

Head 92 — DEPARTMENT OF JUSTICE

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

Estimate 2011–12	\$1,043.2m
Establishment ceiling 2011–12 (notional annual mid-point salary value) representing an estimated 1 065 non-directorate posts as at 31 March 2011 rising by 26 posts to 1 091 posts as at 31 March 2012	\$490.0m
In addition, there will be an estimated 87 directorate posts as at 31 March 2011 and as at 31 March 2012.	
Commitment balance	\$5.3m

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

	2009–10 (Actual)	2010–11 (Original)	2010–11 (Revised)	2011–12 (Estimate)
Financial provision (\$m)	422.7	421.3	414.8 (–1.5%)	428.1 (+3.2%)
				(or +1.6% on 2010–11 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 Government Counsel in the Advocacy Sub-division, 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 Prosecutions 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 2010, 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	2009 (Actual)	2010 (Actual)	2011 (Plan)
providing advice for law enforcement agencies within 14 working days upon receipt of request, or for a complex case, interim reply within 14 working days (%).....	100	96.5	93.1	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	100	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

	2009 (Actual)	2010 (Actual)	2011 (Estimate)
cases conducted by Government Counsel	4 243	4 661	4 665
cases conducted by Counsel instructed to prosecute in all courts	1 212	1 166	1 170
court days undertaken by Government Counsel	4 299	4 552	4 550
court days undertaken by Court Prosecutors in Magistrates' Court.....	11 355	12 262	12 260
court days undertaken by Counsel instructed to prosecute in Magistrates' Court in place of Court Prosecutors.....	3 255	2 668	2 670
cases prepared for the Court of First Instance.....	425	444	445
cases prepared for the District Court.....	1 443	1 418	1 420
items of legal advice provided	16 520	15 133	15 135
appeals conducted	1 454	1 552	1 550

7 The conviction rates for 2009 and 2010 are:

	2009 (Actual)	2010 (Actual)
Magistrates' Court		
- defendants convicted after trial (%).....	53.4	51.6
- defendants convicted after trial and defendants convicted on their own pleas (%).....	74.7	73.8
District Court		
- defendants convicted after trial (%).....	69.2	75.3
- defendants convicted after trial and defendants convicted on their own pleas (%).....	92.3	93.7
Court of First Instance		
- defendants convicted after trial (%).....	65.3	71.7
- defendants convicted after trial and defendants convicted on their own pleas (%).....	91.7	93.8

The conviction rates are defendant based and in relation to any substantive or alternative offence on which the defendant has been convicted. It does not take into account acquittals of other charges if any.

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.

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Matters Requiring Special Attention in 2011–12

8 During 2011–12, the Prosecutions Division will continue to implement measures to:

- promote co-operation amongst prosecutors at the regional and global levels 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.

Programme (2): Civil

	2009–10 (Actual)	2010–11 (Original)	2010–11 (Revised)	2011–12 (Estimate)
Financial provision (\$m)	382.3	391.1	384.8 (–1.6%)	418.5 (+8.8%)
				(or +7.0% on 2010–11 Original)

Aim

9 The aim is to provide legal advice to the Government on civil matters, to undertake civil litigation and dispute resolution 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, building, 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 2010, 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	2009 (Actual)	2010 (Actual)	2011 (Plan)
taking appropriate follow-up action on civil litigation cases within seven working days upon referral by client department (%)	100	100	99	100
providing legal advice within 14 working days upon receipt of instructions/ requests (%)#	92	90	90	92

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

Indicators

	2009 (Actual)	2010 (Actual)	2011 (Estimate)
civil litigation cases current on 31 December	22 842	25 556	26 660
new proceedings (including non-construction arbitration and mediation) brought by the Government	1 526	2 068	2 365
new proceedings (including non-construction arbitration and mediation) brought against the Government	1 071	1 286	1 535
person days of court appearances	1 314	1 219	1 435
items of legal advice provided	15 079	14 482	14 480
commercial tenders, consultancy briefs, contracts, licences and franchises drafted/vetted	617	528	530

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Matters Requiring Special Attention in 2011–12

13 During 2011–12, the Civil Division will advise on the legal aspects of:

- proceedings involving the Government, in particular those involving Basic Law issues, civil service matters, immigration matters, rating appeals, government rent appeals, land disputes and damages claims including personal injuries and other claims taking on board changes since the implementation of the Civil Justice Reform;
- 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 Land Titles Ordinance (Cap. 585);
- claims made under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- issues relating to civil service disciplinary procedures;
- 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 and Ocean Park projects;
- 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 review of the Trustee Ordinance (Cap. 29);
- grant funding, project and film financing;
- food safety legislation;
- legislative initiatives to rewrite the Companies Ordinance (Cap. 32), enhance anti-money laundering regime, and establish the Communications Authority;
- proposed establishment of an independent Insurance Authority;
- development of a territory-wide patient-oriented electronic health record system;
- review of the Personal Data (Privacy) Ordinance (Cap. 486); and
- various studies, projects and initiatives, including those in relation to the enhancement of the soundness and resilience of Hong Kong's financial system and strengthening of Hong Kong's role as an international financial centre amidst the changing financial circumstances, West Kowloon Cultural District, the proposed Hong Kong-Zhuhai-Macao Bridge, Liantang/Heung Yuen Wai Boundary Control Point, the Guangzhou-Shenzhen-Hong Kong Express Rail Link, the Kai Tak Development including the new cruise terminal facilities, Shatin Central Link, South Island Line (East), West Island Line, the development of North East New Territories New Development Areas, operation of private columbaria, revitalization of industrial buildings, development of private hospitals services, consumer protection legislation, review of the Urban Renewal Strategy, as well as the considerations to prohibit anti-competitive practice.

Programme (3): Legal Policy

	2009–10 (Actual)	2010–11 (Original)	2010–11 (Revised)	2011–12 (Estimate)
Financial provision (\$m)	64.4	75.0	67.7 (–9.7%)	74.1 (+9.5%)
				(or –1.2% on 2010–11 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 to the Law Reform Commission.

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Brief Description

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

- 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 (LegCo) and as the principal legal adviser to the Chief Executive;
- advising whether proposed legislation or policy is contrary to established principles underlying the legal system;
- advising on legal issues arising out of prisoners' petitions for remission, references of cases to the Court of Appeal under the Criminal Procedure Ordinance (Cap. 221) 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 the legal profession; and bills effecting law reform or miscellaneous amendments to various ordinances;
- providing advice and information on the laws of the Mainland and on co-operation arrangements with the Mainland authorities, assisting in the discussion with the Mainland authorities on co-operation arrangements on civil/commercial matters where appropriate, and developing working relationships with counterparts in the Mainland;
- providing advice to the Government on LegCo procedures;
- providing advice on 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 2010, the aim of the programme was generally met and the overall performance under the programme was satisfactory.

17 The key performance measures are:

Indicators

	2009 (Actual)	2010 (Actual)	2011 (Estimate)
bills promoted by the Legal Policy Division in each LegCo session	2	2	3
petitions (from prisoners) handled	55	38	40
items of legal advice given on:			
general legal policy issues.....	623	790	790
human rights issues	1 355	1 011	1 010
Mainland law and related matters	332	304	300
Basic Law and constitutional matters.....	995	1 110	1 100
ongoing Law Reform Commission projects	9	9	9
speeches prepared (both for LegCo and elsewhere).....	72	58	55
Basic Law seminars conducted	10	8	8
briefings given in the Mainland and to Mainland delegations in Hong Kong	28	28	25

Matters Requiring Special Attention in 2011–12

18 During 2011–12, the Secretary for Justice's Office and the Legal Policy Division will continue to:

- promote the use of arbitration in Hong Kong and publicise and implement the new arbitration law after enactment by the LegCo;
- 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;

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- develop working relationships with counterparts in the Mainland in particular areas which call for co-operation between HKSAR and the Mainland;
- 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

	2009–10 (Actual)	2010–11 (Original)	2010–11 (Revised)	2011–12 (Estimate)
Financial provision (\$m)	78.7	82.6	79.7 (–3.5%)	82.0 (+2.9%)
				(or –0.7% on 2010–11 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 2010, the aim of the programme was generally met and the overall performance under the programme was satisfactory.

22 The key performance measures are:

Indicators

	2009 (Actual)	2010 (Actual)	2011 (Estimate)
bills gazetted	28	24	30
subsidiary legislation gazetted	265	176	200
pages of bills/subsidiary legislation gazetted (English)	1 970	1 947	2 000
pages of bills/subsidiary legislation gazetted (Chinese)	1 970	1 947	2 000
pages of legislation compiled for publication in the loose-leaf edition	7 078	5 044	6 000
pages of Committee Stage Amendments (English)	44	131	120
pages of Committee Stage Amendments (Chinese)	39	124	110
drafts of bills/subsidiary legislation released	2 350	2 563	2 355
items of legal advice provided	7 482	7 325	7 325

Matters Requiring Special Attention in 2011–12

23 During 2011–12, the Law Drafting 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

	2009–10 (Actual)	2010–11 (Original)	2010–11 (Revised)	2011–12 (Estimate)
Financial provision (\$m)	37.5	39.9	39.3 (–1.5%)	40.5 (+3.1%)
				(or +1.5% on 2010–11 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 as well as requests for assistance on international child abduction cases, and advising on matters involving international legal co-operation.

26 In 2010, the aim of the programme was generally met and the overall performance under the programme was satisfactory.

27 The key performance measures are:

Indicators

	2009 (Actual)	2010 (Actual)	2011 (Estimate)
international agreements initialled	1	2	2
briefings, negotiation and discussion (no. of working sessions)	340	367	400
items of legal advice provided	9 263	8 620	8 600
new requests dealt with in various categories of mutual legal assistance	202	250	270
court appearances.....	103	134	150

Matters Requiring Special Attention in 2011–12

28 During 2011–12, the International Law 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	2009–10 (Actual) (\$m)	2010–11 (Original) (\$m)	2010–11 (Revised) (\$m)	2011–12 (Estimate) (\$m)
(1) Prosecutions	422.7	421.3	414.8	428.1
(2) Civil.....	382.3	391.1	384.8	418.5
(3) Legal Policy.....	64.4	75.0	67.7	74.1
(4) Law Drafting	78.7	82.6	79.7	82.0
(5) International Law	37.5	39.9	39.3	40.5
	985.6	1,009.9	986.3 (–2.3%)	1,043.2 (+5.8%)
				(or +3.3% on 2010–11 Original)

Analysis of Financial and Staffing Provision

Programme (1)

Provision for 2011–12 is \$13.3 million (3.2%) higher than the revised estimate for 2010–11. This is mainly due to the filling of vacancies, creation of eight posts and the full-year effect of upgrading seven posts to meet operational needs, and anticipated increase in general departmental expenses, partly offset by decrease in court costs.

Programme (2)

Provision for 2011–12 is \$33.7 million (8.8%) higher than the revised estimate for 2010–11. This is mainly due to the filling of vacancies, creation of 16 posts and the full-year effect of upgrading six posts to meet operational needs, as well as anticipated increase in general departmental expenses, court costs and briefing-out expenses.

Programme (3)

Provision for 2011–12 is \$6.4 million (9.5%) higher than the revised estimate for 2010–11. This is mainly due to the filling of vacancies, creation of one post and the full-year effect of upgrading one post to meet operational needs, as well as anticipated increase in general departmental expenses.

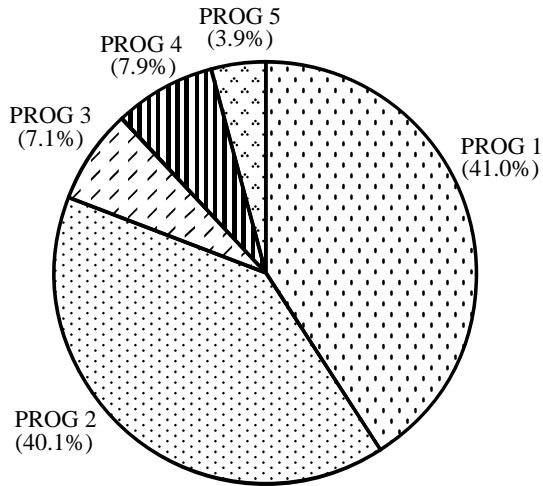
Programme (4)

Provision for 2011–12 is \$2.3 million (2.9%) higher than the revised estimate for 2010–11. This is mainly due to the filling of vacancies, creation of one post to meet operational needs, as well as anticipated increase in general departmental expenses.

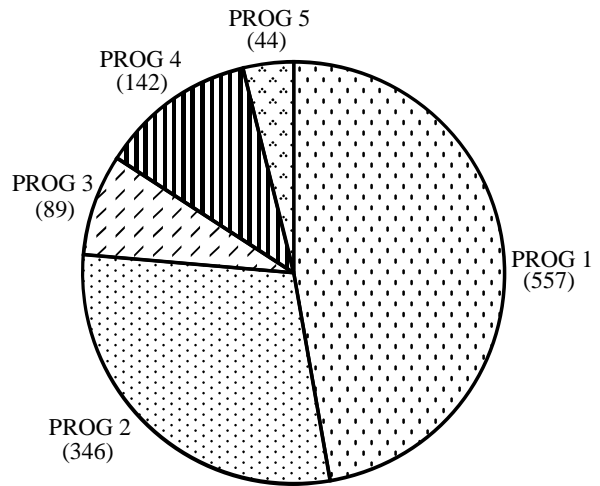
Programme (5)

Provision for 2011–12 is \$1.2 million (3.1%) higher than the revised estimate for 2010–11. This is mainly due to the filling of vacancies and anticipated increase in general departmental expenses, partly offset by decrease in briefing-out expenses.

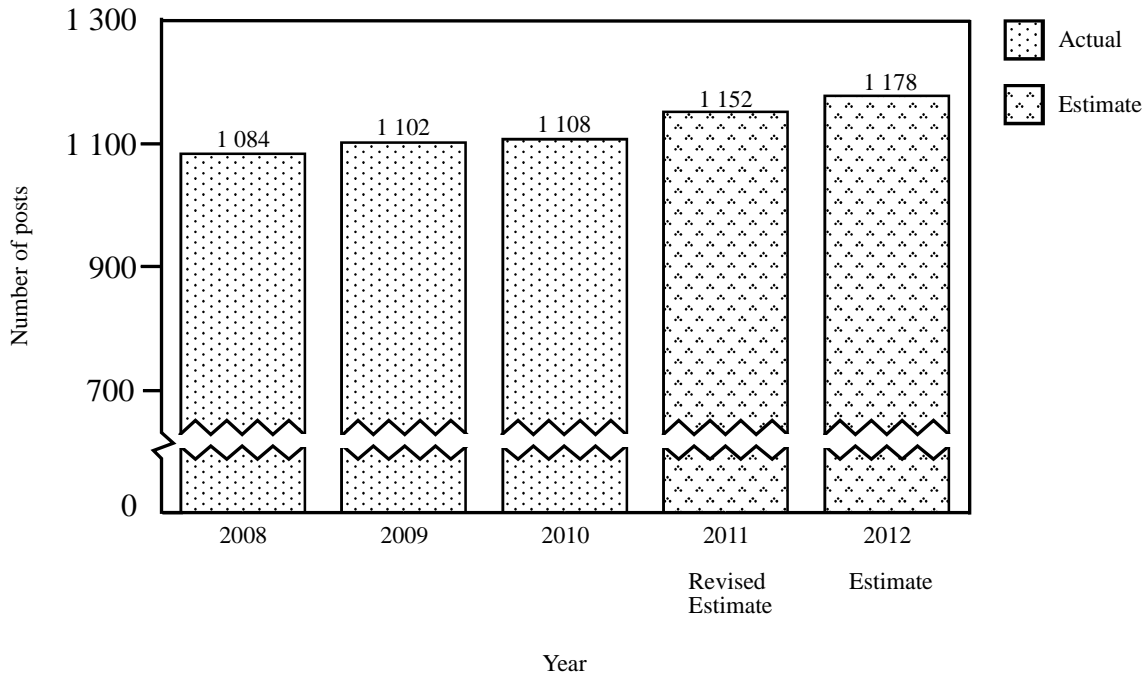
Allocation of provision to programmes (2011-12)



Staff by programme (as at 31 March 2012)



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



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Sub-head (Code)		Actual expenditure 2009–10	Approved estimate 2010–11	Revised estimate 2010–11	Estimate 2011–12
	\$'000	\$'000	\$'000	\$'000	\$'000
Operating Account					
Recurrent					
000	Operational expenses.....	878,871	919,676	896,996	952,782
003	Recoverable salaries and allowances (General).....	2,000			
	<i>Deduct</i> reimbursements.....	<i>Cr. 2,000</i>			
234	Court costs.....	106,361	88,796	88,796	89,449
	Total, Recurrent	<u>985,232</u>	<u>1,008,472</u>	<u>985,792</u>	<u>1,042,231</u>
Non-Recurrent					
700	General non-recurrent	338	1,410	471	960
	Total, Non-Recurrent	<u>338</u>	<u>1,410</u>	<u>471</u>	<u>960</u>
	Total, Operating Account.....	<u>985,570</u>	<u>1,009,882</u>	<u>986,263</u>	<u>1,043,191</u>
<hr/>					
	Total Expenditure	<u><u>985,570</u></u>	<u><u>1,009,882</u></u>	<u><u>986,263</u></u>	<u><u>1,043,191</u></u>

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Details of Expenditure by Subhead

The estimate of the amount required in 2011–12 for the salaries and expenses of the Department of Justice is \$1,043,191,000. This represents an increase of \$56,928,000 over the revised estimate for 2010–11 and of \$57,621,000 over actual expenditure in 2009–10.

Operating Account

Recurrent

2 Provision of \$952,782,000 under *Subhead 000 Operational expenses* is for the salaries, allowances and other operating expenses of the Department of Justice.

3 The establishment as at 31 March 2011 will be 1 152 permanent posts. It is expected that 26 permanent posts will be created in 2011–12. Subject to certain conditions, the controlling officer may under delegated power create or delete non-directorate posts during 2011–12, but the notional annual mid-point salary value of all such posts must not exceed \$489,968,000.

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

	2009–10 (Actual) (\$'000)	2010–11 (Original) (\$'000)	2010–11 (Revised) (\$'000)	2011–12 (Estimate) (\$'000)
Personal Emoluments				
- Salaries	573,792	624,363	598,628	629,326
- Allowances	6,361	11,194	9,185	13,197
- Job-related allowances.....	1	6	6	6
Personnel Related Expenses				
- Mandatory Provident Fund contribution	1,377	2,189	1,311	1,277
- Civil Service Provident Fund contribution	3,542	4,131	5,531	13,819
Departmental Expenses				
- Remuneration for special appointments...	3,758	3,750	3,750	3,750
- General departmental expenses.....	64,567	74,254	71,811	81,392
Other Charges				
- Hire of legal services and related professional fees	182,465	166,789	166,078	169,015
- Legal services for construction dispute resolution.....	43,008	33,000	40,696	41,000
	878,871	919,676	896,996	952,782

5 Provision of \$2,000,000 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 (Cap. 32). 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 Companies Registry Trading Fund.

6 Provision of \$89,449,000 under *Subhead 234 Court costs* is for the payment of costs awarded against the Government in criminal and civil cases. Since payment of court costs is contingent upon the progress of the relevant negotiations, the level of payment may vary from year to year.

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Commitments

Sub-head (Code)	Item (Code)	Ambit	Approved commitment	Accumulated expenditure to 31.3.2010	Revised estimated expenditure for 2010-11	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	3,227	150	1,723
513		Conducting mock trials in the Mainland	2,400	1,609	91	700
514		Promotion of rule of law and Hong Kong's legal system.....	6,300	5,987	30	283
519		Development of Mainland-related legal services in Hong Kong	4,335	1,549	200	2,586
		Total	<u>18,135</u>	<u>12,372</u>	<u>471</u>	<u>5,292</u>