

Head 92 — DEPARTMENT OF JUSTICE

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

Estimate 2008–09 **\$949.2m**

Establishment ceiling 2008–09 (notional annual mid-point salary value) representing an estimated 1 012 non-directorate posts as at 31 March 2008 rising by 26 posts to 1 038 posts as at 31 March 2009 **\$449.4m**

In addition, there will be an estimated 72 directorate posts as at 31 March 2008 and as at 31 March 2009.

Commitment balance **\$6.1m**

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

	2006–07 (Actual)	2007–08 (Original)	2007–08 (Revised)	2008–09 (Estimate)
Financial provision (\$m)	340.0	387.3	355.2 (–8.3%)	389.1 (+9.5%)
				(or +0.5% on 2007–08 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 2007, the aim of the programme was generally met and the overall performance under the programme was satisfactory.

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6 The key performance measures are:

Targets

	Target	2006 (Actual)	2007 (Actual)	2008 (Plan)
Providing advice for law enforcement agencies on whether charges should be laid within 14 working days upon receipt of request, or for a complex case, interim reply within 14 working days (%).....	100	98.7	96.5	100
preparing and filing indictments in the Court of First Instance within seven days of committal of the accused in the Magistrates' Court (%)	100	100	99.4	100
preparing and delivering 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

	2006 (Actual)	2007 (Actual)	2008 (Estimate)
cases conducted by Government Counsel.....	3 901	4 090	4 150
cases conducted by Counsel instructed to prosecute in all courts.....	891	1 076	1 000
court days undertaken by Government Counsel.....	3 998	3 838	4 100
court days undertaken by Court Prosecutors in Magistrates' Court	12 571	12 023	11 700
court days undertaken by Counsel instructed to prosecute in Magistrates' Court in place of Court Prosecutors.....	969	1 493	1 800
cases prepared for the Court of First Instance.....	263	312	320
cases prepared for the District Court	1 177	1 242	1 245
items of legal advice provided	14 895	14 404	14 500
appeals conducted.....	1 468	1 580	1 580

7 The conviction rates for 2006 and 2007 are:

	2006 (Actual)	2007 (Actual)
Magistrates' Court (%)	76.8	76.6
District Court (%)	91.8	90.5
Court of First Instance (%)	92.3	93.4

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 2008–09

8 During 2008–09, the Division will continue to implement measures to:

- promote co-operation amongst prosecutors at the global level in the combat of crime;
- enhance the quality of criminal justice by promoting transparency in public prosecutions, liaising closely with justice partners and reviewing the disclosure arrangements of law enforcement agencies; and
- enhance the standards of advocacy and preparation in criminal cases.

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Programme (2): Civil

	2006–07 (Actual)	2007–08 (Original)	2007–08 (Revised)	2008–09 (Estimate)
Financial provision (\$m)	326.0	341.4	344.9 (+1.0%)	370.5 (+7.4%)
				(or +8.5% on 2007–08 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 2007, 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	2006 (Actual)	2007 (Actual)	2008 (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	89	90	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

	2006 (Actual)	2007 (Actual)	2008 (Estimate)
civil litigation cases current on 31 December	17 270	18 561	20 301
new proceedings (including non-construction arbitration and mediation) brought by the Government.....	1 305	1 247	1 344
new proceedings (including non-construction arbitration and mediation) brought against the Government	919	886	1 060
person days of court appearances	1 180	1 262	1 105
items of legal advice provided	15 822	14 220	14 220
commercial tenders, consultancy briefs, contracts, licences and franchises drafted/vetted.....	538	441	450

Matters Requiring Special Attention in 2008–09

13 During 2008–09, the Division will advise on the legal aspects of :

- proceedings involving the Government, in particular those involving Basic Law issues, civil service matters, immigration matters including right of abode claims, government rent appeals, and damage claims including personal injuries and other claims;
- 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;

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- amendments to the Land Titles Ordinance;
- 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 2008 Legislative Council election;
- the review of the Trustee Ordinance;
- grant funding, project and film financing;
- food safety legislation;
- banning of idling vehicles with running engines;
- legislative initiatives to rewrite the Companies Ordinance, and establish the Communications Authority; and
- various studies, projects and initiatives, including the West Kowloon Cultural District project, the proposed Hong Kong-Zhuhai-Macao bridge, Liantang/Heung Yuen Wai Boundary Control Point, the Guangzhou-Shenzhen-Hong Kong Express Rail Link, a possible rail link between the airports of Hong Kong and Shenzhen, 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

	2006–07 (Actual)	2007–08 (Original)	2007–08 (Revised)	2008–09 (Estimate)
Financial provision (\$m)	55.7	60.7	62.5 (+3.0%)	64.9 (+3.8%)
				(or +6.9% on 2007–08 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);
- promoting bills related to the legal system or effecting law reform or miscellaneous amendments to various ordinances;

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- 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 2007, the aim of the programme was generally met and the overall performance under the programme was satisfactory.

17 The key performance measures are:

Indicators

	2006 (Actual)	2007 (Actual)	2008 (Estimate)
bills promoted by the Legal Policy Division in each session of the Legislative Council	0§	3	1
petitions handled	41	41	41
items of legal advice given on:			
general legal policy issues	680	660	660
human rights issues	1 438	1 173	1 175
Mainland law and related matters	396	434	400
Basic Law and constitutional matters	1 444	1 349	1 340
ongoing Law Reform Commission projects	11	10	10
speeches prepared (both for the Legislative Council and elsewhere)	71	67	66
Basic Law seminars conducted	10	16	16
briefings given in the Mainland and to Mainland delegations in Hong Kong	61	35	34

§ 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 was 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 2008–09

- 18 During 2008–09, the Secretary for Justice's Office and the Legal Policy Division will continue to:
- take forward the comprehensive review of legal education and training;
 - promote the use of arbitration and mediation in Hong Kong and take forward the proposals for reform of arbitration law;
 - explore with the Mainland authorities further opportunities for the legal profession to provide services in the Mainland and assist in the implementation of arrangements with the Mainland, 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 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 HKSAR and the Mainland.

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Programme (4): Law Drafting

	2006–07 (Actual)	2007–08 (Original)	2007–08 (Revised)	2008–09 (Estimate)
Financial provision (\$m)	69.9	82.3	74.1 (–10.0%)	83.7 (+13.0%)

(or +1.7% on
2007–08 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 2007, the aim of the programme was generally met and the overall performance under the programme was satisfactory.

22 The key performance measures are:

Indicators

	2006 (Actual)	2007 (Actual)	2008 (Estimate)
bills gazetted	19	28	23
subsidiary legislation gazetted	291	241	250
pages of bills/subsidiary legislation gazetted (English)	2 626	1 689	1 600
pages of bills/subsidiary legislation gazetted (Chinese)	2 626	1 689	1 600
pages of legislation compiled for publication in the loose-leaf edition	7 666	6 232	6 200
pages of Committee Stage Amendments (English)	527	326	400
pages of Committee Stage Amendments (Chinese)	451	244	340
drafts of bills/subsidiary legislation released	3 264	2 663	2 900
items of legal advice provided	9 022	9 336	9 100

Matters Requiring Special Attention in 2008–09

23 During 2008–09, 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.

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Programme (5): International Law

	2006–07 (Actual)	2007–08 (Original)	2007–08 (Revised)	2008–09 (Estimate)
Financial provision (\$m)	31.5	34.9	34.1 (–2.3%)	41.0 (+20.2%)
				(or +17.5% on 2007–08 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 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

	2006 (Actual)	2007 (Actual)	2008 (Estimate)
international agreements initialled	4	2	3
briefings, negotiation and discussion (no. of working sessions)	348	336	330
items of legal advice provided	7 809	7 326	7 300
new requests dealt with in various categories of mutual legal assistance	227	206	200
court appearances	91	87	90

Matters Requiring Special Attention in 2008–09

27 During 2008–09, 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	2006–07 (Actual) (\$m)	2007–08 (Original) (\$m)	2007–08 (Revised) (\$m)	2008–09 (Estimate) (\$m)
(1) Prosecutions	340.0	387.3	355.2	389.1
(2) Civil.....	326.0	341.4	344.9	370.5
(3) Legal Policy	55.7	60.7	62.5	64.9
(4) Law Drafting	69.9	82.3	74.1	83.7
(5) International Law	31.5	34.9	34.1	41.0
	823.1	906.6	870.8 (–3.9%)	949.2 (+9.0%)
				(or +4.7% on 2007–08 Original)

Analysis of Financial and Staffing Provision

Programme (1)

Provision for 2008–09 is \$33.9 million (9.5%) higher than the revised estimate for 2007–08. This is mainly due to the filling of vacancies, creation of four posts to meet operational needs, salary increments for staff, as well as anticipated increase in general departmental expenses and briefing-out expenses.

Programme (2)

Provision for 2008–09 is \$25.6 million (7.4%) higher than the revised estimate for 2007–08. This is mainly due to the creation of 21 posts to meet operational needs, filling of vacancies, salary increments for staff and anticipated increase in briefing-out expenses.

Programme (3)

Provision for 2008–09 is \$2.4 million (3.8%) higher than the revised estimate for 2007–08. This is mainly due to the creation of one post to meet operational needs, filling of vacancies, salary increments for staff and anticipated increase in general departmental expenses, partly offset by the anticipated decrease in cash flow requirements of non-recurrent items.

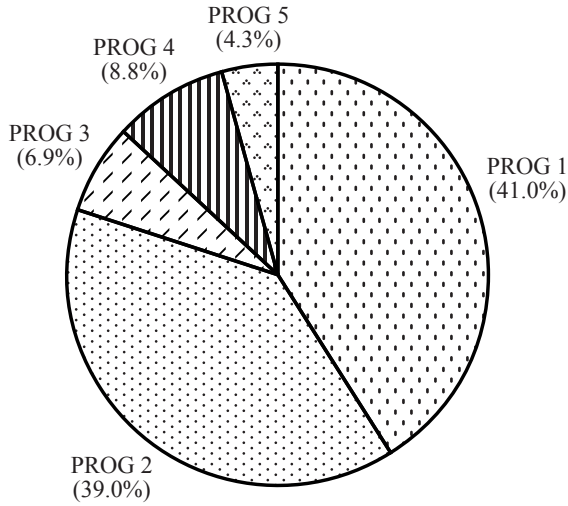
Programme (4)

Provision for 2008–09 is \$9.6 million (13.0%) higher than the revised estimate for 2007–08. This is mainly due to the filling of vacancies, salary increments for staff and anticipated increase in general departmental expenses.

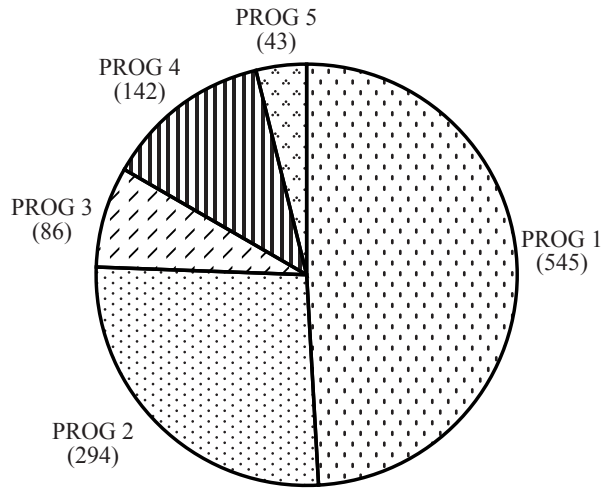
Programme (5)

Provision for 2008–09 is \$6.9 million (20.2%) higher than the revised estimate for 2007–08. This is mainly due to the anticipated increase in general departmental expenses, filling of vacancies and salary increments for staff.

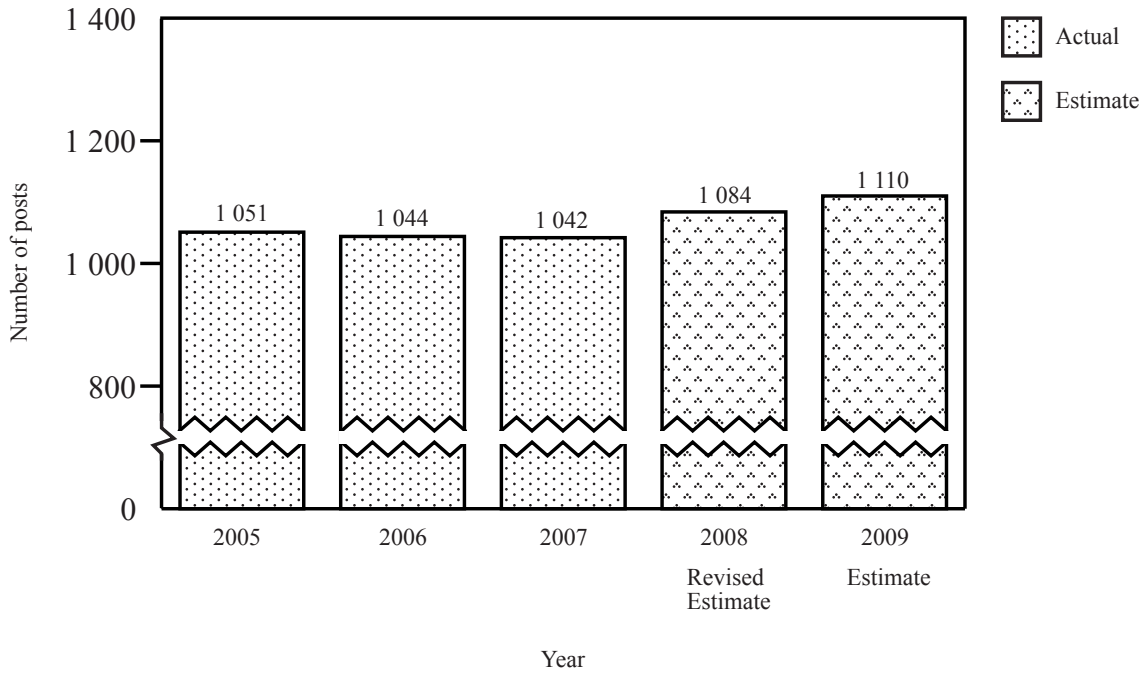
Allocation of provision to programmes (2008-09)



Staff by programme (as at 31 March 2009)



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



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Sub-head (Code)		Actual expenditure 2006–07	Approved estimate 2007–08	Revised estimate 2007–08	Estimate 2008–09
	\$'000	\$'000	\$'000	\$'000	\$'000
Operating Account					
Recurrent					
000	Operational expenses	755,517	798,756	773,826	857,017
003	Recoverable salaries and allowances (General)	5,340			
	<i>Deduct</i> reimbursements	<i>Cr. 5,340</i>			
234	Court costs	66,017	105,000	90,742	90,700
	Total, Recurrent.....	<u>821,534</u>	<u>903,756</u>	<u>864,568</u>	<u>947,717</u>
Non-Recurrent					
700	General non-recurrent	1,551	2,474	5,797	1,483
	Total, Non-Recurrent.....	<u>1,551</u>	<u>2,474</u>	<u>5,797</u>	<u>1,483</u>
	Total, Operating Account	<u>823,085</u>	<u>906,230</u>	<u>870,365</u>	<u>949,200</u>
Capital Account					
Plant, Equipment and Works					
	Minor plant, vehicles and equipment (block vote)	—	400	400	—
	Total, Plant, Equipment and Works.....	<u>—</u>	<u>400</u>	<u>400</u>	<u>—</u>
	Total, Capital Account.....	<u>—</u>	<u>400</u>	<u>400</u>	<u>—</u>
	Total Expenditure	<u><u>823,085</u></u>	<u><u>906,630</u></u>	<u><u>870,765</u></u>	<u><u>949,200</u></u>

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Details of Expenditure by Subhead

The estimate of the amount required in 2008–09 for the salaries and expenses of the Department of Justice is \$949,200,000. This represents an increase of \$78,435,000 over the revised estimate for 2007–08 and of \$126,115,000 over actual expenditure in 2006–07.

Operating Account

Recurrent

2 Provision of \$857,017,000 under *Subhead 000 Operational expenses* is for the salaries, allowances and other operating expenses of the Department of Justice. This includes provision of \$192,000 for a non-accountable entertainment allowance for the Secretary for Justice. The increase of \$83,191,000 (10.8%) over the revised estimate for 2007–08 is mainly due to the filling of vacancies, creation of 26 posts to meet operational needs, salary increments for staff, as well as anticipated increase in general departmental expenses and briefing-out expenses.

3 The establishment as at 31 March 2008 will be 1 083 permanent posts and one supernumerary post. It is expected that there will be a net increase of 26 permanent posts in 2008–09. Subject to certain conditions, the controlling officer may under delegated power create or delete non-directorate posts during 2008–09, but the notional annual mid-point salary value of all such posts must not exceed \$449,382,000.

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

	2006–07 (Actual) (\$'000)	2007–08 (Original) (\$'000)	2007–08 (Revised) (\$'000)	2008–09 (Estimate) (\$'000)
Personal Emoluments				
- Salaries	497,790	540,260	526,752	580,420
- Allowances	4,080	6,331	8,907	10,231
- Job-related allowances	—	6	6	6
Personnel Related Expenses				
- Mandatory Provident Fund contribution	648	1,130	785	1,261
- Civil Service Provident Fund contribution	—	622	769	2,219
Departmental Expenses				
- Remuneration for special appointments ...	3,530	3,540	3,820	3,910
- General departmental expenses	59,135	76,346	64,688	80,328
Other Charges				
- Hire of legal services and related professional fees	155,190	147,171	145,274	151,642
- Legal services for construction dispute resolution	35,144	23,350	22,825	27,000
	755,517	798,756	773,826	857,017

5 Provision of \$5,340,000 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 \$90,700,000 under *Subhead 234 Court costs* is for the payment of costs awarded against the Government in criminal and civil cases.

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Commitments

Sub-head (Code)	Item (Code)	Ambit	Approved commitment	Accumulated expenditure to 31.3.2007	Revised estimated expenditure for 2007–08	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	2,995	250	1,855
	513	Conducting mock trials in the Mainland	2,400	1,609	191	600
	514	Promotion of rule of law and Hong Kong's legal system.....	6,300	5,830	80	390
	518	Consultancy study on the demand for and supply of legal and related services.....	6,000	1,575	4,175	250
	519	Development of Mainland-related legal services in Hong Kong	4,335	808	500	3,027
		Total	<u>24,135</u>	<u>12,817</u>	<u>5,196</u>	<u>6,122</u>