academia when they visit the Department. A new indicator is included to reflect such work.

Matters Requiring Special Attention in 2006–07

18 During 2006–07, 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;

Head 92 — DEPARTMENT OF JUSTICE

- take forward access to justice issues in the context of the consultancy study on the demand for and supply of legal and related services;
- promote Hong Kong as a regional centre for legal services and dispute resolution; 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

	2004–05 (Actual)	2005–06 (Original)	2005–06 (Revised)	2006–07 (Estimate)
Financial provision (\$m)	78.3	82.3	81.6 (–0.9%)	85.0 (+4.2%)
				(or +3.3% on 2005–06 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 2005, the aim of the programme was generally met and the overall performance under the programme was satisfactory.

- 22 The key performance measures are:

Indicators

	2004 (Actual)	2005 (Actual)	2006 (Estimate)
bills gazetted.....	18	33	35
subsidiary legislation gazetted.....	224	237	250
pages of bills/subsidiary legislation gazetted (English).....	1 398	1 742	2 000
pages of bills/subsidiary legislation gazetted (Chinese).....	1 398	1 742	2 000
pages of legislation compiled for publication in the loose-leaf edition	6 174	4 877	6 000
pages of Committee Stage Amendments (English)	923	189	200
pages of Committee Stage Amendments (Chinese).....	646	150	160
drafts of bills/subsidiary legislation released#.....	2 543	2 619	2 800
items of legal advice provided^.....	7 715	8 810	9 000

A new indicator is included to reflect the workload on drafts of legislation formally released to policy bureaux during the drafting stage.

^ A new indicator is included to reflect the items of legal advice given which has been an increasingly important aspect of work of the Division.

Matters Requiring Special Attention in 2006–07

- 23 During 2006–07, the Division will continue to:

- meet the Government's requirements for the drafting of legislation and incidental professional service in an effective manner;
- implement an in-house mentorship programme, and organise seminars and workshops to enhance the drafting skills of the counsel;
- 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.

Head 92 — DEPARTMENT OF JUSTICE

Programme (5): International Law

	2004–05 (Actual)	2005–06 (Original)	2005–06 (Revised)	2006–07 (Estimate)
Financial provision (\$m)	32.1	35.8	35.2 (–1.7%)	37.0 (+5.1%)
				(or +3.4% on 2005–06 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:

Indicators

	2004 (Actual)	2005 (Actual)	2006 (Estimate)
international agreements initialled.....	5	4	4
briefings, negotiation and discussion (no. of working sessions).....	342	357	350
items of legal advice provided.....	8 333	7 793	8 000
new requests dealt with in various categories of mutual legal assistance.....	190	193	190
court appearances	97	115	100

Matters Requiring Special Attention in 2006–07

27 During 2006–07, 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.

Head 92 — DEPARTMENT OF JUSTICE

ANALYSIS OF FINANCIAL PROVISION

Programme	2004-05 (Actual) (\$m)	2005-06 (Original) (\$m)	2005-06 (Revised) (\$m)	2006-07 (Estimate) (\$m)
(1) Prosecutions	343.6	363.4	361.0	376.7
(2) Civil.....	324.8	344.2	319.1	323.5
(3) Legal Policy	59.3	62.5	59.7	57.4
(4) Law Drafting	78.3	82.3	81.6	85.0
(5) International Law	32.1	35.8	35.2	37.0
	838.1	888.2	856.6 (-3.6%)	879.6 (+2.7%)
				(or -1.0% on 2005-06 Original)

Analysis of Financial and Staffing Provision

Programme (1)

Provision for 2006-07 is \$15.7 million (4.3%) higher than the revised estimate for 2005-06. This is mainly due to the filling of vacancies, salary increment for staff and the anticipated increase in briefing out expenses and court costs, partly offset by the net deletion of eight posts and anticipated decrease in general departmental expenses.

Programme (2)

Provision for 2006-07 is \$4.4 million (1.4%) higher than the revised estimate for 2005-06. This is mainly due to the net creation of nine posts, filling of vacancies, salary increment for staff and anticipated increase in briefing out expenses, partly offset by the anticipated decrease in court costs and general departmental expenses.

Programme (3)

Provision for 2006-07 is \$2.3 million (3.9%) lower than the revised estimate for 2005-06. This is mainly due to the anticipated decrease in cash flow requirements for non-recurrent items and general departmental expenses, as well as the net deletion of one post.

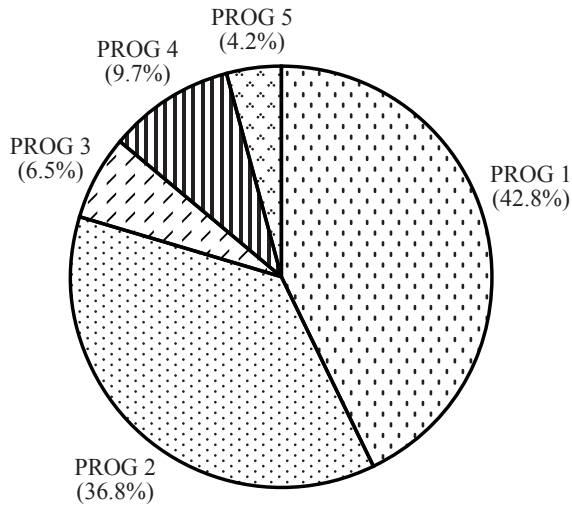
Programme (4)

Provision for 2006-07 is \$3.4 million (4.2%) higher than the revised estimate for 2005-06. This is mainly due to the filling of vacancies and salary increment for staff, partly offset by the net deletion of four posts.

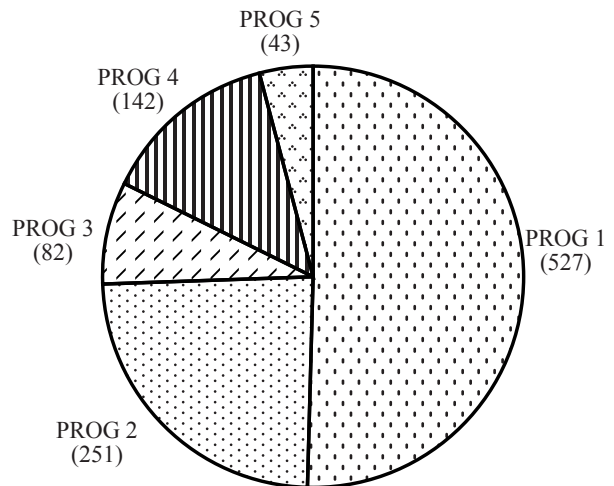
Programme (5)

Provision for 2006-07 is \$1.8 million (5.1%) higher than the revised estimate for 2005-06. This is mainly due to the filling of vacancies and salary increment for staff, partly offset by the anticipated decrease in general departmental expenses.

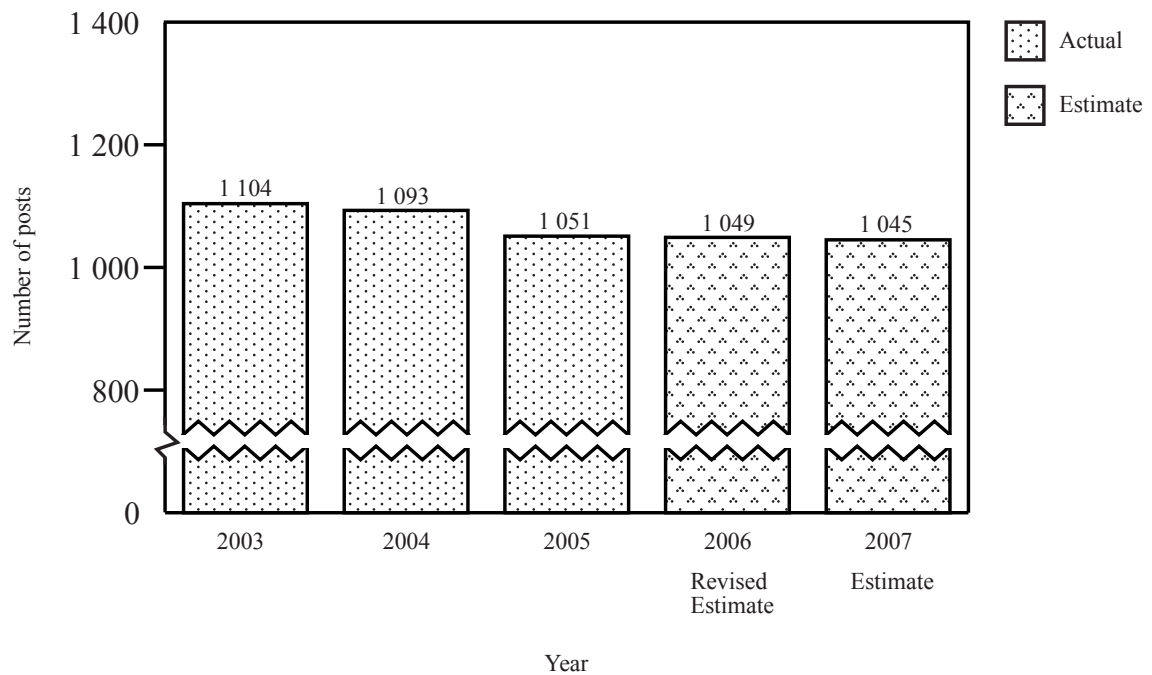
*Allocation of provision
to programmes
(2006-07)*



*Staff by programme
(as at 31 March 2007)*



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



Head 92 — DEPARTMENT OF JUSTICE

Sub-head (Code)		Actual expenditure 2004-05	Approved estimate 2005-06	Revised estimate 2005-06	Estimate 2006-07
	\$,000	\$'000	\$'000	\$'000	\$'000
Operating Account					
Recurrent					
000	Operational expenses.....	728,848	781,790	745,459	771,942
003	Recoverable salaries and allowances (General)				
					5,275
	<i>Deduct</i> reimbursements				<i>Cr. 5,275</i>
234	Court costs	106,030	99,841	104,929	103,000
	Total, Recurrent.....	834,878	881,631	850,388	874,942
Non-Recurrent					
700	General non-recurrent.....	3,225	6,520	6,202	4,657
	Total, Non-Recurrent.....	3,225	6,520	6,202	4,657
	Total, Operating Account.....	838,103	888,151	856,590	879,599
<hr/>					
	Total Expenditure.....	838,103	888,151	856,590	879,599

Head 92 — DEPARTMENT OF JUSTICE

Details of Expenditure by Subhead

The estimate of the amount required in 2006–07 for the salaries and expenses of the Department of Justice is \$879,599,000. This represents an increase of \$23,009,000 over the revised estimate for 2005–06 and of \$41,496,000 over actual expenditure in 2004–05.

Operating Account

Recurrent

2 Provision of \$771,942,000 under *Subhead 000 Operational expenses* is for the salaries, allowances and other operating expenses of the Department of Justice. This includes provision of \$184,500 for a non-accountable entertainment allowance for the Secretary for Justice.

3 The establishment as at 31 March 2006 will be 1 048 permanent posts and one supernumerary post. It is expected that there will be a net deletion of four permanent posts in 2006–07. Subject to certain conditions, the controlling officer may under delegated power create or delete non-directorate posts during 2006–07, but the notional annual mid-point salary value of all such posts must not exceed \$392,654,000.

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

	2004–05 (Actual) (\$'000)	2005–06 (Original) (\$'000)	2005–06 (Revised) (\$'000)	2006–07 (Estimate) (\$'000)
Personal Emoluments				
- Salaries	520,816	521,929	512,369	534,520
- Allowances	3,507	5,187	5,148	4,890
- Job-related allowances	1	6	6	6
Personnel Related Expenses				
- Mandatory Provident Fund contribution	585	646	624	810
Departmental Expenses				
- Remuneration for special appointments...	3,517	3,530	3,530	3,530
- General departmental expenses	53,462	72,286	65,370	62,538
Other Charges				
- Hire of legal services and related professional fees	130,465	142,316	132,340	137,648
- Legal services for construction dispute resolution	16,495	35,890	26,072	28,000
	<u>728,848</u>	<u>781,790</u>	<u>745,459</u>	<u>771,942</u>

5 Provision of \$5,275,000 under *Subhead 003 Recoverable salaries and allowances (General)* is for salaries and allowances of civil servants providing legal services for the rewrite of Companies Ordinance. The gross provision must not be exceeded without the prior approval of the Secretary for Financial Services and the Treasury. Expenditure under this subhead is reimbursed by Company Registry Trading Fund.

6 Provision of \$103,000,000 under *Subhead 234 Court costs* is for the payment of costs awarded against the Government in criminal and civil cases.

Head 92 — DEPARTMENT OF JUSTICE

Commitments

Sub-head (Code)	Item (Code)	Ambit	Approved commitment	Accumulated expenditure to 31.3.2005	Revised estimated expenditure for 2005–06	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	2,732	410	1,958
	514	Promotion of rule of law and Hong Kong's legal system	6,300	5,818	200	282
	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	1,060	1,060
	518	Consultancy study on the demand for and supply of legal and related services	6,000	1,575	3,000	1,425
	519	Development of Mainland-related legal services in Hong Kong	4,335	394	641	3,300
		Total	<u>29,915</u>	<u>16,089</u>	<u>5,411</u>	<u>8,415</u>