

Head 92 — DEPARTMENT OF JUSTICE

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

Estimate 2007–08 **\$906.6m**

Establishment ceiling 2007–08 (notional annual mid-point salary value) representing an estimated 974 non-directorate posts as at 31 March 2007 rising by 38 posts to 1 012 posts as at 31 March 2008..... **\$405.6m**

In addition, there will be an estimated 72 directorate posts as at 31 March 2007 and as at 31 March 2008.

Commitment balance..... **\$7.5m**

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

	2005–06 (Actual)	2006–07 (Original)	2006–07 (Revised)	2007–08 (Estimate)
Financial provision (\$m)	341.5	376.7	347.5 (-7.8%)	387.3 (+11.5%)
				(or +2.8% on 2006–07 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 2006, 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	2005 (Actual)	2006 (Actual)	2007 (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	95.2	98.7	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	99.5	100	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	100	100	100

Indicators

	2005 (Actual)	2006 (Actual)	2007 (Estimate)
cases conducted by Government Counsel	4 463	3 901	3 905
cases conducted by Counsel instructed to prosecute in all courts	950	891	895
court days undertaken by Government Counsel	5 456	3 998	4 000
court days undertaken by Court Prosecutors in Magistrates' Court	13 705	12 571	12 575
court days undertaken by Counsel instructed to prosecute in Magistrates' Court in place of Court Prosecutors	549	969	970
cases prepared for the Court of First Instance@	326	263	265
cases prepared for the District CourtΩ	1 361	1 177	1 180
items of legal advice provided.....	14 707	14 895	14 895
appeals conducted	1 720	1 468	1 470

@ Changes have been made to the wording in this indicator which originally referred to "trials" instead of "cases". The revisions better reflect Counsel's actual preparation work.

Ω Changes have been made to the wording in this indicator which originally referred to "trials" instead of "cases". The revisions better reflect Counsel's actual preparation work. Actual figure for 2005 has been updated to tie in with the revised description of the indicator.

7 The conviction rates for 2005 and 2006 are:

	2005 (Actual)	2006 (Actual)
Magistrates' Court (%).....	73.5	76.8
District Court (%).....	87.5	91.8
Court of First Instance (%).....	90.4	92.3

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 2007-08

8 During 2007-08, the Division will implement measures to:

- expedite the trials of vulnerable witness cases; and
- continue to promote co-operation amongst prosecutors at the global level in the combat of crime.

Head 92 — DEPARTMENT OF JUSTICE

Programme (2): Civil

	2005–06 (Actual)	2006–07 (Original)	2006–07 (Revised)	2007–08 (Estimate)
Financial provision (\$m)	303.3	323.5	325.8 (+0.7%)	341.4 (+4.8%)
				(or +5.5% on 2006–07 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 2006, 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	2005 (Actual)	2006 (Actual)	2007 (Plan)
taking appropriate follow-up actions on civil litigation cases within seven working days upon referral by client departments (%)	100	100	100	100
providing legal advice within 14 working days upon receipt of instructions/ requests (%)#	92.0	92.6	89.0	92.0

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

	2005 (Actual)	2006 (Actual)	2007 (Estimate)
civil litigation cases current on 31 December	16 188	17 270	18 985
new proceedings (including non-construction arbitration and mediation) brought by the Government	1 258	1 305	1 404
new proceedings (including non-construction arbitration and mediation) brought against the Government	1 345	919	1 132
person days of court appearances	907	1 180	1 231
items of legal advice provided	16 220	15 822	16 030
commercial tenders, consultancy briefs, contracts, licences and franchises drafted/vetted	565	538	540

Matters Requiring Special Attention in 2007–08

13 During 2007–08, 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;

Head 92 — DEPARTMENT OF JUSTICE

- 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 Building Management Ordinance, Land Titles Ordinance and Housing Ordinance to effect changes to the relevant legal powers as well as administrative and operational processes under those legislation;
- claims made under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- the regulation of companies, securities, insurance, information technology, electronic transactions, e-commerce, transportation, television broadcasting and telecommunications (including provisions prohibiting anti-competitive practices) 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;
- the preparation for the 2007 District Council election and the 2008 Legislative Council election, including advice on the legislative review of the Village Representative elections and the District Council elections;
- the implementation of the pilot scheme under the 2006 District Council Review with effect from January 2007;
- the review of the Quarantine and Prevention of Disease Ordinance to incorporate the International Health Regulations;
- the implementation of the Hong Kong Port Area project including advice on necessary legislation;
- legislative initiatives to rewrite the Companies Ordinance, and establish the Communications Authority; 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, the Kai Tak Development including the new cruise terminal facilities, public private partnership and private sector involvement projects, the considerations to prohibit anti-competitive practice, regulation of utilities under the respective schemes of control, and legislation providing for bank mergers.

Programme (3): Legal Policy

	2005–06 (Actual)	2006–07 (Original)	2006–07 (Revised)	2007–08 (Estimate)
Financial provision (\$m)	54.9	57.4	56.5 (–1.6%)	60.7 (+7.4%)
				(or +5.7% on 2006–07 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;
- 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);

Head 92 — DEPARTMENT OF JUSTICE

- 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 the Mainland authorities concerning legal services, negotiating with 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 2006, the aim of the programme was generally met and the overall performance under the programme was satisfactory.

17 The key performance measures are:

Indicators

	2005 (Actual)	2006 (Actual)	2007 (Estimate)
bills promoted by the Legal Policy Division in each session of the Legislative Council	1	0§	3
petitions handled	53	41	41
items of legal advice given on:			
general legal policy issues	616	680	680
human rights issues.....	1 120	1 438	1 438
Mainland law and related matters.....	262	396	386
Basic Law and constitutional matters	1 286	1 444	1 446
ongoing Law Reform Commission projects	8	11	11
speeches prepared (both for the Legislative Council and elsewhere)	112	71	70
Basic Law seminars conducted.....	16	10	12
briefings given in the Mainland and to Mainland delegations in Hong Kong	66	61	59

§ During the year, substantial work was undertaken in the preparation of the Domicile Bill, the Mainland Judgments (Reciprocal Enforcement) Bill, and the Statute Law (Miscellaneous Provisions) Bill 2007. The first bill is planned to be introduced into the Legislative Council in February 2007, the second bill in March 2007, and the third bill in April 2007.

Matters Requiring Special Attention in 2007–08

18 During 2007–08, 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 the 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, and attend 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 the HKSAR and the Mainland;
- 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 the HKSAR and the Mainland.

Head 92 — DEPARTMENT OF JUSTICE

Programme (4): Law Drafting

	2005–06 (Actual)	2006–07 (Original)	2006–07 (Revised)	2007–08 (Estimate)
Financial provision (\$m)	72.3	85.0	77.0 (–9.4%)	82.3 (+6.9%)
				(or –3.2% on 2006–07 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 2006, the aim of the programme was generally met and the overall performance under the programme was satisfactory.

22 The key performance measures are:

Indicators

	2005 (Actual)	2006 (Actual)	2007 (Estimate)
bills gazetted.....	33	19	20
subsidiary legislation gazetted.....	237	291	260
pages of bills/subsidiary legislation gazetted (English).....	1 742	2 626	1 800
pages of bills/subsidiary legislation gazetted (Chinese).....	1 742	2 626	1 800
pages of legislation compiled for publication in the loose-leaf edition.....	4 877	7 666	6 500
pages of Committee Stage Amendments (English).....	189	527	300
pages of Committee Stage Amendments (Chinese).....	150	451	240
drafts of bills/subsidiary legislation released.....	2 619	3 264	3 000
pieces of legal advice provided.....	8 810	9 022	9 000

Matters Requiring Special Attention in 2007–08

23 During 2007–08, 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.

Programme (5): International Law

	2005–06 (Actual)	2006–07 (Original)	2006–07 (Revised)	2007–08 (Estimate)
Financial provision (\$m)	30.7	37.0	33.1 (–10.5%)	34.9 (+5.4%)
				(or –5.7% on 2006–07 Original)

Head 92 — DEPARTMENT OF JUSTICE

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 the 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 the 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

	2005 (Actual)	2006 (Actual)	2007 (Estimate)
international agreements initialled.....	4	4	3
briefings, negotiation and discussion (no. of working sessions).....	357	348	350
items of legal advice provided.....	7 793	7 809	8 000
new requests dealt with in various categories of mutual legal assistance	193	227	200
court appearances	115	91	100

Matters Requiring Special Attention in 2007–08

27 During 2007–08, 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	2005-06 (Actual) (\$m)	2006-07 (Original) (\$m)	2006-07 (Revised) (\$m)	2007-08 (Estimate) (\$m)
(1) Prosecutions.....	341.5	376.7	347.5	387.3
(2) Civil.....	303.3	323.5	325.8	341.4
(3) Legal Policy.....	54.9	57.4	56.5	60.7
(4) Law Drafting.....	72.3	85.0	77.0	82.3
(5) International Law.....	30.7	37.0	33.1	34.9
	802.7	879.6	839.9 (-4.5%)	906.6 (+7.9%)
				(or +3.1% on 2006-07 Original)

Analysis of Financial and Staffing Provision

Programme (1)

Provision for 2007-08 is \$39.8 million (11.5%) higher than the revised estimate for 2006-07. This is mainly due to the creation of ten posts to cope with pressing demand for legal services and three posts to meet other operational needs, filling of vacancies, salary increments for staff, as well as anticipated increase in court costs and general departmental expenses.

Programme (2)

Provision for 2007-08 is \$15.6 million (4.8%) higher than the revised estimate for 2006-07. This is mainly due to the anticipated increase in court costs, creation of five posts to cope with pressing demand for legal services and 17 posts to meet other operational needs, filling of vacancies and salary increments for staff, partly offset by the anticipated decrease in briefing out and general departmental expenses.

Programme (3)

Provision for 2007-08 is \$4.2 million (7.4%) higher than the revised estimate for 2006-07. This is mainly due to the anticipated increase in general departmental expenses and creation of three posts to cope with pressing demand for legal services, partly offset by the anticipated decrease in cash flow requirements of non-recurrent items.

Programme (4)

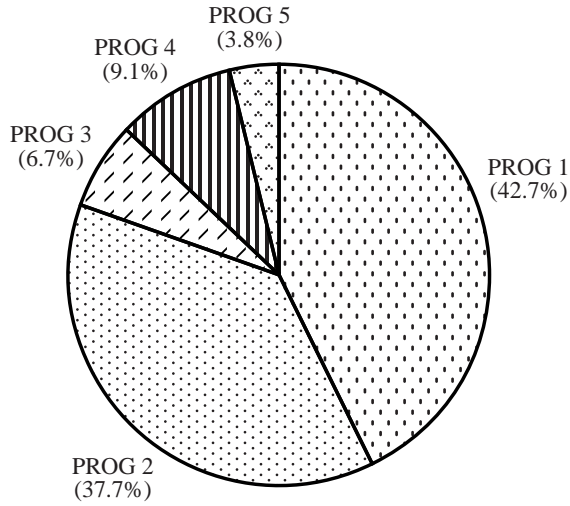
Provision for 2007-08 is \$5.3 million (6.9%) higher than the revised estimate for 2006-07. This is mainly due to the anticipated increase in general departmental expenses, filling of vacancies and salary increments for staff.

Programme (5)

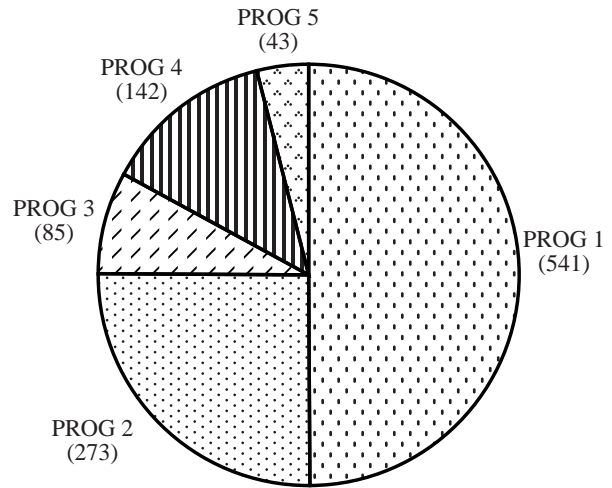
Provision for 2007-08 is \$1.8 million (5.4%) higher than the revised estimate for 2006-07. This is mainly due to the anticipated increase in general departmental expenses.

Head 92 — DEPARTMENT OF JUSTICE

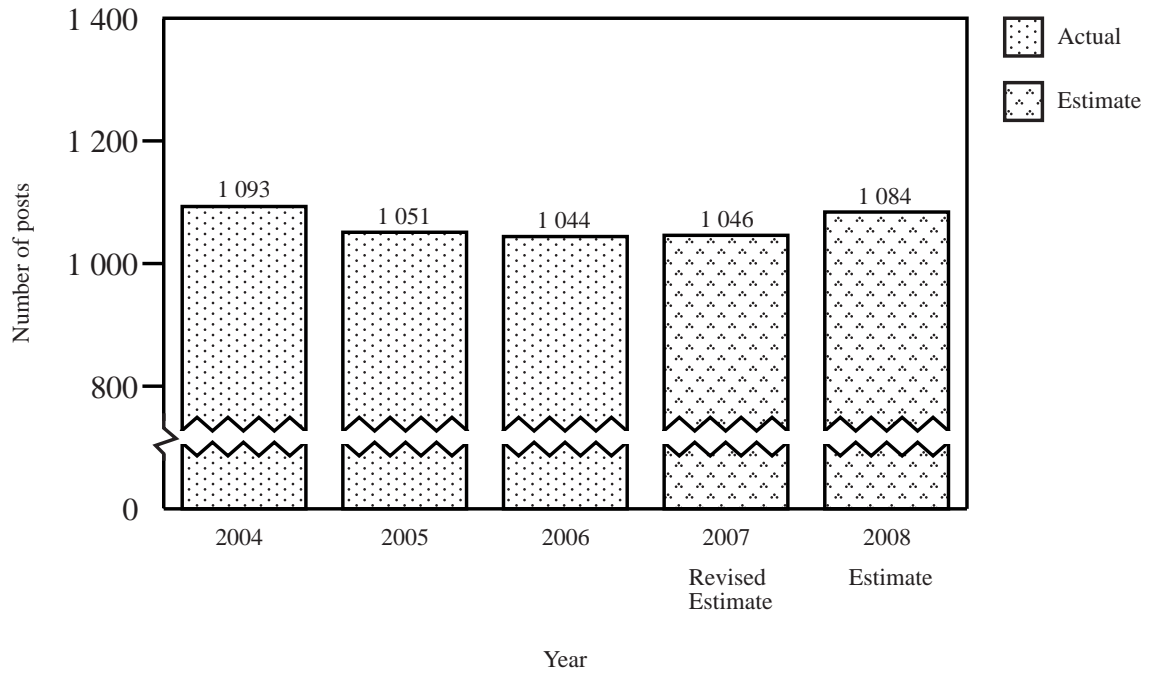
*Allocation of provision
to programmes
(2007-08)*



*Staff by programme
(as at 31 March 2008)*



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



Head 92 — DEPARTMENT OF JUSTICE

Sub-head (Code)		Actual expenditure 2005-06	Approved estimate 2006-07	Revised estimate 2006-07	Estimate 2007-08
	\$'000	\$'000	\$'000	\$'000	\$'000
Operating Account					
Recurrent					
000	Operational expenses.....	703,660	771,942	756,091	798,756
003	Recoverable salaries and allowances (General).....	5,083			
	<i>Deduct reimbursements.....</i>	<i>Cr. 5,083</i>			
234	Court costs.....	97,619	103,000	78,085	105,000
	Total, Recurrent	<u>801,279</u>	<u>874,942</u>	<u>834,176</u>	<u>903,756</u>
Non-Recurrent					
700	General non-recurrent.....	1,394	4,657	5,750	2,474
	Total, Non-Recurrent	<u>1,394</u>	<u>4,657</u>	<u>5,750</u>	<u>2,474</u>
	Total, Operating Account.....	<u>802,673</u>	<u>879,599</u>	<u>839,926</u>	<u>906,230</u>
Capital Account					
Plant, Equipment and Works					
661	Minor plant, vehicles and equipment (block vote).....	—	—	—	400
	Total, Plant, Equipment and Works	<u>—</u>	<u>—</u>	<u>—</u>	<u>400</u>
	Total, Capital Account	<u>—</u>	<u>—</u>	<u>—</u>	<u>400</u>
	Total Expenditure.....	<u><u>802,673</u></u>	<u><u>879,599</u></u>	<u><u>839,926</u></u>	<u><u>906,630</u></u>

Head 92 — DEPARTMENT OF JUSTICE

Details of Expenditure by Subhead

The estimate of the amount required in 2007–08 for the salaries and expenses of the Department of Justice is \$906,630,000. This represents an increase of \$66,704,000 over the revised estimate for 2006–07 and of \$103,957,000 over actual expenditure in 2005–06.

Operating Account

Recurrent

2 Provision of \$798,756,000 under *Subhead 000 Operational expenses* is for the salaries, allowances and other operating expenses of the Department of Justice. This includes provision of \$188,200 for a non-accountable entertainment allowance for the Secretary for Justice.

3 The establishment as at 31 March 2007 will be 1 045 permanent posts and one supernumerary post. It is expected that 38 permanent posts will be created in 2007–08. Subject to certain conditions, the controlling officer may under delegated power create or delete non-directorate posts during 2007–08, but the notional annual mid-point salary value of all such posts must not exceed \$405,599,000.

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

	2005–06 (Actual) (\$'000)	2006–07 (Original) (\$'000)	2006–07 (Revised) (\$'000)	2007–08 (Estimate) (\$'000)
Personal Emoluments				
- Salaries.....	497,398	534,520	502,000	540,260
- Allowances.....	5,038	4,890	5,591	6,331
- Job-related allowances	—	6	6	6
Personnel Related Expenses				
- Mandatory Provident Fund contribution.....	531	810	690	1,130
- Civil Service Provident Fund contribution.....	—	—	—	622
Departmental Expenses				
- Remuneration for special appointments ...	3,530	3,530	3,530	3,540
- General departmental expenses.....	52,222	62,538	62,843	76,346
Other Charges				
- Hire of legal services and related professional fees	123,101	137,648	145,171	147,171
- Legal services for construction dispute resolution	21,840	28,000	36,260	23,350
	703,660	771,942	756,091	798,756

5 Provision of \$5,083,000 under *Subhead 003 Recoverable salaries and allowances (General)* is for the 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 the Company Registry Trading Fund.

6 Provision of \$105,000,000 under *Subhead 234 Court costs* is for the payment of costs awarded against the Government in criminal and civil cases. The increase of \$26,915,000 (34.5%) over the revised estimate for 2006–07 is mainly due to the deferment of some payments to 2007–08 as a result of protracted negotiations.

Head 92 — DEPARTMENT OF JUSTICE

Commitments

Sub-head (Code)	Item (Code)	Ambit	Approved commitment	Accumulated expenditure to 31.3.2006	Revised estimated expenditure for 2006-07	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	2,891	400	1,809
513	Conducting mock trials in the Mainland.....		2,400	1,609	—	791
514	Promotion of rule of law and Hong Kong's legal system.....		6,300	5,822	79	399
516	Production of publicity materials to promote the awareness of the rule of law		5,000	4,545	111	344
518	Consultancy study on the demand for and supply of legal and related services		6,000	1,575	3,675	750
519	Development of Mainland-related legal services in Hong Kong.....		4,335	530	425	3,380
	Total.....		<u>29,135</u>	<u>16,972</u>	<u>4,690</u>	<u>7,473</u>