

Head 92 — DEPARTMENT OF JUSTICE

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

Estimate 2002–03	\$981.8m
Establishment ceiling 2002–03 (notional annual mid-point salary value) representing an estimated 1 043 non-directorate posts at 31 March 2002 reducing by five posts to 1 038 posts at 31 March 2003.....	\$435.2m
In addition there will be an estimated 75 directorate posts at 31 March 2002 reducing by one post to 74 posts at 31 March 2003.	
Capital Account commitment balance	\$6.6m

Controlling Officer's Report

Programmes

<p>Programme (1) Prosecutions Programme (2) Civil Programme (3) Legal Policy Programme (4) Law Drafting Programme (5) International Law</p>	<p>These programmes contribute to Policy Area 11: Legal Administration (Secretary for Justice).</p>
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Detail

Programme (1): Prosecutions

	2000–01 (Actual)	2001–02 (Approved)	2001–02 (Revised)	2002–03 (Estimate)
Financial provision (\$m)	335.7	389.1 (+15.9%)	396.8 (+2.0%)	387.4 (–2.4%)

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 on and prosecutes criminal cases in all the courts in Hong Kong. In most appeals to the Court of Final Appeal and the Court of Appeal, a senior member of the Prosecutions Division appears in court to represent the prosecution. In many cases in the Court of First Instance and some in the District Court, the prosecution is conducted by Government Counsel. Most of the cases in the Magistrates' Court are prosecuted by Court Prosecutors. Some cases are briefed out to members of the private Bar and solicitors in private practice. The Division also advises the law enforcement agencies generally on criminal law and practice and the effect of legislation.

4 These advocacy and advisory functions are performed by various specialist sections within the Prosecutions Division. These sections deal with trial preparation, trials, training and developing bilingualism, vice, obscenity and gambling cases, complaints against Police, appeals, the Basic Law and human rights, immigration cases, coroners' inquests, labour cases, domestic proceeds of crime and Inland Revenue cases, computer crime and copyright cases, Independent Commission Against Corruption cases, Customs & Excise cases, commercial crime cases, and miscellaneous advice.

5 In 2001, the aim of the programme was generally met and the overall performance of the programme as reflected by the key indicators is satisfactory.

6 The key performance measures are:

Indicators

	2000 (Actual)	2001 (Actual)	2002 (Estimate)
cases conducted by Government Counsel	4 338	4 206	4 210
cases conducted by Counsel instructed to prosecute	768	798	800
average number of court days for court specialists.....	96	103	103
number of court days undertaken by Government Counsel who are not court specialists	4 552	4 048	4 050
number of court days undertaken by Court Prosecutors in Magistrates' Court	14 852	14 537	14 550

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	2000 (Actual)	2001 (Actual)	2002 (Estimate)
number of court days undertaken by Counsel instructed to prosecute in Magistrates' Court in place of Court			
Prosecutors	140	797	800
number of trials prepared in the Court of First Instance	416	432	435
number of trials prepared in the District Court	562	537	540
items of legal advice provided	15 545	15 737	15 740
number of appeals conducted.....	1 761	1 697	1 700

7 The conviction rates for 2000 and 2001 are:

	2000 (Actual)	2001 (Actual)
Magistrates' Court	75.1%	77.0%
District Court	89.9%	84.7%
Court of First Instance	93.2%	90.8%

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 2002–03

8 During 2002–03, the Division will:

- publish a new Prosecution Policy Booklet to assist prosecutors, and to promote community understanding of public prosecutions;
- enhance the capacity of the existing specialist team for prosecuting intellectual property cases; and
- continue to provide training for counsel to conduct court proceedings in Chinese.

Programme (2): Civil

	2000–01 (Actual)	2001–02 (Approved)	2001–02 (Revised)	2002–03 (Estimate)
Financial provision (\$m)	348.3	392.7 (+12.7%)	351.8 (–10.4%)	387.8 (+10.2%)

Aim

9 The aim is to provide legal advice to the Government in civil matters, to undertake civil litigation and to draft contracts on commercial and other matters.

Brief Description

10 The work of the Civil Division involves:

- representing the Government and other public bodies in courts and tribunals in all forms of civil litigation and dispute resolution (including 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 to the Government.

11 In 2001, the aim of the programme was generally met and the overall performance of the programme as reflected by the key indicators is satisfactory.

12 The key performance measures are:

Indicators

	2000 (Actual)	2001 (Actual)	2002 (Estimate)
civil proceedings (including non-construction arbitration)			
brought by Government.....	1 470	1 359	1 580
civil proceedings (including non-construction arbitration)			
brought against Government	2 949	4 843	4 640
number of person days of court appearances	1 041	923	1 120

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	2000 (Actual)	2001 (Actual)	2002 (Estimate)
number of civil litigation cases current on 31 December	12 389	15 923	16 200
items of legal advice provided#	14 904	14 306	14 400
commercial tenders, consultancy briefs, contracts, licences and franchises drafted/vetted	390	395	400

Include routine legal advisory work on implementation of electoral legislation which has been transferred from the Legal Policy Division since September 2000.

Matters Requiring Special Attention in 2002–03

13 During 2002–03, the Division will:

- advise on proceedings against the Government, in particular those involving right of abode claims and compensation claims on land resumption related to the West Rail project;
- draft, vet and advise on the English and Chinese texts of contracts, undertakings, tender documents, public franchises, licences and other legal documents for the Government;
- advise on a wide range of land related matters, including town planning, environmental protection, landlord and tenant matters, control of building operations, resumption and reclamation, sewage and flood control, new road and railway schemes and the proposed Tung Chung cable car system;
- advise on the regulation of companies, securities, insurance, information technology, electronic transactions, e-commerce (including the Certification Authority Recognition Office), transportation, television broadcasting and telecommunications (including anti-competition provisions) as well as proposals for reform;
- provide Counsel to the Insider Dealing Tribunal and, subject to the enactment of the Securities and Futures Bill, Market Misconduct Tribunal;
- advise on privatisation, corporatisation and outsourcing of Government's commercial activities;
- advise on occupational retirement and provident fund schemes;
- advise on the Securities and Futures legislation; and
- advise on the implementation of Hong Kong Disneyland.

Programme (3): Legal Policy

	2000–01 (Actual)	2001–02 (Approved)	2001–02 (Revised)	2002–03 (Estimate)
Financial provision (\$m)	62.5	67.9 (+8.6%)	67.2 (–1.0%)	66.6 (–0.9%)

Aim

14 The aim is to advise the Government on matters raising questions of legal policy; to assist in formulating policy, particularly in relation to the legal system and the legal profession; to provide support to the Secretary for Justice in relation to the discharge of her duties; to provide advice in respect of the Basic Law, human rights and constitutional affairs as well as the law and legal developments in the Mainland; and to review chosen areas of the law and provide secretariat support for the Law Reform Commission.

Brief Description

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

- advising whether proposed legislation or particular policy is contrary to established principles underlying the legal system;
- providing support for the Secretary for Justice in relation to her duties as a member of the Executive Council, a designated officer attending meetings of the Legislature 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 Hong Kong;
- promoting Adaptation Bills in relation to ordinances concerning the legal system;
- providing advice and information on the laws of the Mainland and developing working relationships with counterparts in the Mainland;
- providing advice to the Administration on procedures of the Legislature;

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- providing advice on the Basic Law and promoting knowledge of the Basic Law; and
- giving advice and providing research and support to facilitate the work of the Law Reform Commission.

16 In 2001, the aim of the programme was generally met and the overall performance of the programme as reflected by the key indicators is satisfactory.

17 The key performance measures are:

Indicators

	2000 (Actual)	2001 (Actual)	2002 (Estimate)
number of Bills being promoted per session of the Legislature	1	1	2
number of petitions handled.....	66	42	40
items of written advice given on general legal policy issues ..	1 101§	718	720
items of legal advice given on human rights issues	859	754	750
number of law reform projects being handled	9	11	11
number of speeches prepared (both for the Legislature and elsewhere).....	93	68	65
items of legal advice given on Mainland law and related matters	259	155	150
items of legal advice given on the Basic Law and constitutional matters.....	845	1 108	1 090
number of Basic Law seminars conducted	29	16	16

§ The figure for 2000 includes routine legal advisory work on implementation of electoral legislation until September 2000 when it was transferred to the Civil Division.

Matters Requiring Special Attention in 2002–03

18 During 2002–03, 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 opportunities for the legal profession to provide services in the Mainland;
- 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;
- 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 Hong Kong Special Administrative Region (HKSAR) and the Mainland; and
- organise talks, seminars and visits in order to develop and enhance mutual understanding of the legal systems in HKSAR and the Mainland.

Programme (4): Law Drafting

	2000–01 (Actual)	2001–02 (Approved)	2001–02 (Revised)	2002–03 (Estimate)
Financial provision (\$m)	105.3	98.5 (–6.5%)	97.5 (–1.0%)	100.0 (+2.6%)

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;
- providing drafting service in the adaptation of Hong Kong laws to conform with the Basic Law;
- compiling the loose-leaf edition of the Laws of Hong Kong; and
- maintaining the Bilingual Laws Information System database.

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21 In 2001, the aim of the programme was generally met and the overall performance of the programme as reflected by the key indicators is satisfactory.

22 The key performance measures are:

Indicators

	2000 (Actual)	2001 (Actual)	2002 (Estimate)
number of bills gazetted	52	49	50
number of subsidiary legislation gazetted	368	301	300
pages of bills/subsidiary legislation gazetted (English)	3 224	2 160	2 100
pages of bills/subsidiary legislation gazetted (Chinese).....	3 224	2 160	2 100
pages of legislation published in the loose-leaf edition.....	16 516	8 063	8 000
pages of Committee Stage Amendments (English)	698	135	640
pages of Committee Stage Amendments (Chinese).....	543	115	600

23 Drafting work for about 93% of the Ordinances that need to be adapted have been completed. The Administration is assessing policy implications that may arise from the adaptation of the remaining 7% with the assistance of the Law Drafting Division and other Divisions of the Department of Justice.

Matters Requiring Special Attention in 2002–03

24 During 2002–03, the Division will continue to:

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

Programme (5): International Law

	2000–01 (Actual)	2001–02 (Approved)	2001–02 (Revised)	2002–03 (Estimate)
Financial provision (\$m)	34.1	38.5 (+12.9%)	37.9 (–1.6%)	40.0 (+5.5%)

Aim

25 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

26 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 and air services;
- 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.

27 The key performance measures are:

Indicators

	2000 (Actual)	2001 (Actual)	2002 (Estimate)
number of international agreements initialled.....	6	9	6
briefings, negotiation and discussion (number of working sessions).....	459	585	550
number of items of advice provided.....	5 671	6 335	6 000
number of new requests dealt with in various categories of mutual legal assistance.....	137	129	120

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	2000 (Actual)	2001 (Actual)	2002 (Estimate)
number of court appearances.....	87	28	40

Matters Requiring Special Attention in 2002–03

28 During 2002–03, 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	2000-01 (Actual) (\$m)	2001-02 (Approved) (\$m)	2001-02 (Revised) (\$m)	2002-03 (Estimate) (\$m)
(1) Prosecutions	335.7	389.1	396.8	387.4
(2) Civil.....	348.3	392.7	351.8	387.8
(3) Legal Policy.....	62.5	67.9	67.2	66.6
(4) Law Drafting	105.3	98.5	97.5	100.0
(5) International Law	34.1	38.5	37.9	40.0
	885.9	986.7 (+11.4%)	951.2 (-3.6%)	981.8 (+3.2%)

Analysis of Financial and Staffing Provision

Programme (1)

Provision for 2002-03 is \$9.4 million (2.4%) lower than the revised estimate for 2001-02. This is mainly due to a net deletion of one post and the lapse of one supernumerary post in 2002-03, as well as an anticipated decrease in the requirement for court cost payments.

Programme (2)

Provision for 2002-03 is \$36.0 million (10.2%) higher than the revised estimate for 2001-02. This is mainly due to a net creation of three posts in 2002-03 mainly for improving professional support, the additional provision for employment of non-civil service contract staff, as well as an anticipated increase in the requirement for court cost payments.

Programme (3)

Provision for 2002-03 is \$0.6 million (0.9%) lower than the revised estimate for 2001-02. This is mainly due to the deletion of two posts in 2002-03.

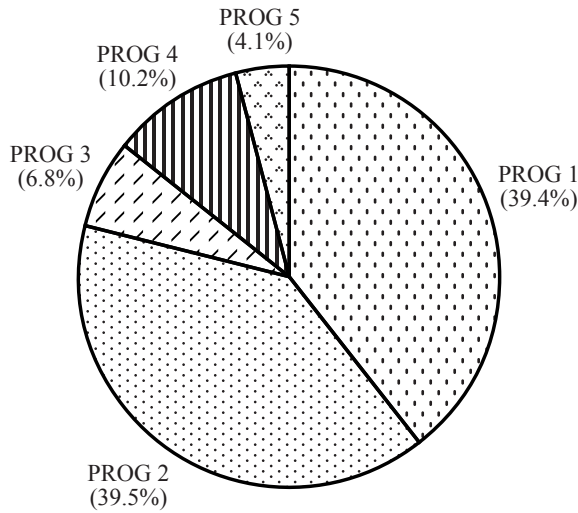
Programme (4)

Provision for 2002-03 is \$2.5 million (2.6%) higher than the revised estimate for 2001-02. This is mainly due to additional provision for employment of non-civil service contract staff and an increase in cashflow requirement for updating the loose-leaf edition of the Laws of Hong Kong (adaptation amendments). The increase in expenditure is partly offset by the deletion of five posts in 2002-03.

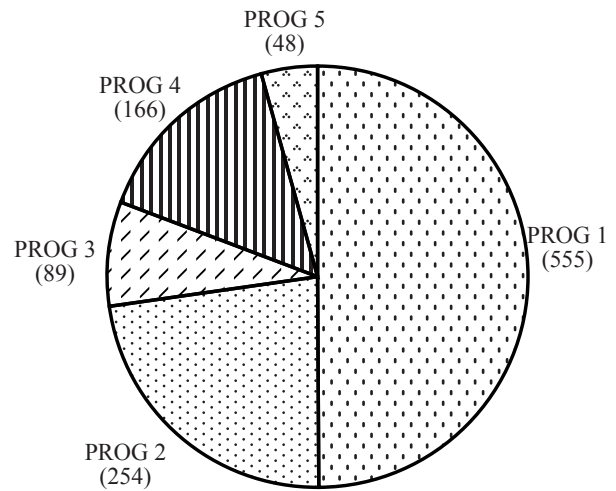
Programme (5)

Provision for 2002-03 is \$2.1 million (5.5%) higher than the revised estimate for 2001-02. This is mainly due to salary increments for staff and the provision for the filling of vacancies in 2002-03.

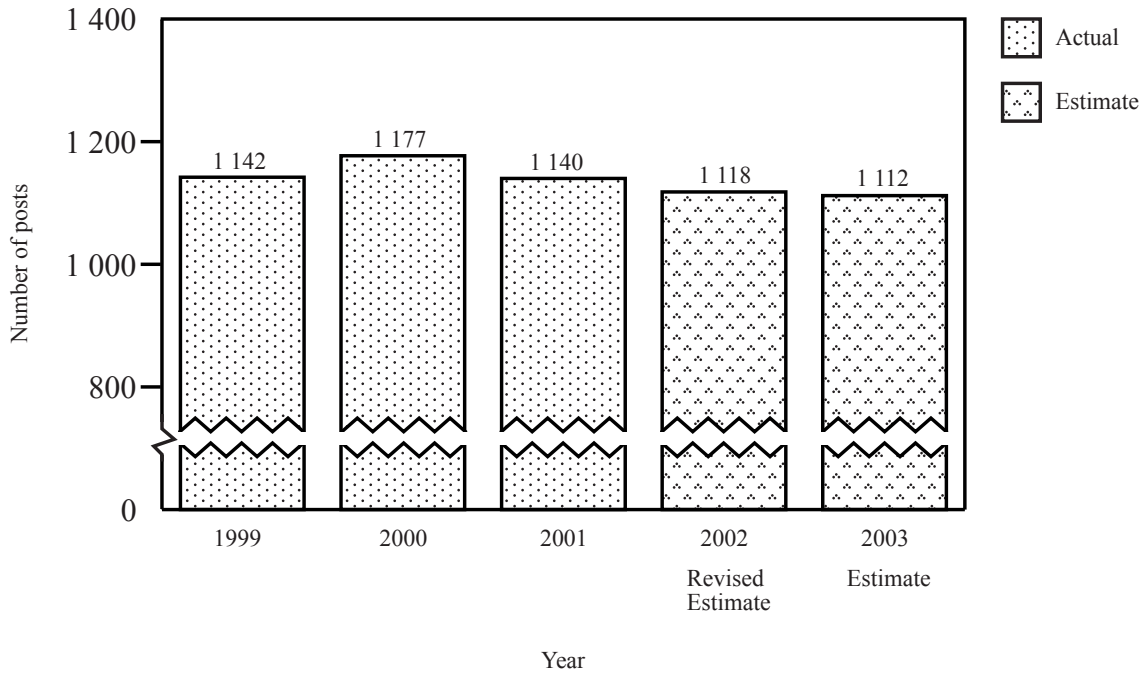
Allocation of provision to programmes (2002-03)



Staff by programme (as at 31 March 2003)



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



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Sub-head (Code)		Actual expenditure 2000-01	Approved estimate 2001-02	Revised estimate 2001-02	Estimate 2002-03
		\$'000	\$'000	\$'000	\$'000
Recurrent Account					
I — Personal Emoluments					
001	Salaries	535,223	538,408	555,512	562,118
002	Allowances	9,200	12,289	8,926	9,265
007	Job-related allowances	33	35	34	35
	Total, Personal Emoluments	<u>544,456</u>	<u>550,732</u>	<u>564,472</u>	<u>571,418</u>
III — Departmental Expenses					
149	General departmental expenses	56,384	68,672	65,000	85,433
	Total, Departmental Expenses	<u>56,384</u>	<u>68,672</u>	<u>65,000</u>	<u>85,433</u>
IV — Other Charges					
234	Court costs	89,383	102,000	97,000	100,368*
243	Hire of legal services and related professional fees	179,728	199,569	164,569	162,114
287	Legal services for construction dispute resolution	12,532	61,718	56,500	58,718
	Total, Other Charges	<u>281,643</u>	<u>363,287</u>	<u>318,069</u>	<u>321,200</u>
	Total, Recurrent Account	<u>882,483</u>	<u>982,691</u>	<u>947,541</u>	<u>978,051</u>
Capital Account					
II — Other Non-Recurrent					
700	General other non-recurrent	3,388	4,004	3,630	3,769
	Total, Other Non-Recurrent	<u>3,388</u>	<u>4,004</u>	<u>3,630</u>	<u>3,769</u>
	Total, Capital Account	<u>3,388</u>	<u>4,004</u>	<u>3,630</u>	<u>3,769</u>
	Total Expenditure	<u><u>885,871</u></u>	<u><u>986,695</u></u>	<u><u>951,171</u></u>	<u><u>981,820</u></u>

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Details of Expenditure by Subhead

The estimate of the amount required in 2002–03 for the salaries and expenses of the Department of Justice is \$981,820,000. This represents an increase of \$30,649,000 over the revised estimate for 2001–02 and of \$95,949,000 over actual expenditure in 2000–01.

Recurrent Account

Personal Emoluments

2 Provision of \$571,418,000 for personal emoluments represents an increase of \$6,946,000 over the revised estimate for 2001–02. This includes provision of \$198,600 for a non-accountable entertainment allowance for the Secretary for Justice.

3 The establishment at 31 March 2002 will be 1 116 permanent posts and two supernumerary posts. It is expected that a net five permanent posts will be deleted and one supernumerary post will lapse in 2002–03.

4 Subject to certain conditions, the controlling officer may under delegated powers create or delete non-directorate posts during 2002–03, but the notional annual mid-point salary value of all such posts must not exceed \$435,181,000.

5 Provision of \$9,265,000 under *Subhead 002 Allowances* is for standard allowances, the consolidated overtime allowance for Chauffeur grade, and the following non-standard allowance—

	Rank	Rate per month \$
consolidated overtime allowance for domestic staff at the residence of the Secretary for Justice	No. 2 Chef Domestic Servant	3,810 2,870

6 Provision of \$35,000 under *Subhead 007 Job-related allowances* is for standard job-related allowances.

Departmental Expenses

7 Provision of \$85,433,000 under *Subhead 149 General departmental expenses* represents an increase of \$20,433,000 (31.4%) over the revised estimate for 2001–02. This is mainly due to the additional provision for contract maintenance and increased requirements for employment of non-civil service contract staff for improving professional and administrative support, partly offset by savings in operating expenses under the Enhanced Productivity Programme.

Other Charges

8 Provision of \$100,368,000 under *Subhead 234 Court costs* is for the payment of costs awarded against the Government in criminal and civil cases.

9 Provision of \$162,114,000 under *Subhead 243 Hire of legal services and related professional fees* is to meet the costs for engaging:

- (a) lawyers (local or overseas) to advise on, or act for the Government of the HKSAR in, any matter or proceeding, whether criminal or civil (including arbitration), or to appear in such connection in any Hong Kong court, commission of inquiry, inquiry, tribunal or board;
- (b) lawyers for overseas work;
- (c) expert witnesses and consultants;
- (d) accountants and arbitrators; and
- (e) other services directly related to legal matters or proceedings.

10 Provision of \$58,718,000 under *Subhead 287 Legal services for construction dispute resolution* is for the payment of fees to private practitioners engaged to undertake specialised work relating to construction dispute resolution. Private practitioners include lawyers (local or overseas), expert witnesses, consultants, accountants and arbitrators. Engagement of other services directly related to construction dispute resolution is also included.

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Capital Account

Commitments

Sub-head (Code)	Item (Code)	Ambit	Approved commitment	Accumulated expenditure to 31.3.2001	Revised estimated expenditure for 2001-02	Balance
			\$'000	\$'000	\$'000	\$'000
700		<i>General other non-recurrent</i>				
	512	Hire of service for translation and Chinese typing	5,100	1,712	405	2,983
	513	Conducting mock trials in the Mainland.....	2,400	704	600	1,096
	514	Promotion of rule of law and Hong Kong's legal system	6,300	5,371	595	334
	515	Updating of the loose-leaf edition of the Laws of Hong Kong (adaptation amendments)	1,900	371	120	1,409
	516	Production of publicity materials to promote the awareness of the rule of law	5,000	2,500	1,700	800
		Total.....	<u>20,700</u>	<u>10,658</u>	<u>3,420</u>	<u>6,622</u>