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INDONESIA TRADE ASSISTANCE PROJECT (ITAP)

**Improving the Quality of Legal Services within
the Ministry of Trade of the Republic of Indonesia**

June 6, 2008

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INDONESIA TRADE ASSISTANCE PROJECT (ITAP)

Improving the Quality of Legal Services within the Ministry of Trade of the Republic of Indonesia

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EXECUTIVE SUMMARY

The Government of Indonesia (GOI) and particularly the Ministry of Trade (MOT) face many challenges in positioning Indonesia as a power on the international stage commensurate with its size, population, regional importance and geopolitical significance. Globalization brings with it various opportunities but also many challenges. In order to remain competitive, countries have been forced to modernize and improve the quality of services they provide, including legal services. Many have abandoned antiquated structures and systems for delivering legal services in favor of responsive, centralized offices that bring together expertise and experience in order to deliver high-quality results.

Lawyers are increasingly involved in all aspects of a government's work. Most of the competitive countries, and the best performing government agencies within them, place a high value on including quality legal services from experienced and knowledgeable lawyers as part of their operational and decision-making processes. Those government agencies without the benefit of quality legal services are at a distinct disadvantage, both within their own domestic regulatory environments but also when they meet, interact and negotiate with their counterparts from other countries.

It is within this global context that the Ministry of Trade requested that the Indonesia Trade Assistance Project (ITAP) prepare a Blueprint for improving the quality of legal services provided to the Ministry. The analysis and recommendations that follow are based upon ITAP's almost three years of experience within the Ministry and upon a Legal Needs Assessment (LNA) conducted from January - May 2008. This assessment consisted of a series of interviews with key MOT personnel, a written questionnaire completed by the major operational units within the Ministry, and a review of best practices that focused on five comparative government agencies both in Indonesia and abroad (Comparison Agencies).

The LNA found broad-based consensus within the Ministry for far-reaching and fundamental changes in the delivery of legal services at the MOT. Regardless of the source of legal services, the consumers of those services at every level within the Ministry indicated that they were receiving neither the quantity nor quality of legal services required in order to be effective and to competently and professionally carry out the MOT's key role in developing, supporting, regulating, administering and negotiating trade law and policy inside and outside of Indonesia.

The recommendations that follow are designed to improve the quality, effectiveness and professionalism of legal services within the Ministry of Trade. Quality, effective and professional legal services are defined as independent, consistent, accurate, and those legal services reduce risk and

exposure while at the same time maximizing benefit and efficacy. To provide quality legal services will require a combination of both organizational and human resource changes at the MOT.

Organizational Recommendations.

- 1. *Expand the role of lawyers and the Legal Bureau*** to include legal advice, negotiations and counseling, in addition to drafting and litigation.
- 2. *Realign the functions of the Legal Bureau*** to better serve specific client and overall Ministry needs and to coordinate legal services in and from the Ministry.
- 3. *Establish a formal concurrence process*** that requires early consultations between the DGs/Agencies and the Legal Bureau in the drafting process, policy development and regarding potential legal issues
- 4. *Raise the status of the Legal Bureau*** within the MOT by elevating the Bureau to a Directorate General.

Human Resource Recommendations.

- 1. *Develop an overall staffing plan for legal positions*** within the Ministry that corresponds to the actual needs of the clients and overall Ministry goals.
- 2. *Increase the number of lawyers in the Legal Bureau*** to handle the broad range of domestic, international and litigation needs which arise in the context of the Ministry's work.
- 3. *Create a program that best utilizes all returning postgraduate students in law*** as lawyers in the Legal Bureau and provides them with the opportunity to use and build upon the legal skills they learned in their Master's programs and to learn about the scope of work handled by the Ministry.
- 4. *Assign junior lawyers to more senior staff*** for management, training and mentoring.
- 5. *Establish an MOT legal team that encompasses all law graduates doing legal work***, regardless of where they are employed within the Ministry.
- 6. *Provide additional resources to the MOT legal team***, including training on internet research for all lawyers and specialized training for the staff of the Legal Bureau's Documentation Division.
- 7. *Increase legal capacity through postgraduate education in law***, abroad and in Indonesia.
- 8. *Provide additional opportunities for lawyers to increase knowledge and skills*** through internships and overseas assignments.
- 9. *Create a better career path for lawyers*** so they will continue to work as lawyers during their time at the MOT and can develop substantive expertise in areas of law that are key to the Ministry and to ensure that there is a cadre of experienced lawyers to coach and manage newer Ministry lawyers.

Roadmap for Implementation.

The Secretary General of the MOT specifically asked that the Blueprint include a Roadmap detailing how the final recommendations could be implemented over time. The Roadmap sets forth three phases for implementation. Each phase has a specific overall goal and areas of emphasis, and all three taken together represent a continuum leading to a fully centralized Directorate General for Legal Affairs (DG-LA).

The three phases are:

- Phase I Improve the existing organization and continue increasing the numbers and quality of the lawyers;
- Phase II Modify the existing organizational structure and coordination of legal issues; and
- Phase III Create a Directorate General for Legal Affairs.

The primary emphasis in Phase I is on strengthening human resources, and beginning to build a legal team with greater skills and experience as soon as possible. Hiring new lawyers and continuing training is critical. The development of a cadre of well trained lawyers will form the foundation for all the other changes that will follow. Timing is particularly critical in this phase given the window of opportunity presented by returning postgraduate students, a large enough number of lawyers to change the landscape of the Ministry's legal services system if they are used as lawyers upon their return and trained correctly over the next few years.

A secondary emphasis in Phase I is on expanding the role of lawyers within the Ministry beyond drafting and involving lawyers early in Ministry decision-making.

In Phase II, the development of the MOT legal team continues with further training, coaching and coordination among lawyers throughout the Ministry. The Legal Bureau is realigned to better meet the strategic needs of the Ministry and to pilot the basics of the organizational structure for Phase III.

By Phase III, the team is trained and ready to step into the new structure once it is approved by MenPAN.

Each phase contains action steps that lead to the stated objective for that phase. The majority of the action steps can be implemented in whole or in part without organizational or human resource changes that must be approved by outside agencies.

A three year plan for sequencing the action steps and detailing decisions necessary to implement them is included as Annex Fourteen to the Blueprint, as are two charts: one that provides a conceptual overview of the entire Blueprint/Roadmap process, and one that provides a flow chart of action steps. The timetable begins in 2nd quarter 2008 and ends after 2nd quarter 2010.

TABLE OF ACRONYMS AND ORGANIZATIONAL TERMS

Acronyms

| | |
|---------|--|
| BI | Bank Indonesia |
| BPO | Bureau of Personnel and Organization |
| CAHDI | Committee of Legal Advisers on Public International Law |
| COFTRA | Commodity Futures Trading Agency |
| DG | Directorate General |
| DG-DT | Directorate General of Domestic Trade |
| DG-FT | Directorate General of Foreign Trade |
| DG-ITC | Directorate General of International Trade Cooperation |
| DG-LAIT | Directorate General for Legal Affairs and International Treaties |
| DG-LA | Directorate General for Legal Affairs |
| DLA | Directorate for Legal Affairs |
| DOC | U.S. Department of Commerce |
| EC | European Commission |
| EU | European Union |
| GOI | Government of Indonesia |
| IBRA | Indonesian Bank Restructuring Agency |
| IG | Inspectorate General |
| ITAP | Indonesia Trade Assistance Project |
| KADI | Indonesian Committee on Anti-Dumping |
| KPPI | Indonesian Trade Safeguard Committee |
| LNA | Legal Needs Assessment |
| MenPAN | Ministry for Administrative Reform (Menteri Negara Pendayagunaan Aparatur Negara) |

| | |
|--------|--|
| MITL | Masters in International Trade Law |
| MOF | Ministry of Finance |
| MoFA | Ministry of Foreign Affairs |
| MOI | Ministry of Industry |
| MOIT | Ministry of Industry and Trade |
| MOT | Ministry of Trade |
| NAFED | National Agency for Export Development |
| NGOs | Non-governmental Organizations |
| OGC | Office of General Counsel |
| SecGen | Secretary General |
| TREDA | Trade Research and Development Agency |
| USAID | United States Agency for International Development |
| WTO | World Trade Organization |

Organizational Terms and Explanations

| | |
|----------------------|--|
| Agency | Three Agencies, COFTRA, TREDATA and NAFED report to the Minister of Trade. |
| Bureau | Bureaus are sub-units within directorates. Five bureaus (level 2) report to the Secretary General. |
| Committees | Two Committees, KADI and KPPI report to the Minister but normally are not included as part of the organizational chart of the MOT. |
| Director | Title for heads of directorates (Level 2). |
| Director General | Title for (level 1) person in charge of a directorate general. |
| Directorate General: | Ditjen Direktorat Jenderal (in Bahasa). Three DGs report directly to the Minister of Trade. |
| Directorates | Also known as Divisions. Directorate Generals are divided into directorates (level 2). Directorates are divided into sub-directorates (level 3). Sub-directorates are divided into sections. (level 4). MOT Directorate Generals typically have four divisions and one secretariat. |
| Echelon | Sometimes referred to as 'level'. Ranking of positions in the structural hierarchy. There are four management echelons, with echelon I, the highest, reporting directly to the minister. |
| Head of Bureau | Title for (level 2) MOT person in charge of a bureau. |
| Functional | Functional positions (Jabatan Fungsional or j.f.) are civil service career paths for certain professions like medical doctors, computer operators, researchers etc. Precondition for the appointment in a j.f. is the corresponding professional education and working experience. In its effort to make the civil service more professional, the government is increasing the number of j.f. as compared to the number of jabatan structural. |
| Structural | Structural positions (Jabatan Struktural or j.s.) are line management positions in the civil service with a |

| | |
|-------------------|---|
| | supervisory function for a work unit. Approximately 157,000 positions in the civil service are j.s. |
| Level | See Echelon. |
| Secretariat | Each DG has a secretariat (level 2), which is the administrative backbone of the directorate. Secretariats are divided into divisions (level 3) and subdivisions (level 4). |
| Secretary | Title for (level 2) heads of secretariats under DGs. |
| Secretary General | Sekjen (Sekretaris Jenderal). Title for (level 1) head of Secretariat General. |
| Sub-Division | Bureaus (level 3) are broken down into divisions (level 4). Typically, each division has three sub-divisions, with each sub-division having at least three employees. |
| Unit | Generic term used to signify DG, bureau, center, division, or any individual organizational entity in the MOT hierarchy. |

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I. Introduction.

A. *Background of the Indonesia Trade Assistance Project.*

In 2004, the Indonesian Ministry of Trade (MOT) and Ministry of Industry (MOI) separated after ten years as a combined Ministry of Industry and Trade (MOIT). Shortly thereafter, the U.S. Agency for International Development (USAID) agreed to provide assistance to the newly independent MOT.¹ The result was the Indonesia Trade Assistance Project (ITAP), under USAID Task Order No. AFP-1-04-04-00002-00, managed by Chemonics International Inc., which supports the Government of Indonesia by building and strengthening the capacity of the MOT.

Among the major objectives of ITAP are improving the legal capacities of the MOT Legal Bureau and the overall legal capacity of the MOT. The development of professional skills, such as legal drafting and negotiations, and increasing the knowledge of trade laws, especially the rules and procedures of the World Trade Organization (WTO), has been a main focus of ITAP. A team (Legal Team) led by Senior Trade Lawyer James Lockett, assisted by local trade lawyers and foreign and local short term consultants, has been working within the Ministry since January 2006.

B. *Original Scope of Work.*

The development of a Blueprint for the establishment of a Legal Advisor's Office (General Counsel) was part of the mandate of the ITAP Legal Team discussed in the Project's original Scope of Work. However, during the preparation of the Initial Baseline Assessment (28 February 2006), it was determined that this assignment, although important, should be postponed for two reasons.

First, discussions with MOT officials revealed little enthusiasm to make the substantial changes to the existing structure necessary to create a central directorate general, *i.e.*, a Legal Advisor's office.² Second, it was determined that the MOT does not have jurisdiction over organizational changes and restructuring. Approval from the responsible Government of Indonesia (GOI) agencies³ would be needed to take any action on these matters. According to MOT officials, obtaining approval would be difficult and time consuming and the likelihood of success would be uncertain.

¹ See **Annex One** for an organizational chart of the MOT.

² The initial ITAP review determined that the provision of legal services at the MOT was highly unstructured; with 119 of the 137 law graduates in the MOT physically located and working in various directorates and only 18 law graduates working in the Legal Bureau.

³ For example, all organizational changes must be approved by the State Ministry for Administrative Reform, *Menteri Negara Pendayagunaan Aparatur Negara* (MenPAN). Similarly, salary levels, promotional steps and other benefit and remuneration issues are regulated and standardized for the central government at the national level.

C. Revised Scope of Work.

In late 2007, the concept of reforming the organization of the MOT's legal services was revisited. Some changes had already been made within the MOT relating to recognition of the need for legal services and the role of the Legal Bureau. During 2006 and 2007, changes had also been taking place within the GOI. As part of the overall government reforms introduced by the current President of Indonesia after his election to the office of the presidency in 2004, MenPAN was charged with increasing the quality, efficiency and transparency of GOI Agencies. Many Ministries were undergoing reform, an overall reform plan was underway at the MOT, and MenPAN had approved the restructuring of legal services in several other Ministries. In September 2007, the Secretary General of the MOT (SecGen), Pak Hatanto Reksodipoetro, expressed his desire to obtain a Blueprint⁴ on how to move the Legal Bureau towards the functional equivalent of a General Counsel's Office. Within this new environment, and with the support of the SecGen and the Minister of Trade, the MOT decided it should be able to obtain the necessary approvals from the other agencies so that the Blueprint, once adopted, could be implemented.

ITAP agreed to undertake this assignment and to complete it in 2008. The result is the present document (Blueprint), which addresses the problems with the current system for delivery of legal services, makes recommendations to address these problems that further the overall goal of improving the quality of legal services in the MOT, and sets forth a Roadmap for implementation.

In preparing this document, ITAP has worked closely with Pak Hatanto, the Secretary General of the MOT. As instructed by the SecGen, ITAP has discussed the legal needs of the MOT with senior MOT officials and coordinated within the Ministry with offices such as the Bureau of Personnel & Organization (BPO), the Legal Bureau and the Planning Bureau to make sure that the proposed changes regarding legal services are in line with Ministry-wide reforms under discussion.

Since 2006, ITAP has worked with many MOT officials and has gained considerable insights and a deeper understanding about the provision of legal services within the MOT. In preparation for making recommendations as part of this Blueprint, the ITAP Legal Team conducted a Legal Needs Assessment (LNA) in the Ministry from February through early May 2008.⁵ The results of the LNA provide the statistical basis and otherwise inform the discussion found throughout this document.

⁴ The term "Blueprint" was explicitly used by the SecGen at this time. In later meetings he spoke also of a "Roadmap" in this context, whereby the latter document should also lay out a timetable or at least map-out the steps to be taken (including the order in which they should be implemented) in order to achieve the outcomes set out in the Blueprint.

⁵ See **Annex Two** for the Legal Needs Assessment Questionnaire.

The LNA gathered statistical information regarding the total number and location of law graduates and lawyers within the Ministry,⁶ on the level of education and experience of the lawyers and on the source of existing services, *e.g.*, the Legal Bureau, lawyers in DGs/Agencies, or outside counsel. The LNA was also used as the basis for in-depth discussions at the DG/Agency level. Input was gathered from key MOT stakeholders on the overall legal needs of the Ministry. Their views were solicited on the quality and sufficiency of existing legal services and ways to improve their effectiveness.

In addition, ITAP examined the most effective government agencies in Indonesia and in a number of other countries to identify how these agencies have structured themselves to deliver high quality, consistent, independent legal advice to minimize risk and maximize benefit, and to determine best practices that might be adapted for use in the MOT.⁷

II. Legal Services within the MOT.

A. *Legal services provided by the Legal Bureau.*

A legal services office has existed in the MOT for almost fifteen years.⁸ The current MOT Legal Bureau was created when two lawyers were transferred to the MOT after the split from the MOIT in March 2005.⁹ According to these lawyers, the transfer was difficult and traumatic -- from a well-equipped set of offices in the MOIT to a construction site in the MOT with very few library materials or other resources. The effects of the split were further exacerbated by a Ministry-wide hiring freeze from 1996-2006¹⁰ and a change in the leadership of the Legal Bureau when the then-head of the Legal Bureau, Pak Djunari, was advised in March 2006 that he would be transferred to a non-legal position overseas.¹¹ While the role and need of the Legal Bureau was better appreciated during this time, there was no consensus as to how to use lawyers or improve the Legal Bureau.

The Ministerial regulation that provides the legal basis for the Legal Bureau's activities focuses on the role of the Legal Bureau in drafting. Indeed, the Legal Bureau is primarily seen within the MOT as

⁶ As used herein, the term, law graduates, refers to those employees holding an Indonesian law degree. Employees who are referred to as lawyers are law graduates who have gained training and experience as a lawyer and have been identified by their operating unit as performing legal functions.

⁷ See **Annex Three** for a list of individuals in the MOT and elsewhere who were interviewed as part of the LNA.

⁸ Before merger with the MOI in 1995, the MOT's Legal Bureau was called the Legal Affairs Bureau, and included a Public Relations/Spokesperson function. These two functions were separated prior to the merger. In the MOIT, a combined Legal Affairs Bureau covered all issues of trade and industry.

⁹ The transfer of only two lawyers from the MOIT is a remarkably low number considering that there has been a Legal Bureau of some type for almost 15 years and is indicative of problems with developing and retaining trade lawyers and in building a viable Legal Bureau for the Ministry.

¹⁰ The hiring freeze was a direct result of Indonesia's financial problems caused by the financial crisis of the 1990s.

¹¹ The actual transfer did not take place until late 2006 and Pak Djunari left only in February 2007, and his replacement, Pak Widodo, did not start until May 2007.

the final clearance point for any documents requiring the SecGen's approval. The regulation states that the Legal Bureau has the task of coordinating and drafting laws and regulations, providing legal services and assistance, as well as maintaining legal documentation and information.¹² The Legal Bureau is responsible for (1) matters arising under domestic Indonesian law relating to trade/commerce, and (2) international trade/commercial issues. According to lawyers in the Legal Bureau, their work involves approximately seventy percent (70%) domestic issues and thirty percent (30%) international matters.¹³

As of May 2008, the Legal Bureau has a total of 37 employees, which includes 16 support staff and 21 lawyers.¹⁴ The Legal Bureau is headed by an *Echelon II* lawyer who reports to the SecGen. It has four Divisions: Foreign Trade, Domestic Trade, Litigation, and Documentation (research).¹⁵ Each Division should be managed by an *Echelon III* Division Head.

- The five-lawyer *Foreign Trade Law Division* handles all international/foreign trade law issues. The client offices for this division are the DG of Foreign Trade (DG-FT), the DG of International Trade Cooperation (DG-ITC), KADI and KPPI. The National Agency for Export Development (NAFED) could also be a client office to a limited extent. The Division has three sub-Divisions: Study, Drafting, and Agreements.¹⁶
- The *Domestic Trade Law Division's* six lawyers are responsible for domestic legal issues including consumer protection and business licenses and regulation. The client office for this Division is the DG for Domestic Trade (DG-DT). It has three sub-Divisions: Study, Drafting, and Agreements.¹⁷
- The *Litigation Division* handles the domestic and international litigation needs of the MOT and is staffed by five lawyers assisted, when needed, by other lawyers in the Legal Bureau. The entire MOT is the client of this Division. It has three sub-Divisions: Domestic Litigation, Foreign Litigation,¹⁸ and Legal Assistance.

¹² See **Annex Four** for the text of the Ministerial Regulation.

¹³ These percentages are skewed by the admittedly low level of use of Legal Bureau services by the DG for International Trade Cooperation.

¹⁴ Three lawyers from the Legal Bureau in the Masters in International Trade Law (MITL) program are included in the numbers for the MITL/Masters in Law program rather than here, as is one lawyer currently pursuing an LL.M. in Australia and another in the Netherlands.

¹⁵ See **Annex Five** for an organizational chart of the Legal Bureau.

¹⁶ These sub-Divisions are not used in practice, because they bear no relationship to how legal work can be divided well (you do not have one person study, one draft, and another finish agreements), and the structure does not relate to client needs.

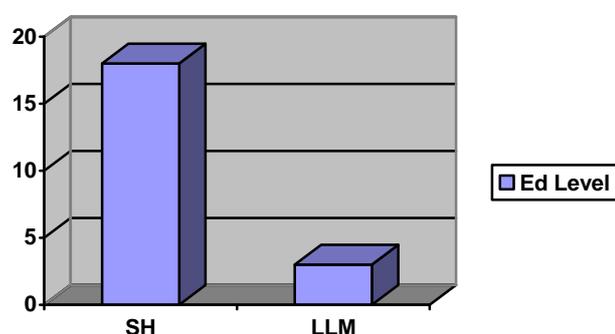
¹⁷ This is the same structure as the sub-Divisions for Foreign Trade, as to which, see the remarks in footnote 16 above.

¹⁸ At the moment this Foreign Litigation sub-directorate is relatively inactive. To date, there is no record of it having been involved in foreign litigation. Its work could be expanded to assist in the WTO and ASEAN dispute settlement systems, and it could also be a resource for other types of litigation abroad.

- The *Documentation Division* is responsible for the legal research needs of the MOT and is staffed by four lawyers. The clients of this Division are the Legal Bureau, other units within the MOT, government agencies outside of the MOT, and private law firms. It has three sub-Divisions: Legal Documents, Legal Information,¹⁹ and the Legal Bureau Administrative Support Staff.

Three of the Legal Bureau lawyers, including two of the Division Heads, hold a Masters Degree in Law from a university in Indonesia and 18 hold an Indonesian SH²⁰ degree.²¹

CHART I. Level of Education of Lawyers in the Legal Bureau



The Head of the Legal Bureau and the three current Division Heads²² are lawyers with experience in the MOT or earlier MOIT. None of the Legal Bureau managers have been lawyers for their entire professional careers. The Head of the Legal Bureau has five to ten years' experience practicing law. All three Division Heads have over ten years' legal experience. Of the remaining 17 lawyers in the Legal Bureau, 13 lawyers have less than five years of experience, two have five to ten years of experience and two have more than ten years of experience.

All four of the Legal Bureau managers will retire in the next ten years as will another lawyer with five to ten years experience and three lawyers with more than 10 years experience.²³ With these

¹⁹ One project for the Legal Information sub-Directorate would be to prepare a legal database for the MOT, which could include compiling all trade related regulations that are not available online, basically those enacted prior to the MOIT separation in 2004. This would greatly assist in the drafting of new regulations and in preparing regulatory impact assessments.

²⁰ The abbreviation "SH" stands for *Sarjana Hukum*, which essentially is the equivalent to a bachelor's degree in law.

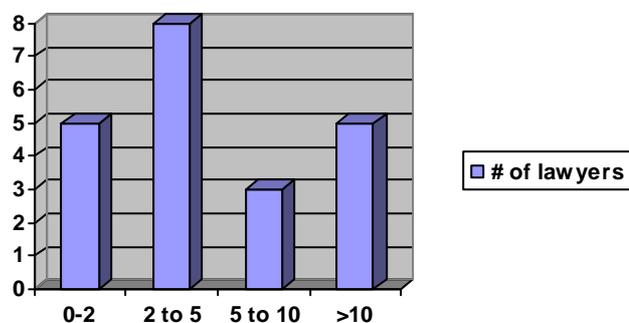
²¹ Two of these lawyers have a Masters in a field other than law. One has an MBA from a University in Korea and the other an Indonesian MITP.

²² The longstanding Division Head for Foreign Trade Law has recently left for a non-legal post in Egypt and this position has not yet been filled.

²³ In the Indonesian personnel system, retirement is mandatory at 55 although exceptions are sometimes made for key employees who are Echelon I or II, for whom retirement at 60 is required.

retirements, seven of the eight most experienced lawyers in the Legal Bureau will have retired as will two of the three lawyers with Masters Degrees.

CHARTS II. Years of Experience of Lawyers in the Legal Bureau

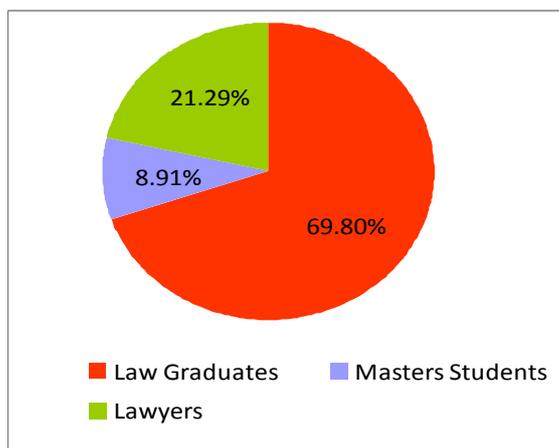


Clearly the lack of hiring in past years and the lack of a lawyer retention policy will mean that today’s young and inexperienced lawyers in the Legal Bureau need to be ready to provide both key legal services and management in the not-too-distant future.

B. Legal services provided Outside the Legal Bureau.

As of March 2008, there were 202 law graduates employed by the Ministry. Only 61 (30%) of these law graduates were designated as lawyers by their DG/Agency/Office on their LNA questionnaire.²⁴

CHART III. Lawyers as a percentage of law graduates.



Of the 61 lawyers designated as such by the MOT:

- 21 (34% of the total 61 lawyers) work in the Legal Bureau;

²⁴ See **Annex Six** for a synopsis of lawyers within the MOT by unit, education and years of experience.

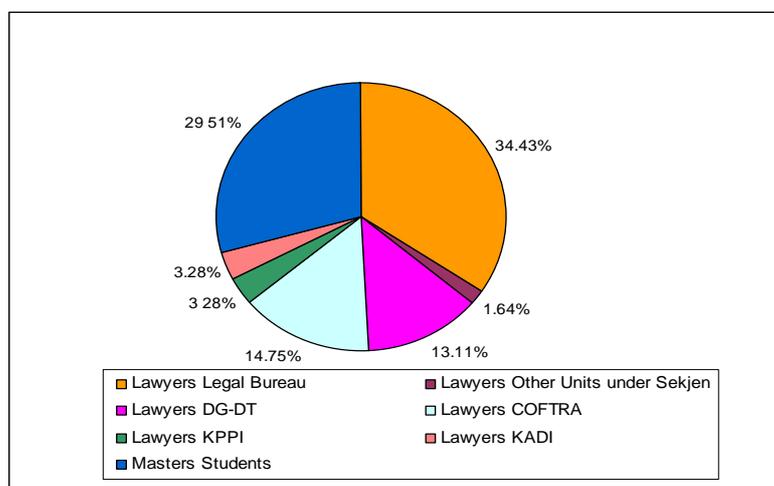
- 19 (30% of the total 61 lawyers) are in the MITL or in an overseas Masters in Law program; and
- 22 (36% of the total 61 lawyers) work outside of the Legal Bureau, as follows:
 - Eight (13%) in DG-DT,
 - Two (3.25 %) in the Indonesian Trade Safeguard Committee (KPPI);
 - Two (3.25 %) in the Indonesian Committee on Anti-Dumping (KADI);
 - One (1.5 %) in the Bureau of Personnel & Organization; and
 - Nine (15%) in the Commodity Futures Trading Regulatory Agency (COFTRA).

Notably, of the lawyers designated as such by the MOT, only the lawyers working in the Legal Bureau and the COFTRA Legal Bureau (21 lawyers and 9 lawyers) are part of units dedicated to the provision of legal services and are supervised by and trained as lawyers. The remaining 31 lawyers (51%), which include the 19 lawyers in Masters in Law programs, are not currently part of a legal service office.

Out of 202 persons with law degrees in the MOT, the percentage that actually become lawyers is small (30%) and they are not concentrated within a single organization unit or under a consolidated structural framework. Less than 11% of all persons with a law degree (21, out of 202) in the MOT have become lawyers in the Legal Bureau, although as shown in the Chart below, they form the largest single group of MOT lawyers, followed by the lawyers in Masters in Law programs whose future status has not been decided by the MOT. COFTRA²⁵ and the DG-DT are the only other units in the MOT with any significant concentration of lawyers.

²⁵ The COFTRA Legal Bureau has an *Echelon II* Bureau Head. The Bureau handles legislative and administrative law functions for COFTRA, including investigations and making decisions as to possible violations. It does not handle litigation. Criminal prosecutions are referred to the Attorney General's Office and civil litigation is handled by the Litigation Division of the main MOT Legal Bureau.

CHART IV. Location of lawyers within the MOT.



Four of the lawyers outside the Legal Bureau have Masters in Law: two from COFTRA and two from DG-DT.²⁶

Over 50% of the lawyers outside the Legal Bureau are entry-level and almost 70% have less than five years experience. There are nine lawyers outside of the Legal Bureau with more than 10 years of legal experience, five in DG-DT, two in COFTRA and one each in the BPO and KADI.

Two of these most experienced lawyers, one in DG-DT and one in COFTRA, will retire in the next year as will another DG-DT lawyer in 2009 and a COFTRA lawyer in early 2011. Thus, almost half of the most experienced lawyers outside of the Legal Bureau will be retiring in the next three years.

There are no lawyers in DG-ITC, DG-FT, Trade Research Development Agency (TREDA), NAFED or the Inspector General's (IG) Office.²⁷ There are 141 law graduates scattered among the various directorates general, agencies and the offices of both the Secretary General and the Inspector General. These law graduates do not practice law as part of their job description, but some of them perform administrative or regulatory work (*e.g.*, issuance of licenses, investigations, etc.). They may undertake legal tasks occasionally on an *ad hoc* basis to enforce a law or regulation or prepare initial drafts of regulations and decrees that are then submitted to the Legal Bureau for final review. Others may be managers, negotiators, etc., while some perform work unrelated to law (*e.g.*, financial work, HR, etc.).

²⁶ One law graduate in DG-ITC has recently received a Masters in Law in Australia but is not working as a lawyer. One law graduate from NAFED, who does not work as a lawyer for NAFED, is currently abroad in a Masters in Law program.

²⁷ According to the LNA responses from all other DGs and Agencies, none of these have any lawyers.

III. Review of Best Practices.

A. Background of Reforms in Legal Services.

With the advent of globalization and the growing interaction between and among countries, the world is becoming increasingly intertwined and complex. Over the last three decades, many countries have abandoned traditional government structures in an attempt to increase their government's effectiveness in this rapidly changing world. The global trade negotiation system and approaches to government management have undergone profound transformation.²⁸ Similarly, loose, unstructured and inconsistent systems for delivering legal services in government agencies have been replaced by responsive centralized offices that deliver high-quality results.

Whether the activity is negotiating trade agreements or dealing with the fallout from international or national financial or food crises, lawyers are increasingly involved in all aspects of a government's work. While lawyers have traditionally played an active, substantive role in the common law countries and in Western Europe, a lawyer's role in developing countries has often been limited to drafting or reviewing documents as a step in the clearance process. This limited role is still in place at the MOT, and the MOT's organizational structure, mandated years ago by MenPAN, has remained virtually the same for decades as has the structure and use of the Legal Bureau.

B. Scope of Review.

As part of the development of this Blueprint, the Legal Team reviewed select agencies (Comparison Agencies) to determine how these agencies have restructured to deliver high quality, consistent, independent legal advice to minimize risk and maximize benefit, and to identify best practices for possible adoption by the MOT. The Legal Team looked at countries outside of Indonesia and also at GOI entities that had recently reformed their delivery of legal services and had been recommended as models for change. For purposes of this analysis, we will focus primarily upon two foreign and three domestic agencies for the comparisons we will make:

- The Commission of the European Communities (Commission),²⁹
- The U.S. Department of Commerce (DOC),³⁰
- Bank Indonesia (BI),³¹

²⁸ See Ministry of Trade, Structural Assessment, ITAP, October 2006.

²⁹ See **Annex Seven** for a further description of the Commission's Legal Service.

³⁰ See **Annex Eight** for a further description of the DOC's Office of General Counsel (OGC), including organizational charts for the OGC and for the Department of Commerce.

³¹ See **Annex Nine** for a further description of the BI Directorate of Legal Affairs, including an organization chart.

- Ministry of Finance (MOF),³² and
- Ministry of Foreign Affairs (MoFA).³³

Two of the three Indonesian entities, MOF and MoFA, are Ministries subject to the dictates of MenPAN. The structure and personnel of the third GOI agency examined, BI, are overseen by a Board of Governors rather than by MenPAN.³⁴

C. Foreign and Domestic Comparison Agency findings.

Many of the government ministries in developed and developing countries with which the MOT interfaces have already changed the role of lawyers within their organizations, as have the three Indonesian agencies studied. Wherever these legal service offices are located within the government and whether they deal only with trade or with a range of issues, common trends can be seen in the reforms implemented.

1. Raising the status and influence of legal services.

Strong and prestigious Legal Advisor's/General Counsel's offices³⁵ that provide overall senior level counsel to the Minister and legal support to particular areas where substantive expertise is needed have become common.³⁶ In the U.S. Department of Commerce, the Office of the General Counsel serves as the law firm for the Department, and the General Counsel personally is the legal advisor to the Secretary of Commerce,³⁷ often traveling with the Secretary and sitting by his/her side during negotiations, and meetings and appearances before Congress. As the chief law officer of the Department the General Counsel has the authority to render all legal services and legal advice to the Secretary and all officers of the Department. In the European Union, the Legal Service of the Commission, an internal Directorate General (DG) reporting directly to the President of the Commission, acts as the Commission's in-house counsel, providing legal advice and representing the Commission in all court cases.

³² See **Annex Ten** for a further description of the MOF Legal Bureau and an organizational chart of the Ministry that includes the make-up of its two Legal Bureaus.

³³ See **Annex Eleven** for a further description of the Directorate General for Legal Affairs and International Treaties at the MoFA, including an organization chart of both the Ministry and the Directorate General.

³⁴ BI is an independent state institution and fully autonomous in implementing its tasks and authorities. It has its own classification system (Levels 1-8 with 8 being the highest level) and rules for hiring and promoting employees.

³⁵ These offices may be found in a variety of government entities including a Ministry of Trade equivalent or a combined office of Foreign Affairs and Trade or Labor and Trade.

³⁶ In some countries, most notably Singapore, and increasingly Malaysia, attorneys handling trade negotiations may be part of an Attorney General's Office/Chambers that provides designated legal services to the government or are part of a central office that coordinates lawyers from across the government to deal with particular trade issues, as with the Office of the U.S. Trade Representative. In both structures, legal offices have a high rank and lawyers have clear authority over the topics with which they are dealing.

³⁷ The Secretary in a U.S. Department is the equivalent of the Minister in an Indonesian Ministry.

In 2004, the Committee of Legal Advisers on Public International Law (CAHDI)³⁸ collected state-specific information from 52 countries on the organization and functions of the Office of the Legal Adviser of the Ministry of Foreign Affairs. While the exact name of the office and its competencies differ from one country to another, a review of the database containing the country submissions reveals that the majority of the Legal Adviser offices enjoy a high level of prestige within their institutions and governments and have final and decision-making authority over a range of legal issues.

In Indonesia, while the three Comparison Agency entities reviewed adopted slightly different structural solutions to raising the status and influence of legal services, each cited recognition of the importance of legal services to the success of the organization as a critical factor in their ability to restructure. In the MOF and BI, ongoing fallout from the financial crisis in the nineties made officials aware of the role lawyers can play in minimizing risk, and so they permanently changed the organization's culture to include lawyers from the beginning in all decision making. In the MoFA, globalization and particularly WTO accession and its aftermath, raised the importance of expert and consistent legal opinions.

In the Indonesian bureaucracy, the status of a unit is based on the *Echelon* level of its head. Status relates directly to power and, in the case of legal services, having the status and power to render legal opinions that are followed is critical to minimizing risk. Two of the GOI entities raised the status of their legal services office to *Echelon* I. In the MoFA, a Legal Bureau headed by an *Echelon* II lawyer was replaced by a Directorate General for Legal Affairs and International Treaties (DGLAIT) headed by an *Echelon* I lawyer reporting directly to the Minister of Foreign Affairs. In BI, the Legal Bureau was changed into a Directorate of Legal Affairs (DLA) reporting to the Board of Governors. The MOF took a different approach, creating two *Echelon* II Legal Bureaus where only one had previously existed. All three entities felt that the changes they had made increased the importance of legal services within the organization and furthered the goals of their Ministry/Agency.

2. Expanding the role of lawyers through a focus on client needs.

Older and less efficient ways of trying to use lawyers include adhering to bureaucratic span of control concepts,³⁹ taking a limited view of lawyers as drafters only, or structuring on very broad, general

³⁸ The Council of Europe's Committee of Legal Advisers on Public International Law (CAHDI), is an intergovernmental committee that brings together the legal advisers of the Ministries for foreign affairs of the Member States of the Council of Europe as well as of a significant number of observer States and Organizations.

³⁹ This term refers to an outdated concept relating to the number of subordinates a bureaucrat can effectively control, which is the basis for much of the structure dictated by MenPAN.

categories of legal practice focus such as "foreign" versus "domestic". Our Comparison Agencies have rejected these older ways and have centralized certain types of legal work such as litigation and/or established counterparts for major client units.⁴⁰ This specialization expands lawyers' roles, fosters early involvement of lawyers in the full range of client work and allows lawyers to become experts in the substantive laws governing their client's activities.

The European Commission Legal Service is divided into 11 teams, each of which serves as counsel to one or more DGs that focus upon a particular policy or service area. For example, one of the teams consists of lawyers working in the Trade Policy area who deal with the following four issues:

- Trade policy;
- Trade aspects of international agreements;
- World Trade Organization (WTO);
- Dispute settlement in the WTO.

At the U.S. Department of Commerce, the lawyers are divided into 13 teams. Department-wide legal advice is provided by three centralized OGC offices: 1) Administration; 2) Finance and Litigation; and 3) Legislation and Regulation. Ten OGC client offices mirror the legal needs of the nine DOC agencies/bureaus.⁴¹ These offices are physically located next to the clients they serve, integrated but independent, and provide specialized advice to meet their client's needs.

As can be seen from the organizational charts in Annexes Nine to Eleven, all three Indonesian legal service offices were reorganized with function in mind.

- At BI, this meant creating seven teams that correspond to major client offices or handle Ministry-wide legal work for all client units. The DLA Director has three Deputies that supervise 2-3 units each from among a Secretariat and seven Legal Advisory Teams that handle: Banking and Enquiry Points; Legislation and Legal Research; Internal Management; Monetary & Payment; Legal Information and Publication; Litigation; and Strategic Legal Problems & Legal Assistance.
- Historically, a centralized Legal Bureau in the MOF had three Divisions assigned to client offices and two sections that handled litigation. As part of the MOF reform plan, the lawyers

⁴⁰ Please note that the organizational charts for each of the Comparison Agencies is contained at the back of the Annex pertaining to that Agency, *e.g.*, see **Annex Seven** for the organizational chart of the European Commission Directorate General for Legal Service.

⁴¹ As can be seen from the organizational Chart in **Annex Eight**, there are only nine agencies at the Department of Commerce. Two legal offices work with the International Trade Administration, one legal office handling international trade remedy issues, *e.g.*, anti-dumping, and the other office handling general international law including treaties.

that handle litigation were transferred to a separate Legal Assistance Bureau that has two Divisions, general litigation and litigation relating to the financial crisis and the Indonesian Bank Restructuring Agency (IBRA). The Legal Bureau and the Legal Assistance Bureau are now two of eight bureaus that report to the Secretary General. The original Legal Bureau had five Divisions, two of which were freed up by this change. The Legal Bureau was then reorganized, setting up its five Divisions as counterparts to handle all non-litigation legal matters of the MOF's primary operating units.

- In the MoFA, the Directorate General of Legal Affairs and International Treaties (DG-LAIT) was set up to serve as the legal advisor to the Minister and as Counsel to the various Bureaus.⁴² There are two Directorates in the DG-LAIT addressing specific client office needs, such as a Directorate on the Law and Treaties on Economic and Socio-Cultural Affairs. There is also a general legal affairs Directorate, with a Sub Directorate of Legal Services, a Sub Directorate of Legal Review and a Sub Directorate of Publication and Socialization of Laws and Regulations, which were created to correspond, not to client units, but to ministry-wide legal services needed by the Minister and the DGs.

3. Improving the quality and consistency of legal services

To deliver quality legal services, a cadre of lawyers with legal knowledge, skills and experience must exist to provide them. To create such a cadre you need to recruit the best possible talent, train that talent throughout their legal careers, and provide an environment where these increasingly knowledgeable lawyers can advance and flourish.

a. Recruiting and training.

Both the Department of Commerce and the European Commission have competitive processes for recruiting new lawyers. The Commission holds open competitions across Europe for jobs with the Legal Service. In most cases recruits will have had two to three years' professional experience before they join. In the U.S., the OGC sends its recruiters to law schools throughout the country and has developed connections with organizations and groups where specialty lawyers are likely to be found. New lawyers arriving at the OGC are assigned mentors and provided on-the-job and outside training opportunities throughout their careers.

⁴² The DG-LAIT is not counsel to the IG office, although the IG in certain cases coordinates with the DG-LAIT.

In Indonesia, MoFA and BI take an active role in recruiting at the top Indonesian law schools, requesting a list of the 10 highest-ranking students at each university so they can recruit the best graduates. On-the-job training with coaching by experienced lawyers begins in all three entities as soon as a law graduate arrives. The number of lawyers with advanced degrees ranges from almost 50% at MOF to 80% at BI and other outside training is offered through internships and postings.

b. Creating a structured environment.

Institutionalizing lawyer independence and better coordination through centralization play key roles in creating an environment that is conducive to high quality legal work. In the Comparison Agencies, lawyers work together in a single legal unit reporting to a head lawyer rather than to a non-lawyer in a client office, a structure that enhances the independence of legal opinions. This is true in both the General Counsel office of the Commerce Department and the European Commission’s Legal Service. The MOF has lawyers at both the ministry-wide level that report to the Secretary General and lawyers in most but not all of its Bureaus that report to the Bureau DG. The Legal Bureau handles cross-bureau problems and issues of higher risk and importance that have an impact on the Ministry as a whole. If there are issues of great importance that arise at the Bureau level, the Legal Bureau will be called in to assist. At MoFA, which originally had a structure very much like that at the MOT, conflicting negotiating positions resulting from lack of coordination became even more apparent with the ratification of the WTO. A primary reason for reorganization was to place all lawyers under one roof for better coordination of services and to ensure that all lawyers would have the same ideology and perspective and speak with one voice. At BI, all high risk legal issues are handled by the Directorate of Legal Affairs.⁴³ With a focus on client specialization these central office lawyers are involved in the day-to-day activities of the Directorates and Bureaus they represent and help bring consistency to the work being done by lawyers in these other offices.

⁴³ Risk Classifications for determining how to handle legal issues at BI:

| Degree of Harm | Policy | Products | Officials in Charge |
|----------------|--|---|----------------------------------|
| High Risk | <ul style="list-style-type: none"> ▪ Strategic Policy ▪ Operational Policy | BI Regulations, Governor of BI Decree | The Directorate of Legal Affairs |
| Low Risk | Operation | Internal Circular Regulations, Contracts, Director of BI Decree | Directorate/Office Units |

c. Expanding the career path for lawyers.

Even with improved recruiting and training in place, it is difficult to improve the quality of legal services without providing a clear career path for lawyers, as otherwise they will leave legal positions for others where they can advance. Both the Commission and the DOC have clear career paths with many options for advancement open to lawyers. Statistical evidence reflects this fact. The current Acting Director of the Legal Service has worked at the Commission since 1973 and within the Legal Service since 1982. At the DOC, many of the lawyers that head the OGC client and central offices have between 20 and 30 years of legal experience, much of it at the DOC, and the staff that reports to them usually have more than 15 years of legal experience.

In Indonesia, two of the three entities reviewed responded to this challenge by creating Directorate Generals. In a Directorate General (as compared to a Bureau), depending upon its structure, you can potentially have three times as many management positions (1+3+9-12 = 13-16 positions),⁴⁴ which means tripling the career-path opportunities. You can expand opportunities even more by permitting more than 3-4 divisions in each Directorate. At BI the creation of a new Directorate of Legal Affairs resulted in new positions for a Level 8 Director (equivalent to a DG), three Level 7 Deputy Directors and six Level 6 team leaders, a clear path for the almost 60 lawyers employed there. When the legal offices at MoFA were raised to *Echelon I*, they created one new *Echelon I* position, a new *Echelon II* position and at least three new *Echelon III* Division heads.

At MOF, which took a different approach to this problem, the creation of a second Legal Bureau, with an increase in sub-units from five to eight meant that there are now two *Echelon II* positions rather than one and eight *Echelon III* positions, up from five such positions before the change.

Another option to expand the career path of lawyers is to use functional positions. While the lawyers at MoFA and MOF are classified as structural, at BI all but the four managing lawyers are classified as functional. BI felt that this classification allowed them to provide opportunities for more rapid promotion, another way to retain the best and the brightest.

⁴⁴ The MOT Legal Bureau has 5 management positions, so an upgrade to a Directorate General can triple the number of high level career opportunities for lawyers in the MOT from 5 to 13-16.

IV. Analysis

A Overview of Legal Needs Assessment (LNA) Results.

At the time of the initial Baseline Assessment in February 2006, little information about legal services at the MOT was available. The number of law graduates could be determined but more detailed information about the number of practicing lawyers, their position within the Ministry, years of legal experience, levels of education and the type of work assigned to them, particularly with regard to law graduates outside the Legal Bureau, was not known. In 2006, it was known (1) that the Legal Bureau was not the focal point for legal work or for lawyers at the MOT; and (2) that there were more than 130 law graduates in every DG, Agency and Bureau who may or may not be involved in legal work, with only 18 of these law graduates in the Legal Bureau. The Head of the Legal Bureau at that time estimated that a significant amount – roughly eighty percent (80%) – of the MOT’s legal work was being performed by legally trained personnel working outside of the Legal Bureau or was being done by non-lawyers.

In this environment, ITAP was asked to adjust its training plans and to focus upon capacity building for lawyers in the Legal Bureau and elsewhere in the MOT and upon overall legal training. As a result, in 2006 and 2007, ITAP provided ninety-eight (98) legal training seminars with 2607 attendees, and it held 335 counseling, advising and mentoring sessions with over 1100 personal sessions helping MOT lawyers and officials on legal issues. As a result, there is a newfound awareness of the importance of legal work, and ITAP has been able to help enhance the MOT’s legal capacity.

Thus, today, there is a different picture. In part, this difference reflects the training and changes over the past two years that have resulted in more of the MOT’s legal work being performed by the Legal Bureau now than in the past. The number of active lawyers within the Legal Bureau has increased. A new Head of the Legal Bureau has been appointed and clients have indicated a willingness to send more work to the Legal Bureau because of his stature.⁴⁵ The SecGen has issued new directives that certain items have to be cleared by the Legal Bureau before he or the Minister will sign them. A significant number of lawyers have been trained, and others, primarily younger lawyers, are in Masters programs.

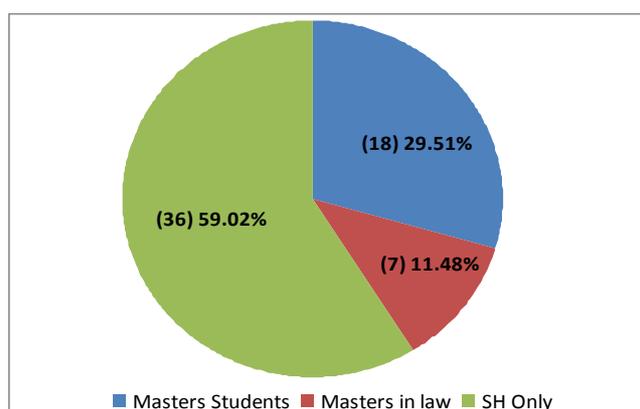
⁴⁵ The Legal Bureau under earlier Directors such as Pak Djunari and Ibu Titi also had made progress, and their leadership and the ever-improving work of the Legal Bureau lawyers has helped to bring the MOT to its current status.

Information from the Legal Needs Assessment (LNA) has provided a clearer idea of the MOT's overall legal services. What are some of the key findings and interpretations of the LNA?

- With only 21 active lawyers in the Legal Bureau, 13 of whom have less than five years legal experience, the statistical evidence confirms what we were told in our interviews, that there are too few experienced lawyers for the Legal Bureau to handle the large number of complex legal issues dealt with by the Ministry.⁴⁶
- The 22 lawyers practicing outside the Legal Bureau are not as large a group as originally believed and they are concentrated in a few offices, although not necessarily in offices whose purpose is to provide legal services. As in the Legal Bureau, 13 of these lawyers have less than five years experience. Surprisingly, many of the DGs/Agencies have no lawyers at all, and there is very little use of outside counsel.
- Only seven out of 61 MOT lawyers (just over 11%), have advanced degrees in law. The MOT lags far behind BI, the MOF and the MoFA in percent of graduate degrees,⁴⁷ but the MITL program and other postgraduate study is helping the MOT make substantial improvements in this area. There are 19 lawyers currently enrolled in Masters in Law programs, 30% of all lawyers at the MOT. They represent a huge opportunity for the MOT to make a sea change in both the quality and the quantity of legal services within the Ministry, but only if they are placed in legal positions and provided ongoing training and mentoring upon their return.

With regard to the education background of the MOT's 61 lawyers, the LNA shows that the MOT lags far behind BI, the MOF and the MoFA, but the MITL is helping the MOT make substantial improvements in this area.

CHART V. MOT lawyers education level.

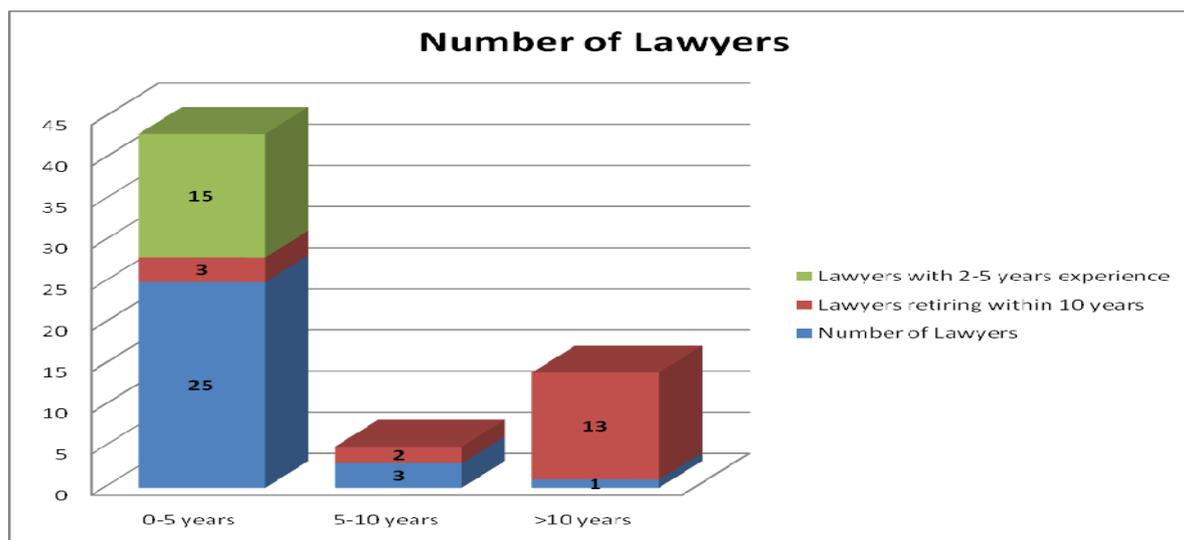


⁴⁶ The numbers of active lawyers in the Legal Bureau and the practicing lawyers outside of it do not include the 17 MITL students and 1 lawyer doing an LL.M. overseas.

⁴⁷ As compared to BI, MOF and MoFA, 50-80% of whose lawyers hold advanced degrees.

Looking at the statistics for both the lawyers in the Legal Bureau and lawyers outside the Legal Bureau, it becomes clear that the MOT has a large group of inexperienced lawyers (70% or 42 lawyers) with only 19 lawyers that have more than five years experience. No lawyer has more than 15 years experience. 15 of these 19 most experienced lawyers will retire by the end of 2018 (10 years). Some of these lawyers will begin retiring this year.⁴⁸

CHART VI. MOT lawyers years of experience.



These statistics support the LNA’s findings that the MOT has too few lawyers with the senior level training and experience needed to provide the quality, sophisticated legal opinions required by the Ministry. In addition, they identify a “Gap” that presents both a problem and an opportunity for the MOT.

The problem is (1) that there are too many inexperienced lawyers with too few experienced senior lawyers to manage and coach them and (2) that there is only a short time period to train the less experienced lawyers to take over the leadership of legal services within six to ten years.

The opportunity is:

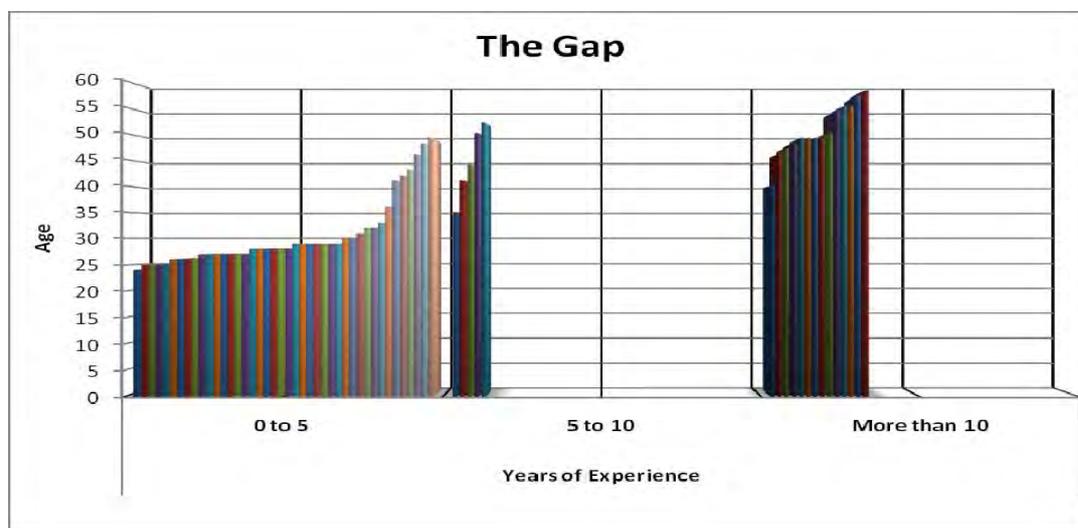
- A core group of 19 law graduates currently in Masters in Law programs and 19 additional lawyers under the age of 40 that can be groomed as specialists and future managers;

⁴⁸ Almost half of the most experienced lawyers outside the Legal Bureau will retire in the next three years and seven of the eight senior lawyers in the Legal Bureau will retire in the next ten years, including the Head of the Legal Bureau and the three Division Heads.

- A window of opportunity presented by this core group, a large enough number of lawyers to change the Ministry’s legal services system if they are used as lawyers and trained correctly over the next few years;
- A number of law graduates experienced in the substance of the Ministry who can be used to help coach and manage this group.

The magnitude of the gap can be seen in the chart below.

CHART VII. The Gap of experience and seniority among MOT lawyers



Each bar in the above Chart VII is an actual MOT lawyer and his/her age and level of experience. Normally, the MOT should have number of lawyers with 5-10 years of experience, who normally would be under the age of 35. There are almost none in the MOT. Developing this group – filling the “GAP” – is critical.

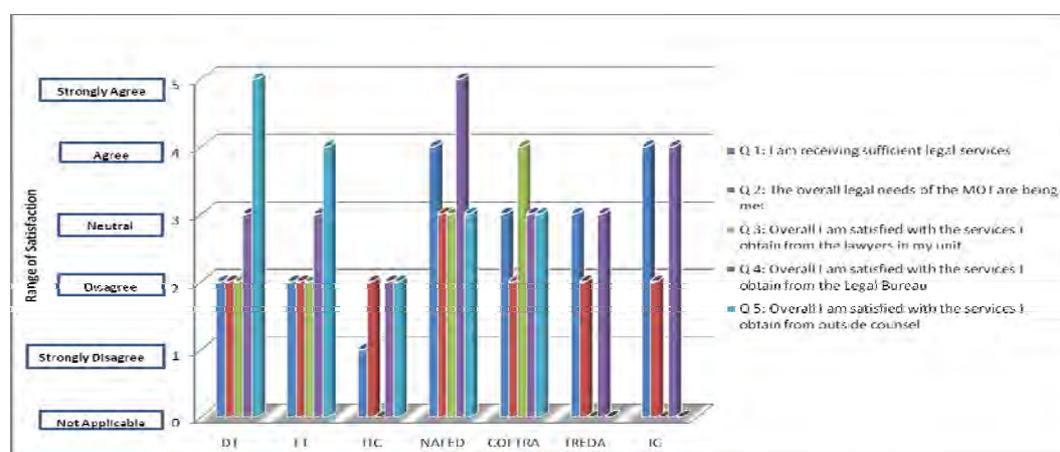
To raise the quality of legal services and develop a cadre of well trained lawyers to take over the soon-to-be vacated leadership positions, the MOT needs to identify and then train this next generation of legal leadership as soon as possible. To do this the MOT will have to use the best qualified, experienced lawyers before they retire, as well as find other senior officials who are law graduates but not necessarily practicing law. These two groups of senior lawyers and legally-trained officials will be needed to manage/coach the younger lawyers.

Looking at the Ministry’s substantive legal needs, a compilation of the Ministry’s overall needs and of the specific types of services needed by client unit shows a significant discrepancy between the

services needed and those available.⁴⁹ Many legal issues of great importance to the MOT are not being addressed at all.

Most senior officials within the Ministry are not satisfied with the quality and quantity of legal services. They indicate that they do not receive sufficient legal services. They do not believe that the overall legal needs of the MOT are being met. They are not satisfied generally by either the legal services from their own units (if any) or by the services available from the Legal Bureau. There is consensus that changes are needed and strong support within the Ministry for change.

CHART VIII. Level of satisfaction with current legal services



B. Analysis of Organizational Issues.

1. Role of legal services.

Compared to lawyers or experts in other parts of the MOT, or in the Comparison Agencies, the Legal Bureau does a very small amount of advising, counseling, attending negotiations, advising on WTO issues, etc. Historically, the Legal Bureau has been seen, internally as well as externally, primarily as a place to review drafting, rather than as a broader resource that can provide legal advice, counseling or expertise on substantive law.

This view is reinforced by the narrow statutory basis for the Legal Bureau, its position in the overall MOT structure⁵⁰ and by its current structure. For example, two of the substantive divisions in the

⁴⁹ See **Annex Twelve** for a list of the legal services needed in the Ministry.

⁵⁰ The Legal Bureau is part of the SecGen's office and is therefore perceived to be part of the approval process at the Secretary General level, a hurdle to be overcome rather than a general resource for the Ministry as a whole.

current Legal Bureau structure - Foreign Trade Law and Domestic Trade Law - have sub-divisions focused on reviewing draft regulations (study, then drafting, then agreements). Nothing in the structure of these sub-divisions indicates a lawyer's role in any other capacity than in the drafting process.

Limitations can also be seen in the narrow role MOT lawyers play in WTO, regional or bilateral negotiations, a key area of the Ministry's work. By contrast, lawyers play an important role on most other countries' delegations. On many negotiating teams, lawyers sit beside negotiators to oversee the kind of language being agreed to. A seasoned and experienced trade lawyer is likely to know how a particular word or phrase will be interpreted in any future dispute based on his or her knowledge of the law and of similar agreements and can help to avoid unpleasant surprises.

Despite Indonesia's success over the last few years in various negotiating contexts, some observers believe that Indonesia is, to a certain extent, being out-manuevered on a number of issues and a number of fronts in international trade matters. Other countries, which are in a position to rely on trained negotiators supported by both expert legal and economic advisors, are much more successful in negotiating agreements that provide substantial benefits to their trade regimes and governments.

2. Structure of legal services.

The Legal Bureau is headed by an *Echelon* II lawyer and operates within the structure of the Secretary General's Office. Therefore it does not have a high ranking position or stature within the MOT. Most of the lawyers in the Legal Bureau are clustered in the *Echelon* IV ranks as are most of the DG/Agency lawyers, who have the added complication of having to report to non-lawyers in their units. Two major concerns arise because of this structure. The first is that the MOT Legal Bureau lawyers, and even the Legal Bureau Head, do not have sufficient rank within the organization to be able to enforce their views with higher-ranking decision making authorities. Second, those offices and lawyers that are part of a DG or Agency are within the management structure of these entities and therefore are not independent, a critical aspect necessary for delivering a quality legal opinion.

It is interesting to compare the status of the main Legal Bureau and the COFTRA Legal Bureau. Despite the fact that COFTRA lawyers provide legal advice to one agency on a limited set of issues rather than on a wide range of issues to the MOT as a whole, the COFTRA Legal Bureau is headed by an *Echelon* II lawyer and therefore both Legal Bureaus have the same rank. Rank is less of an issue

within COFTRA, however, as the Head of the COFTRA Legal Bureau and all of the other *Echelon II* Bureau Heads within COFTRA report to the Head of COFTRA and are therefore of the same rank.⁵¹

Another difficulty faced by the Legal Bureau is that the current structure is not conducive to meeting the challenges it faces in today's environment, since it is not organized from the perspective of either a modern-day substantive law grouping or on the basis of its client constituencies. The current divisions reflect the Legal Bureau's historically limited role relating only to drafting, which does not promote specialization and is not client focused.

3. Operating procedures.

With legal work being handled by the Legal Bureau, as well as by MOT lawyers outside the Legal Bureau, there is a lack of coordination and consistency in the delivery of legal services that leaves the Ministry open to risk. Some legal documents, such as decrees and regulations, may be reviewed by both DG/Agency lawyers and by the Legal Bureau. Others, such as international agreements, may not be reviewed by lawyers at the DG level or by the Legal Bureau or may be reviewed by the Legal Bureau only for drafting purposes rather than in order to examine substantive issues. The ITAP Legal Team has noticed that, even when the Legal Bureau is consulted, often it is at the last minute. Many legal issues are not being identified or dealt with at all, which is due to a combination of lack of identifying issues that require consultation, a lack of knowledge, a lack of time for proper evaluation, and an insufficient number of staff.

There are no Ministry-wide policies⁵² requiring legal input into decision making or oversight of legal opinions, nor a systematic and timely process for handling review and input on legal issues to ensure that all relevant inputs are received. Nor is there a systematic process in place for providing timely review and comment on decisions and policies. In most government agencies that handle legislation, ongoing cases or disputes, negotiations and meetings, there is a system in place that ensures that officials from operations, policy, and legal have input and involvement.

Early involvement by lawyers is important and sometimes critical. For example, we found that the Legal Bureau has not been involved early in work such as trade remedy cases (*e.g.*, anti-dumping) or consumer affairs, so these cases are well underway before the Legal Bureau is asked for assistance. Similar problems exist in bilateral, regional and multilateral trade agreements, where legal texts are routinely negotiated with little or no involvement by lawyers. Legal Bureau counseling would also be

⁵¹ It is interesting to note that the current Head of COFTRA is the former Head of the Legal Bureau.

⁵² The exception is the SecGen's requirement that all new regulations must be approved by the Legal Bureau. See **Annex Thirteen** for the 31 October 2007 decree of the MOT Secretary General.

helpful in negotiations and meetings when policies and approaches are being developed and to provide regulatory impact assessments when new regulations are being considered.⁵³

C. *Analysis of Human Resource Issues*

1. *Staffing.*

The hiring of lawyers within the MOT is not coordinated and there is no staffing plan to meet its overall legal needs. The DGs/Agencies hire and employ their own law graduates, assigning some to part-time legal duties. Other than in COFTRA and DG-DT, none are assigned to full time legal work. The Legal Bureau operates independently with no interaction between and among the Legal Bureau and DGs/Agencies to assess workloads or future needs in a given substantive/client area.

Legal Bureau lawyers are perceived to have neither the expertise nor the experience to offer high-level and expert assistance in work other than drafting. Almost everyone with whom we spoke stated that the Legal Bureau was not adequately staffed to meet their current needs and that the number of lawyers in the Legal Bureau was too small to be able to take on new issues and legal projects. As long as these bottle-necks exist, DGs will want to continue to hire their own legal staff to make sure they have the advice they need when they need it.⁵⁴

Many clients of the Legal Bureau also felt that the way lawyers were assigned to their work caused problems. Rather than having a single lawyer with experience and substantive expertise assigned to a project, different lawyers may attend each different meeting for a project, and it is generally the junior lawyers who attend but are regarded as too inexperienced to provide quality legal advice. Some of these problems could be solved by better project management by the Legal Bureau but part of it is due to having too few senior lawyers. Consequently, many MOT units do not see the need to work with the Legal Bureau except with regard to drafting of certain decrees where there is a SecGen directive requiring them to do so.

The Legal Bureau is in transition, with a relatively new Head, the hiring of three new law graduates and four lawyers who will receive master's degrees in law this year. As noted above, save for a handful of senior staff, most of the lawyers in the Legal Bureau have very little experience, leaving a

⁵³ Several of the DG/Agency staff with whom we spoke mentioned a concern with regulatory issues. They wanted a legal review of the impact of regulations prior to adoption, not just legal review on drafting questions. They also wanted a comprehensive legal review of all of their current regulations to see what additional regulations might be needed and what existing regulations might be eliminated or rewritten.

⁵⁴ The irony – and a major problem – is that the MOT DGs do not have their own adequate legal staff, yet will not use the Legal Bureau. Part of this is a desire of the DGs to “control” the legal input they receive, which runs contrary to the concept of independent legal advice.

huge gap in the middle where one would normally find lawyers with five to ten years of experience who could begin to fill supervisory positions and mentor the junior lawyers. Under MenPAN rules prohibiting hiring except at *Echelon IV*, it is difficult to remedy this problem.

Pak Widodo, who has been head of the Legal Bureau since June 2007, has made progress in improving regard for the Legal Bureau as evidenced by the number of Legal Bureau clients who said they have turned to him for legal advice. Further significant progress is unlikely without substantial changes in hiring and deployment of lawyers. Making these changes in the role and organization of lawyers in the MOT is a difficult challenge with no easy solutions. The Legal Bureau has too few lawyers, too few experienced lawyers, too few lawyers with specialized substantive knowledge to meet the client's needs, and too few lawyers to move into areas beyond drafting.

Changing the structure alone is not the answer, nor is making strides in improving the quality of lawyers. It is only through a combination of these two approaches that success can hope to be achieved.

In addition to the staffing deficiencies discussed above, there are a number of on-going challenges that the MOT is facing relating to (1) recruitment, (2) training and (3) retention of lawyers, three clearly interconnected areas. Any meaningful discussion of legal services must include a discussion of recruiting and training as well as career paths, each of which is addressed below.

2. Recruitment.

For a period of ten years, there was no recruitment for legal or any other positions in the MOT due to the above mentioned hiring freeze. This freeze was difficult for the entire Ministry but it was even more difficult for the Legal Bureau and for the legal positions elsewhere in the MOT. In 2006, soon after the freeze was lifted, just over 130 MOT employees were law graduates out of several thousand employees. During the freeze, there were only a small number of law graduates to fill legal positions and an even smaller number that could be classified as experienced lawyers. Other parts of the organization could fill slots from a pool of hundreds of existing employees that included the law graduates. These greater opportunities outside of the law, coupled with the very compelling reasons not to pursue a legal career at the MOT described in more detail below, resulted in lawyers leaving legal positions for positions elsewhere in the MOT. It is extremely difficult to compensate for this loss.

Not only did the Legal Bureau and the other MOT lawyers emerge from the freeze in a particularly difficult staffing situation, this situation was exacerbated by the Legal Bureau having the second lowest budget of any operational division within the Ministry.⁵⁵ Now that the freeze has been lifted, there are significant challenges in increasing the number of lawyers in the Legal Bureau, starting with the necessity for MenPAN approval for new hires. Given the very small number of authorized new hires for the Legal Bureau in 2008, the Legal Bureau is falling even further behind.⁵⁶

Recruiting lawyers for the MOT is also difficult because it does not have a competitive edge compared to other Ministries and the private sector. If asking the question “what are lawyers with the highest potential looking for when choosing a job”, then money is a key factor. Governments all over the world have a difficult time keeping up with salaries in the private sector. Lawyers, however, are also looking for high quality training, interesting work, a career path and quality of life. The law offices in the best government agencies determine how they can compete in areas other than salary level. They also reach out and actively recruit the best talent from the law schools, augmenting the recruitment processes of their HR departments. Offers of advanced degree training, and opportunities for overseas internships, as well as openings to advance so as to be involved in challenging legal work, are also used to draw and retain talent in the government.

3. Training.

Training for lawyers is deficient within the MOT. Training is difficult without a central plan for continuing legal education and a central plan usually requires a centralized structure to develop and administer it, which is currently missing in the MOT.

Prior to ITAP taking up its work in 2006, legal training for lawyers inside and outside of the Legal Bureau was minimal. A few law graduates were sent to Master’s programs, usually outside of Indonesia. Upon their return they might put their newfound knowledge to work, or, just as likely, they would return to a position that involved little or no legal work without the opportunity to practice what they had learned and without the supervision of more experienced lawyers to guide their learning process. Other outside training programs such as short term workshops, internships in other

⁵⁵ The small size of the Legal Bureau budget is clearly reflected in both its physical environment and the resources available to it.

⁵⁶ This number of three new hires in the Legal Bureau for 2008 was far short of the ten new law graduates per year recommended by ITAP. All decisions relating to the personnel budget and the provision of slots for new hires are made by MenPAN.

agencies and law firms or work assignments, such as postings to legal slots in overseas missions,⁵⁷ did not get utilized.⁵⁸

For a little over two years, ITAP has conducted a series of training programs and consultations within the MOT that have reached several hundred Ministry employees. A group of 17 law graduates from across the Ministry are participating in an ITAP-designed specialized Masters in International Trade Law (MITL) program at the University of Indonesia, from which they will graduate in October 2008. Currently, there is no plan in place to either continue this program⁵⁹ nor is there a plan that will best utilize these newly trained lawyers upon their return to the MOT.

Why all the emphasis on training? A common assumption is that graduating from law school - or even from a Masters in Law program - makes someone a lawyer -- but this is not true. Attendance at law school may develop knowledge about how to research or instill minimal skills in legal writing, but law graduates are not lawyers. A lawyer is a person with a law degree who has *in addition* gained the skills and experience necessary to perform the role of a lawyer. A law school graduate without further training is not able to function fully as a lawyer.

Ongoing training is key to developing a team of lawyers that can provide high quality legal services. Training for lawyers can be both on-the-job (work assignments and mentoring) and through formal programs (continuing the university education, plus skills training) that build experience and skills. On the job training links junior lawyers with more senior lawyers who can teach them skills on a day-to-day basis. This kind of teaching is difficult in an environment such as the MOT, where there are few senior lawyers and little time for mentoring due to heavy workloads, as in the Legal Bureau, or where lawyers are isolated and do not have contact with other practicing attorneys, as in the DGs and Agencies. Outside training is not occurring in any meaningful way and is unlikely to occur in the future without centralized planning.

⁵⁷ By way of example, many WTO Missions have a lawyer from their Trade Ministry's Legal Department. For Indonesia there are no specially trained lawyers present in certain key international embassy postings, such as the Indonesian WTO Mission in Geneva, or in Washington, Brussels, Canberra, Tokyo and Beijing. Indonesia currently has positions for Indonesian staff, in addition to its trade attaché, in four posts: Brussels (one supporting staff), Washington D.C. (one home staff), Geneva (one home staff, two supporting staff) and Tokyo (one supporting staff). Home staff fill posts for 2-3 years and their appointment is also approved by MoFA. Supporting staff can be appointed by the MOT on its own and serve for a period of six months to one year. The MOT is already discussing the possibility of posting a lawyer to Geneva. Using lawyers in designated legal positions in other Embassies deserves serious attention.

⁵⁸ The Legal Bureau and other parts of the MOT have tried on several occasions to have staff qualify for internships at the Advisory Centre for WTO Law in Geneva but so far no MOT lawyers have been chosen.

⁵⁹ As of to the end of May 2008, UI has not yet decided whether it would offer this program again.

The MOT must develop an ongoing training program for the law graduates it wishes to use as lawyers.⁶⁰ The MOT will be unable to achieve its overall goals until it has sufficient lawyers with experience who can deliver high quality legal services.

4. Retention.

The Legal Bureau does not have enough experienced lawyers even though it has existed for at least fifteen years in various forms. The same can be said of other DGs/Agencies in the Ministry. This indicates that there has been a high degree of turnover or attrition among the lawyers.

The lack of experienced lawyers is due in large part to the lack of a career path for lawyers. In the Legal Bureau, there are few opportunities for advancement. An *Echelon II* Legal Bureau head means that the number of *Echelon II* positions is capped at one, with four potential *Echelon III* positions heading the subdivisions reporting to the Head of the Legal Bureau. This situation is mirrored in the COFTRA Legal Bureau, which is headed by an *Echelon II* with three *Echelon III* subdivisions. In the other DG/Agencies, advancement for lawyers is limited by both the availability and the rank of legal positions.

Many lawyers leave legal positions and move into other positions within the MOT structure where there is more room for advancement. Some lawyers leave legal jobs forever and their legal experience is lost to the MOT. Others move in and out of legal positions, putting legal skill development and experience aside for long periods of time.⁶¹ Still others perform legal work only part-time on an *ad hoc* basis. It is hard to develop a strong cadre of experienced, specialized lawyers when many are performing legal work only part of the time or when the only way to promotion is to move out of the legal function.

In the Indonesian civil service system, a distinction is made between employees whose primary activity is in a management chain of command (structural) and those whose work requires a particular type and level of expertise, *e.g.*, accountants, auditors, drafters, librarians (functional). A functional route may provide faster advancement as promotion is based upon meeting certain criteria. Also, opportunities are not limited based on the number of positions open at a given *Echelon* level.

⁶⁰ *Pusdiklat*, the MOT's Training and Education Center, is unlikely to be able to serve in this capacity, as it has no experienced senior lawyers. Outsourcing will be needed. Using 2-3 of the MOT's current senior lawyers in *Pusdiklat* upon their retirement could also be considered.

⁶¹ Two of the five Legal Bureau managers at the time ITAP began in January 2006, Pak Djunari and Ibu Lasminingsih, were transferred to non-legal jobs overseas, and were not quickly or easily replaced.

Most of the employees within the MOT are classified as structural employees. All of the employees of the Legal Bureau, with the exception of one employee who is a librarian in the Documentation Division, are structural employees. The lawyers in the rest of the MOT are also all structural employees. There is an increasing use of functional positions within the GOI. The MOT is currently reviewing the possibility of increasing the number of employees classified as functional as a means of providing a more promising career path for employees with key substantive or technical expertise.⁶²

V. Recommendations.

The recommendations that follow are designed to improve the quality and effectiveness of legal services within the Ministry of Trade. Quality and effective legal services are defined as independent, consistent, accurate, and reducing risk while maximizing opportunity. To provide quality legal services will require a combination of both organizational and human resource changes at the Ministry of Trade. Our recommendations address those two aspects separately.⁶³

A. Organizational Recommendations.

1. Expand the role of lawyers and the Legal Bureau

This recommendation would involve expanding the role of MOT lawyers, including legal advice, negotiations and counseling in addition to drafting and litigation. Lawyers should be utilized as drafters *and* as consultants on a variety of issues including negotiating agreements, new regulations, trade disputes, trade remedy cases and business issues. The MOT should involve lawyers early and throughout the decision-making process. The Legal Bureau should communicate within and across MOT Directorates and Agencies and with lawyers in other Ministries.

2. Realign the functions of the Legal Bureau

Instead of having sub-divisions of the Legal Bureau directed toward small parts of the drafting process, a change of the names and focus of the sub-divisions will assist in allowing the Legal Bureau to better serve specific client and overall Ministry needs. The key feature is: restructure the office to create counterparts to client offices and provide enhanced services on Ministry-wide legal issues.⁶⁴ Lawyers assigned to client offices should sit with their clients to facilitate access and to develop teams

⁶² Classifying certain positions as functional must ultimately be approved by MenPAN. To obtain this approval, the MOT will have to decide what group of lawyers it wishes to classify as functional, develop a job description and credit points and pilot the treatment of this group as functional for about a year. Functional classification has some benefits for lawyers as it will allow for more rapid advancement. In addition, functional employees can retire later.

⁶³ Full details of the action steps are in **Annex 14**.

⁶⁴ **Annex 16** shows the details of this recommendation for realigning the names and functions of these sub-Divisions.

of specialized lawyers with expertise in the substantive laws governing their client's activities. Lawyers should be independent but integrated into client offices and clients should have meaningful input into the performance reviews of the lawyers who serve them. With the specialized structure, there will be a need to organize regular meetings to coordinate work, and in particular to identify and address cross-sectoral issues.

3. Establish a formal concurrence process

This would be a process that requires early consultations between the DGs/Agencies and the Legal Bureau in the drafting process, policy development and regarding potential legal issues, and which includes a final sign-off by the Legal Bureau. While a concurrence process should be adopted to improve consistency and minimize risk regardless of organizational structure, it is especially critical as long as the MOT has lawyers in multiple offices rather than in one central office. The concurrence process will also encourage use of the Legal Bureau as a more general resource.

4. Raise the status of the Legal Bureau

This can be done within the MOT by elevating the Bureau to a Directorate General, thus creating a more structured environment with all lawyers centralized under one roof. In addition to ensuring a stronger voice for lawyers in the decision making process, this structural change will also help develop a career path for lawyers as it provides more opportunities for advancement by increasing the numbers of higher level positions within the Legal Bureau.⁶⁵

B. Human Resource recommendations.

1. Develop an overall staffing plan for legal positions

This would be a staffing plan within the Ministry that corresponds to the actual needs of the clients and overall Ministry goals. Create job descriptions for all lawyer positions. Take a proactive approach to hiring the best candidates, with lawyers involved in hiring other lawyers. Hire, train and promote lawyers that have the competencies required to meet the needs identified. Base promotions on demonstrable advancement in skill and/or knowledge levels using key performance indicators. The legal needs of the MOT overall (see Annex 12) need to be linked to the organization (see Annex 15).

⁶⁵ Annex 18 contains the proposed organization chart of the DG-LA.

2. Increase the number of lawyers in the Legal Bureau

This will help the Legal Bureau in its efforts to handle the broad range of domestic, international and litigation needs of the Ministry contemplated by the Legal Bureau's expanded role. Hire a minimum of ten (10) lawyers per year for at least three to five years. Consider a limited number of lawyers currently working elsewhere in the Ministry for transfer to the Legal Bureau, once they pass an interview and agree to participate fully in all training. Focus on strong and continuous internal organic growth over the next five years to build long term legal capacity.⁶⁶

3. Create a program that best utilizes all returning postgraduate students in law

This will allow returning postgraduate students to work as lawyers and provides them with the opportunity to use and build on the legal skills they learned in their Masters program and to learn about the scope of work handled by the Ministry. Pilot this program with the returning MITL and other masters students being placed in the Legal Bureau and immediately divided into three Legal Task Forces that cover the three major client DGs: Domestic Trade (DG-DT), Foreign Trade (DG-FT), and International Trade Cooperation (DG-ITC). Each Legal Task Force will sit with its clients, work on one to two issues of key importance to that DG and the Ministry, and be exposed to the work of the other Legal Task Forces and to the task forces of the returning Masters in Economics students. The Bureau of Personnel & Organization should administer the program in conjunction with the Legal Bureau. The program developed should reflect the lessons learned in creating and implementing the program for the earlier returning Masters in Economics students. Additional focused training should be provided by ITAP both before and after the MITL students return. Upon completion of the Task Force process, all newly trained lawyers should be assigned to regular work in the Legal Bureau.

4. Assign junior lawyers to more senior lawyers for management, training and mentoring

This can best be achieved through a coordination mechanism supervised by the Legal Bureau. Be creative in identifying individuals to serve as coaches/trainers/managers and as resources for the Legal Task Forces. With too few experienced lawyers to coach or manage the large number of lawyers less than five years out of school, the MOT is facing a three to five year gap before it has enough experienced lawyers to provide meaningful management or training. In the interim, alternatives will have to be developed. Options include:

⁶⁶ The overall needs of the Legal Bureau are shown in detail in **Annex 15**.

- **Recruiting a few senior lawyer managers from other Ministries** to serve as managers in the MOT. Recruit transferred lawyers to fill higher Echelon positions than they currently occupy to make such transfers attractive.
- **Designating existing MOT officials who are law graduates with applicable senior level experience as managers or coaches**, regardless of what office they are located in at the Ministry and whether or not they are practicing lawyers. For example, a senior level negotiator in DG-ITC with a law degree could serve as a manager for the Foreign Trade lawyers in the Legal Bureau or a lawyer in DG-DT could mentor one or more of the newer lawyers in the Domestic Trade or Litigation Divisions of the Legal Bureau.
- **Identifying lawyers to serve as trainers** that have been through the ITAP training programs. The courses and materials have been prepared and will be left with the MOT. ITAP can further train those that have grasped these courses to give them, and over time they can train others.
- **Reaching outside the Ministry to find coaches** in other Ministries, law offices and non-governmental organizations (NGOs). Start with a key goal such as building legal capacity to support trade negotiations. Develop local opportunities where trade specialist lawyers can build skills and knowledge by working with lawyers from the MoFA on trade negotiations, and with lawyers in Jakarta or in regional law offices specializing in trade law or with other local entities such as the Association of Southeast Asian Nations (ASEAN) Secretariat. Involve these newly trained lawyers in the trade agreement negotiating process. This same process can be applied to the other legal disciplines most critical to the Ministry.

5. Establish a MOT legal team that encompasses all law graduates doing legal work

MOT lawyers need to be identified and coordinated, regardless of where they are employed within the Ministry. To build capacity, each lawyer should be assigned to a practice group relevant to their daily work and required to attend all training activities undertaken for and by the Legal Bureau in their relevant area of work. Training is needed in both skills and the substantive legal areas handled by the MOT. Each lawyer should develop a personal training plan for review and approval by the Legal Bureau.

Monthly meetings of all lawyers should be held to increase communication, provide an additional venue for training and team building, and serve as a vehicle for identifying cross cutting legal issues.

Weekly meetings of MOT legal managers should be established to address priorities and to ensure that cross-sectoral issues are properly addressed.⁶⁷

6. Provide additional resources to the MOT legal team

This will be essential in order to increase performance. Expand training on internet research for all lawyers and particularly specialized training for the staff of the Legal Bureau's Documentation Division. Identify research resources needed by practice group and determine what key resources are available online. Limited funds for library purchases should be used to buy key resources that are not online. With the improved access to the internet available in the new building, make online resources more available to lawyers. Create an online database system, password protected where necessary, that contains all applicable decrees, regulations, opinions and lists of online resources. Require all lawyers to post their work on this online system and increase the database of legal materials pertinent to the legal issues of interest to the MOT. As lawyers' training opportunities are increased, consider including non-lawyers in pertinent training programs and have the newly trained lawyers reach out to train other employees on areas of the law they should understand to perform their jobs more effectively.

7. Increase legal capacity through postgraduate education in law

This focus includes postgraduate education received abroad and in Indonesia. Send lawyers overseas for LL.M. programs to build substantive expertise and foreign language skills, as well as to build the prestige and image of the lawyers and the Legal Bureau as a whole. In the trade area, a strong working ability in English should be encouraged as many of the online resources and trade negotiations regardless of country use English as the language of choice. Continue the MITL program at the University of Indonesia and use feedback from the returning MITL students and their supervisors to improve the program so it best serves the needs of the Ministry.

8. Provide additional opportunities for lawyers to increase knowledge and skills through internships and overseas assignments

This focus will provide incentives for pursuing a career path as a lawyer. Establish internships in law firms, Ministries and NGOs in Indonesia and abroad. Develop lawyer slots in key posts in strategic Embassies or Missions. Such placement will have a two-fold impact. First, it will greatly increase the knowledge and skills resident among MOT lawyers and it will also provide an attractive possibility

⁶⁷ Annex 17 contains the proposed organization chart for this coordination.

for young employees looking at potential career paths. Lawyers taking such placements and postings must agree to return to the Legal Bureau (or another MOT legal position) afterwards, so that the experience can be shared with other MOT lawyers and the advice by these lawyers enhanced by that experience.

9. Create a better career path for lawyers

This will ensure that lawyers will continue to work as lawyers during their time at the MOT and can develop substantive expertise in areas of law that are key to the Ministry. It will also ensure that there is a cadre of experienced lawyers to coach and manage newer Ministry lawyers. The possibility of designating legal positions as functional positions should be explored.

VI. Roadmap for Implementation

In March 2008, the SecGen specifically asked that the Blueprint contain a Roadmap detailing how the final recommendations could be implemented over time. The result is the three phases presented below, which represent a continuum leading to a fully centralized Directorate General for Legal Affairs. Each phase contains action steps that lead to the stated objective for that phase. Not all action steps in each phase have to be implemented and some can be taken out of order and implemented in another phase depending upon the needs of the Ministry. The majority of the thirteen recommendations set forth in Section V can be implemented in whole or in part without organizational changes that must be approved by outside agencies.⁶⁸

The three phases are to: 1) improve the existing organization; 2) modify the existing organizational structure; and 3) create a Directorate General for Legal Affairs (DG-LA).

A. Phase I – Improve the Existing Organization, while Hiring and Training More Lawyers

The steps in this phase are focused on building legal capacity within the Ministry by taking initial steps to recruit, train and retain lawyers so that the MOT lawyers continue to build the experience and skills necessary for the more substantial structural and role changes contemplated in the other phases.

The action steps in Phase I are within the control of the Ministry of Trade, save for Step 1 - increasing the number of lawyers within the Legal Bureau, and could be implemented immediately. Step 1 (adding ten lawyers per year for 3 – 5 years) needs MenPAN approval but is so critical to the overall

⁶⁸ See **Annex Fourteen** for a flow chart and sequencing of action steps for the three phases, including those necessary for MenPAN approval.

improvement of legal services that it should be elevated by the Ministry to one of its key goals as soon as possible. A large number of new lawyers with specialties geared toward the work of the Ministry will be needed to improve the legal services provided. It will take time to recruit and train these new lawyers but as a necessary step for any of the phases to be successfully implemented, it should be focused upon immediately.⁶⁹

In order to implement a DG-LA in Phase III, it is recommended that in Phase I the MOT begin discussions with MenPAN to obtain their guidance and establish the MOT committees that will oversee the reform process. The committees will gather information in the first half of Phase II, with particular focus on the newly realigned Legal Bureau structure, with submission of documents to MenPAN early in the second half of Phase II. The goal is to have MenPAN approval as early as possible in Phase III.

Action steps in Phase I include:

1. Increasing the number of lawyers in the Legal Bureau.
2. Expanding the role of lawyers in the MOT to act as consultants as well as drafters.
3. Involving lawyers early in the decision making process.
4. Formalizing the existing concurrence/approval system.
5. Developing an overall staffing plan for lawyers in the MOT.
6. Improving the recruiting process for lawyers.
7. Engaging the MITL students and all returning postgraduates in law in meaningful legal work upon their return to the MOT, which includes assignment to the Legal Bureau.
8. Assigning junior lawyers to more senior staff for managing, training and coaching.
9. Creating and coordinating a MOT legal team (overall, and by practice group).
10. Providing additional resources to support the legal team, e.g., training and research capability.
11. Increasing legal educational and training opportunities.

⁶⁹ See **Annex Fifteen** for an estimate of lawyers needed by the Legal Bureau to fulfill its expanded role. This estimate was prepared by the ITAP Legal Team and its legal and HR experts based upon their considerable experience managing law offices and after discussions with lawyers in the Legal Bureau and with officials and lawyers in the DGs and Agencies.

B. Phase II – Modify the Existing Organization.

Phase II action steps continue the emphasis on training to develop skills and experience as well as recognizing the importance of coordinating legal services within the Ministry. This can be done *e.g.*, by improving communications between the Legal Bureau and DG/Agencies. Also required would be the restructuring of the Legal Bureau along client and substantive specialization lines to improve services and to prepare for the final Phase III DG by putting in place a basic pilot structure of the internal organizational structure to be achieved upon completion of these steps. Steps 1-4 can be made without outside approval and are extensions of changes begun in Phase I. Steps 5-6 will require outside approval but can be piloted while approval is pending.

Action steps in Phase II include:

1. Expanding the concurrence/approval process to require Legal Bureau sign-off on all legal opinions for signature or approval of the DGs or Agency heads or above.
2. Coordinating legal staffing between Legal Bureau and DG/Agency lawyers.
3. Increasing legal educational and training opportunities to include internships and overseas opportunities.
4. Restructuring the Legal Bureau along client and substantive specialization lines.⁷⁰
5. Establishing *Echelon II* legal coordinators in each DG/agency, who should be law graduates or lawyers, and supported by *Echelon III* officials and staff.⁷¹
6. Designating some or all law positions as functional as part of the current MOT reform process.

C. Phase III – Create a Directorate General for Legal Affairs.

Some form of centralized office structure was adopted by the Comparison Agencies and has become the norm in progressive governments around the world. Step 1 will need to be approved by MenPAN. Steps 2 and 3 may need only changes in Ministerial Decrees and regulations. Step 4 is within the control of the Ministry.

Action steps in Phase III include:

⁷⁰ See **Annex Sixteen** for a proposed organizational structure of the Legal Bureau at the Ministry of Trade.

⁷¹ See **Annex Seventeen** for an organizational chart showing the structure proposed for coordination of Legal Affairs in the Ministry. One possible location for the coordinating positions could be in a sub-Division present in many of the DG Secretariats that has slightly different names but deals with law and reporting.

1. Centralizing all Ministry lawyers within a unit headed by an *Echelon I* Director General for Legal Affairs.⁷²
2. Making the Director General the chief law officer of the Ministry and the legal advisor to the Minister and all other officers of the Ministry.
3. Giving the Directorate General for Legal Affairs the authority to render all legal services within the Ministry.
4. Implement the concept of “independent but integrated” by locating lawyers providing specialized client services within their client’s offices, and locating the rest of the lawyers – *i.e.*, those lawyers providing Ministry-wide legal advice - in the DG-LA offices, which should ideally be located in proximity to the Minister and SecGen so that the DG can be available to provide regular senior level advice.

If MenPAN does not approve the establishment of a DG-LA (Step 1), then Phase III should be continued, and a back-up proposal should be submitted for MenPAN approval. If MenPAN will not approve a DG-LA despite already approving a similar structure of MoFA (using the influence of the WTO as its argument), then the MOT should ask MenPAN at least for approval of the addition of two new legal units headed by Echelon II officials. In essence, the MOT would then have three Legal Bureaus: Legal Bureau for General Affairs and Litigation,⁷³ Legal Bureau for International Trade,⁷⁴ and Legal Bureau for Domestic Trade.⁷⁵ Step 1 would be implemented as above (move all MOT lawyers into one of the Legal Bureaus), and Steps 2-4 would be implemented taking account of the differences in structure.

However, with MoFA and BI leading the way with approvals to upgrade the status of lawyers, if the MOT properly presents its needs to MenPAN, an upgrade to DG-LA is a logical step.

⁷² See **Annex Eighteen** for a proposed organizational chart for the Directorate General for Legal Affairs.

⁷³ A Legal Bureau for General Affairs and Litigation should have four divisions: Litigation, Contracts and Procurement, Personnel and Administrative Law, and Law Library and Databases. This Legal Bureau would serve the entire MOT. In essence, it would be like the present Legal Bureau, except that all work relating to domestic law and foreign law would be handled by the other two Bureaus. This would allow more focus for this general Legal Bureau. Essentially, the two Divisions for Litigation and Administrative Law in **Annex 16** would be expanded to four Divisions.

⁷⁴ A Legal Bureau for International Trade should have four divisions: Foreign Trade (all DG-FT issues), Multilateral, Regional and Bilateral Agreements (all DG-ITC issues except trade remedies), Trade Remedies (all KADI, KPPI, Trade Defense and Rules issues), and International Commercial Law (NAFED, plus international legal benchmark research). The structure would be the same as in **Annex 16**, except the four sub-Divisions would be elevated to Divisions. This unit would have primary legal responsibilities for DG-FT, DG-ITC, NAFED, KADI and KPPI, and would provide advice and support on all international trade law issues to the other units.

⁷⁵ A Legal Bureau for Domestic Trade should have four divisions: Business Development and Company Registration Law, Market Development and Distribution Law, Consumer Protection and Distribution Law, and Metrology Law. The structure would be the same as in **Annex 16**, except the four sub-Divisions would be elevated to Divisions. This unit would have primary legal responsibility for DG-DT, would provide back-up support to COFTRA, and would provide advice and support on all domestic trade law issues to the other units.

VII. Summary

All of the recommended changes can be achieved over time in the new GOI environment, but these changes will require sacrifices. The benefits of these changes will outweigh the sacrifices. Not making changes is not an option as the failure to change the handling of legal issues will prevent the MOT from achieving its full potential on a par with other GOI agencies such Bank Indonesia, Ministry of Finance and Ministry of Foreign Affairs, and its counterparts in the rest of the world.

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Proposed Organizational Structure of the Legal Bureau

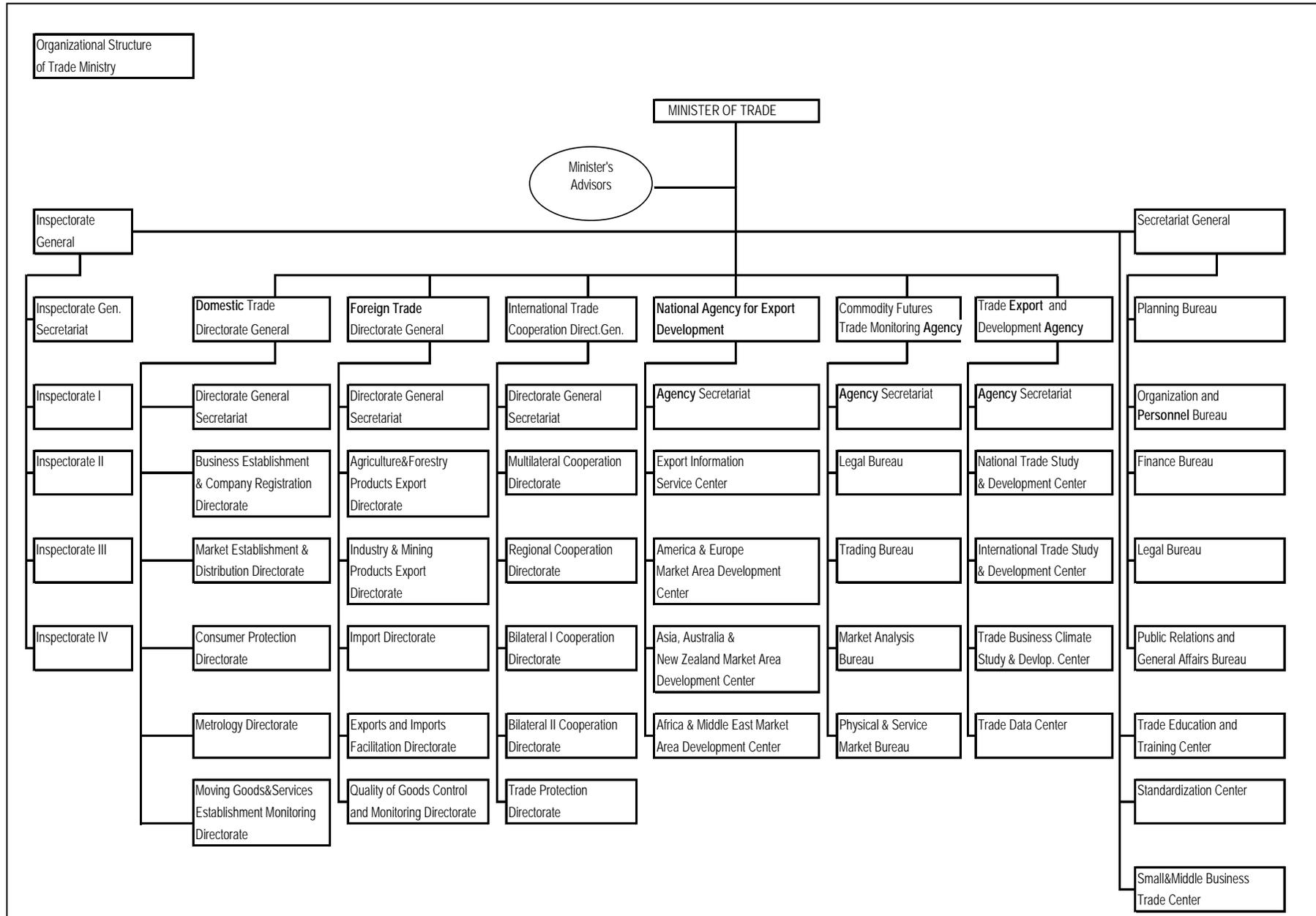
Annex Seventeen

Proposed Organizational Chart of Coordination of Legal Affairs in the Ministry

Annex Eighteen

Proposed Organizational Chart of the Directorate General for Legal Affairs

Annex One: Organizational Chart of the Ministry of Trade



4. What are the legal needs of the MOT, specifically the Directorates General and main agencies of the MOT?

5. What suggestions would you offer to improve the provision of legal services in the MOT?

6. Please complete the following section for your unit:

| | |
|--|----------------|
| Number of law graduates | |
| Number of law graduates providing legal services (lawyers) | |
| Number of law graduates with masters in law degree | |
| Number of lawyers with <u>legal</u> experience in unit: | • 0-2 years : |
| | • 2-5 years : |
| | • 5-10 years : |
| | • > 10 years : |

4. Kebutuhan bantuan hukum apa saja yang diperlukan oleh DepDag, terutama di masing-masing Direktorat Jendral dan Badan-Badan di lingkungan DepDag?

5. Masukan apakah yang Bapak/Ibu dapat berikan dalam rangka upaya peningkatan pelayanan hukum di DepDag?

6. Mohon untuk melengkapi form dibawah bagi unit Bapak/Ibu:

| | |
|---|----------------|
| Jumlah pegawai yang mempunyai ijazah Sarjana Hukum | |
| Jumlah pegawai yang mempunyai ijazah Sarjana Hukum, yang memberikan jasa pelayanan di bidang hukum (lawyers) | |
| Jumlah pegawai yang mempunyai ijazah Sarjana Hukum, dan ijazah S2 dalam bidang hukum | |
| Jumlah lawyers yang mempunyai pengalaman memberikan jasa pelayanan di bidang hukum di unit Bapak/Ibu, antara: | • 0-2 tahun : |
| | • 2-5 tahun : |
| | • 5-10 tahun : |
| | • > 10 tahun : |

Annex Three: List of Participants in Legal Needs Assessment

| No | Institution | Name | Occupation |
|----|-------------------|--------------------------------|--|
| 1 | Ministry of Trade | Drs. Hatanto Reksodipoetro, MA | Secretary General |
| 2 | Ministry of Trade | Ir. Ardiansyah Parman | Director General of DG DT |
| | | Eddy Suseno, SH | Secretary of DG DT |
| | | M. Syst, SH, MH | Head of Legal and Regulations Sub-division |
| 3 | Ministry of Trade | Ir. Diah Maulida, MA | Director General of DG FT |
| | | Budhi Santoso, MSc | Secretary of DG FT |
| 4 | Ministry of Trade | Drs. Herry Soetanto | Director General of DG-ITC |
| | | Dra. Ita Megasari Dachlan | Secretary of DG ITC |
| | | Luther Palimbong, SE, M.Si | Head of Legal and Evaluation Division |
| | | Alfons Samosir, SH | Head of Security and Protection of Market Access on Goods Sub-Directorate |
| | | Yamanah AC, SH, MH | Head of ASEAN Trade Facilitation Cooperation and Investment |
| 5 | Ministry of Trade | Drs. Dede Hidayat | Secretary of NAFED |
| | | Zulfikar Mark Zulkifli, SIP | Head of NAFED Evaluation Sub-Division |
| 6 | Ministry of Trade | Chrisnawan Triwahyuardhianto | Secretary of COFTRA |
| | | Pater Y Angwarmasse | Head of COFTRA Legal Bureau |
| | | Made Sukarwo | Head of Trading Bureau |
| | | Sri Haryati | Lawyer of COFTRA |
| | | Mardyana Listyowati | Lawyer of COFTRA |
| | | Amestayisca Putri | Lawyer of COFTRA |
| | | Tengku Bayu | Lawyer of COFTRA |
| | | Eddie Y. Latief, SH, M.Si | Head of PR and Cooperation Division |
| 7 | Ministry of Trade | Erwidodo | Head of TREDA |
| | | Andin Hadiyanto, Ph.D | Director of the Business Climate for TREDA |
| | | Ir. Ernawati MA | Secretary for TREDA |
| | | Ari Satria, SE, MA | Head of Program and Cooperation Division for TREDA |
| | | Jantje H.A. Lengkong | Deputy of Personnel for TREDA |
| 8 | Ministry of Trade | Drs. Suhartono | Head of Planning Bureau |
| | | Dra. Kusni Pangestuti MM | Head of Overseas Assistance Division |
| 9 | Ministry of Trade | Ir. Rahayubudi, MM | Head of Personnel & Organization Bureau |
| 10 | Ministry of Trade | Aang Kanaan Hadikusumah | Secretary of Inspector General |
| 11 | Ministry of Trade | Drs. Muchtar MSc | Management Expert |
| 12 | Ministry of Trade | Halida Miljani | Special Advisor to the Minister for International Cooperation, and Head of KADI and KPPI |
| | | Penta Riris Nasution | Executive Secretary of KADI and KPPI |
| 13 | Ministry of Trade | Widodo | Head of Legal Bureau |
| | | Lulu Husein | Head of Legal Bureau Domestic Trade Law Division |
| | | Lasminingsih | Former Head of Legal Bureau Foreign Trade Division |
| | | Yuni Hadiati | Head of Legal Bureau Documentation Division |

INDONESIA TRADE ASSISTANCE PROJECT
 IMPROVING THE QUALITY OF LEGAL SERVICES WITHIN THE MINISTRY OF TRADE

| No | Institution | Name | Occupation |
|----|-----------------------------|----------------------|---|
| | | Irpan Ganda Kusumah | Head of Legal Bureau Litigation Division |
| | Ministry of Trade | | 17 MITL students |
| | Ministry of Trade | 21 February 2008 | Meeting with more than 30 MOT staff |
| | Ministry of Trade | 12 March 2008 | Meeting with more than 30 MOT staff |
| 14 | Ministry of Foreign Affairs | Damos Dumoli Agusman | Director for Economic and Socio-Cultural Treaties |
| | | Harditya | Lawyer |
| 15 | Ministry of Finance | Arief Wibisono | Head of Division - Legal Bureau |
| | | Dody Gusdiyandi | Head Lawyer for the Investment Treaty-Contract Division |
| 16 | Bank Indonesia | Zulkarnain Sitompul | Lawyer |
| | | Imam Subarkah | Lawyer |
| | | Suchaemi SY Maarif | Executive Legal Analyst |

Annex Four: Regulations of the Minister of Trade regarding the Legal Bureau

Regulation of the Minister of Trade

No. 01/M-DAG/PER/3/2005 dated 22 March 2005

Article 65

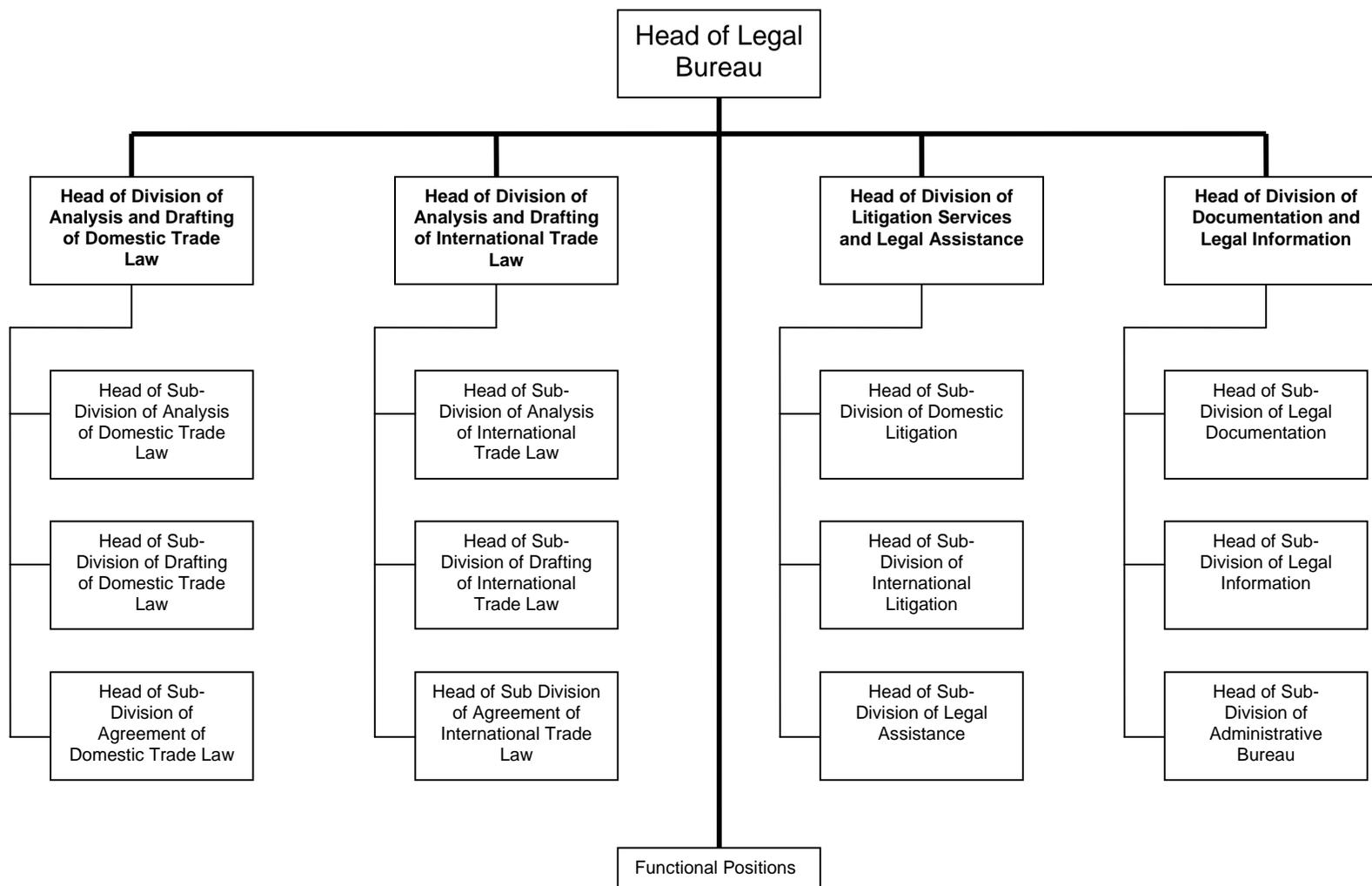
The Legal Bureau has the task of coordinating and drafting laws and regulations, providing legal service and assistance, as well as legal documentation and information.

Article 66

In conducting the tasks mentioned in Article 65, the Legal Bureau has the following functions:

- a. to prepare the coordination, analysis and study as well as the law for the domestic trade;
- b. to prepare the coordination, analysis and study as well as the law for the international trade;
- c. to provide legal services, consultation and assistance;
- d. to conduct legal documentation and information affairs.

Annex Five: Present Organizational Chart of the Legal Bureau of the Ministry of Trade



Annex Six: Synopsis of Lawyers within the MOT by Unit, Education and Years of Experience

| Directorate Generals/ Agencies | Number of Lawyers | | | | Legal Experience | | | | Number of Lawyers Retired within Ten years |
|-----------------------------------|----------------------|----------|-----------|-----------|------------------|--------------|---------------|--------------|---|
| | S1 | S2 | Masters | Total | 0-2 years | 2-5 years | 5-10 years | >10 years | |
| Legal Bureau | 18 | 3 | 4 | 25 | 8 | 9 | 3 | 5 | 8 |
| Other Units under Sekjen | 1 | 0 | 2 | 3 | 2 | 0 | 0 | 1 | 1 |
| DG-DT | 6 | 2 | 4 | 12 | 5 | 2 | 0 | 5 | 6 |
| DG-FT | 0 | 0 | 2 | 2 | 2 | 0 | 0 | 0 | 0 |
| DG-ITC | 0 | 0 | 3 | 3 | 3 | 0 | 0 | 0 | 0 |
| TREDA | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| NAFED | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| COFTRA | 7 | 2 | 0 | 9 | 2 | 3 | 2 | 2 | 2 |
| IG | 0 | 0 | 3 | 3 | 3 | 0 | 0 | 0 | 0 |
| KADI/KPPI | 4 | 0 | 0 | 4 | 2 | 1 | 0 | 1 | 1 |
| Others | | | | 0 | | | | | 0 |
| TOTAL | 36 | 7 | 18 | 61 | 27 | 15 | 5 | 14 | 18 |

Annex Seven: Description of the European Commission Directorate General for Legal Service

The European Commission

Legal Service

Overview¹ The Commission² is organized into Directorates General (DGs) which cover the major areas over which the Commission exercises responsibility and service groups that provide general and internal services to the Commission (together referred to as units). At present, there are eighteen units covering policy areas,³ six units dealing with external relations,⁴ five units that provide general services⁵ and 12 units that provide internal services,⁶ for a grand total of 41 units. One of the units that provides internal services is the legal service.

Structure of Legal Services⁷ The Legal Service is an internal Directorate General of the Commission reporting directly to the President of the Commission. See attached organizational chart. The role of the Legal Service is twofold:

- To provide legal advice to the Commission and its services; and
- To represent the Commission in all court cases.

The provision of legal advice ensures the legality of the Commission's decisions. It is of vital importance in preventing or reducing the risk of subsequent litigation. The Legal Service's role as agent of the Commission in court is comparable to the traditional role of legal counsel. The Legal Service is the in-house counsel to the Commission and is the only entity authorized to represent the Commission before the Community Courts⁸ and the national and international Courts (World Trade Organization).

The Legal Service is organized into teams, each headed by a Director. Each team performs the Legal Service's two roles of providing the DGs with legal advice and assistance and representing the Commission in the courts and focuses on a specific set of subject areas and policies. For example, one of the teams consists of lawyers working in the Trade Policy area who deal with the following four issues:

- Trade policy
- Trade aspects of international agreements
- World Trade Organization (WTO)
- Dispute settlement in the WTO

¹ Information in this section is taken largely from Paul Craig and Grainne De Burca, *EU Law Text Cases and Materials*, Oxford University Press, Fourth Edition, 2008, pp. 38 ff.

² When engaging in any discussion on the European Commission it is important to understand that the term 'Commission' refers both to the College of Commissioners, as well as the standing Brussels bureaucracy which staff the Commission's services. The present note is only concerned with the latter.

³ The 18 policy units are: Agriculture; Competition; Economic and Financial Affairs; Education and Culture; Employment; Executive Agencies; Social Affairs and Equal Opportunities; Enterprise and Industry; Environment; Fisheries and Maritime Affairs; Health and Consumer Protection; the Information and Media Society; Internal Market and Services; the Joint Research Center; Justice; Freedom and Security; Regional Policy; Research; Taxation and Customs Union; and Transport and Energy.

⁴ The six units are: Development, Enlargement, The EuropeAid Co-Operation Office, External Relations, Humanitarian Aid and Trade.

⁵ The five units are: Communication, European Anti-Fraud Office, Eurostat, Publications Office and Secretariat General.

⁶ The twelve units are: Budget, Bureau of European Policy Advisors, Informatics, European Commission Data Protection Officer, Infrastructures and Logistics – Brussels, Infrastructures and Logistics – Luxembourg, Internal Audit Service, Interpretation, Legal Service, Office for Administration and Payment of Individual Entitlements, Personnel and Administration and Translation.

⁷ Information in this section taken largely from the homepage of the Commission's Legal Service:
http://ec.europa.eu/dgs/legal_service/index_en.htm

⁸ Court of Justice, Court of First Instance, Civil Service Tribunal

The teams are structured as follows:

- Institutions;
- External relations;
- Internal market for goods, energy including Euratom; enterprise; customs union; environment;
- Budget, administration and personnel, research, structural instruments, taxation;
- Justice, freedom and security, private law and criminal law;
- Competition;
- Trade policy;
- Establishment, services, business law, movement of capital, transport, intellectual property and information society;
- Employment and social affairs, education and culture, health and consumer protection;
- Agriculture and fisheries;
- State aids and dumping.

Personnel and Career Path⁹ As of May 1, 2006 a new grading system was introduced to describe functional positions and roles of personnel in the European Union (EU) Institutions, including the Commission. The system is comprised of two function groups, Administrators AD and Assistants AST. Function group AD comprises twelve grades, corresponding to administrative, advisory, linguistic and scientific duties. Function Group AST comprises eleven grades, corresponding to executive, technical and clerical duties. Applicants for both groups are recruited by means of open competitions or ‘concours’.

AD (Administrators) are employed in drafting policies and implementing EU Law, analyzing and advising. They form the backbone of the management. Some competitions are open to graduates of any discipline; others (such as for lawyers in the Commission’s Legal Service) may require a degree in a specific subject such as law.

Recruitment as an administrator will generally be at grades 5 to 8 and shall require at least:

- a) For grades 5 and 6
 - A level of education which corresponds to completed university studies of at least three years attested by a diploma, or;
 - Where justified in the interest of the service, professional training of an equivalent level.
- b) for grades 7 to 16
 - A level of education which corresponds to completed university studies attested by a diploma when the normal period of university education is four years or more, or
 - A level of education which corresponds to completed university studies attested by a diploma and appropriate professional experience of at least one year when the normal period of university education is at least three years, or
 - Where justified in the interests of the service, professional training of an equivalent level

Aside from new EU members there is open competition from across Europe for jobs with the Legal Service, which is organized like a law firm. In most cases recruits will have had two or three years’ professional experience before they join. Lawyers can remain in the Legal Service, or the Commission, and become career civil servants, or they can leave after a number of years and join one of the many law firms in Brussels or their home Member State which are active in one of the many

⁹ Information in this section taken from various sources including:

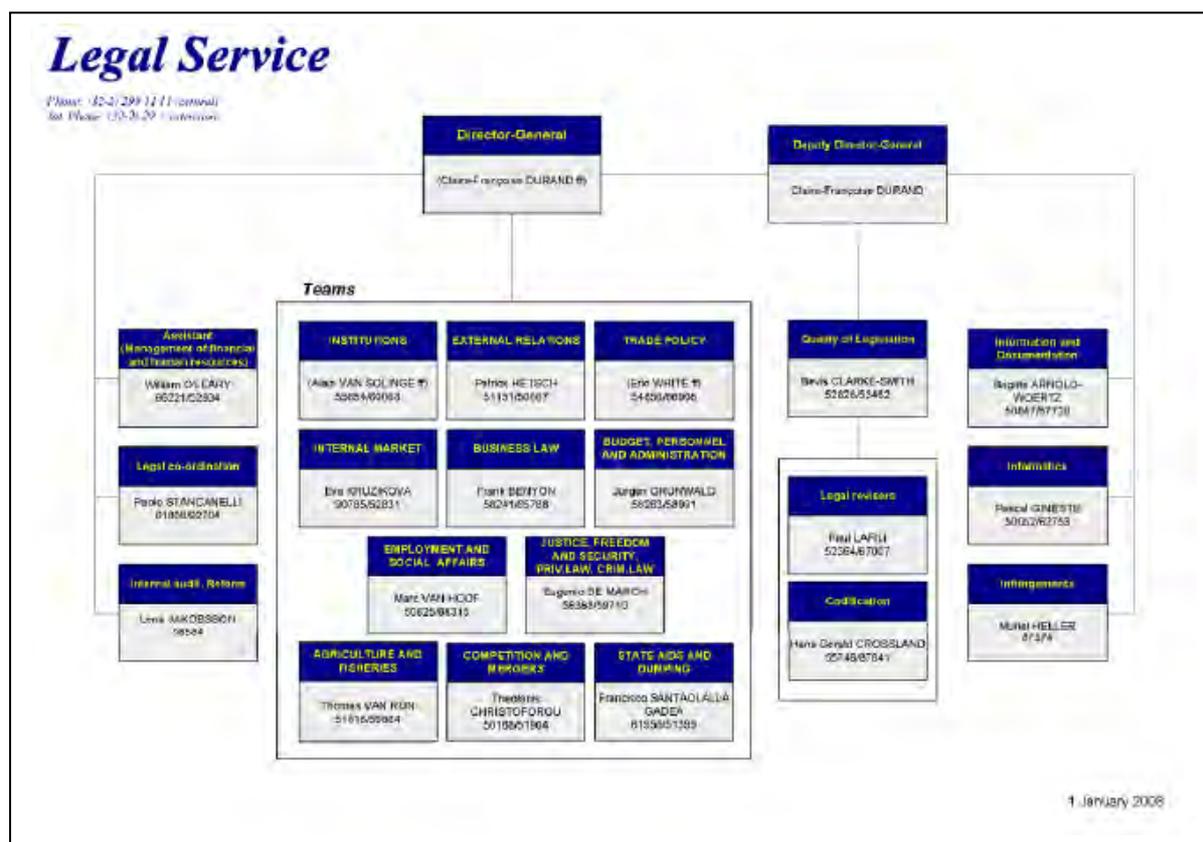
- Article from *The Times* newspaper entitled “Improve the world – law degrees can make a difference”, published on January 22, 2008, at: <http://business.timesonline.co.uk/tol/business/law/student/article3206961.ece>;
- http://careers.civil-service.gov.uk/userfiles/Cabinet%20Office/Europe/Candidates_Guide_2006.pdf;

areas of EU law. Opportunities for experienced lawyers once they leave the Commission tend to be abundant.

History of Changes/Reform¹⁰ Reforms were enacted following the resignation of the Santer Commission in 1999 which led, among other things, to the new grading system described above. A major reform undertaken in 1998/1999 following the European Commission's (EC) defeat in the WTO Hormones Case was to set up a Dispute Settlement Taskforce within DG Trade. The Taskforce is staffed with lawyers seconded from the Legal Service, and acts as a dedicated unit to bring and win cases at the WTO. At present, the Dispute Settlement Taskforce is involved in 40 cases before the WTO, either as applicant or defendant. Written information on additional changes or reforms relates to those impacting the Commission bureaucracy as a whole rather than the Legal Service *per se*.¹¹

Results The EC is consistently one of the best informed, best represented and effective players in the field of trade policy, including negotiations and disputes. The EC recruits and retains high-quality people, and has in place efficient instruments for commercial interests (traders, corporations, business associations) to interact with the Commission and bring their concerns to the policy-making process.

The Commission attracts and recruits lawyers from a broad range of legal systems and cultures, perhaps giving them an edge in litigating before international fora over other Members whose lawyers are mostly educated and trained in the context of a single litigation culture. From the point of view of WTO dispute settlement, the reforms described above certainly led to better representation for the EC and have greatly increased the EC's success in the dispute settlement process.



Source: http://ec.europa.eu/dgs/legal_service/index_en.htm

¹⁰ Information in this section taken from a number of sources, including:
 ■ Emanuelle Schön-Quinliven, *Administrative Reform in the European Commission, from rhetoric to re-legitimization*, 21 June 2006, published at http://www.eu-consent.net/library/deliverables/D17_Team7_Schon2.pdf
 ■ [http://en.wikipedia.org/wiki/Directorate-General_for_Legal_Service_\(European_Commission\)](http://en.wikipedia.org/wiki/Directorate-General_for_Legal_Service_(European_Commission))
¹¹ Such information will presumably only be available in certain specific academic literature but not over the internet in publicly accessible form.

Annex Eight: Description of the Office of General Counsel at the U.S. Department of Commerce

Department of Commerce

Office of the General Counsel

Overview. The mission of the Commerce Department is to foster, serve, and promote the Nation's economic development and technological advancement. The Department fulfills this mission by: participating in the creation of national policy, promoting and assisting international trade, strengthening the international economic position of the United States, promoting domestic business policies and growth, improving the physical environment and its oceanic life, ensuring effective use and growth of the Nation's scientific and technical resources, acquiring, analyzing, and disseminating information regarding the Nation and the economy, and assisting states, communities, and individuals with economic progress.¹ The Department is a holding company, with nine entities under its umbrella that focus on one of the above tasks and an Office of the Secretary that includes the Secretary, the Deputy Secretary and a series of offices reporting to them that provide services to all of the Department.

Structure of Legal Services. The General Counsel is the chief law officer of the Department, and is the legal advisor to the Secretary, the Under Secretaries, the Assistant Secretaries, and other officers of the Department. The authority to render all legal services is delegated to the General Counsel² and all personnel actions involving legal positions³ are coordinated by the General Counsel.⁴ The OGC is the law firm for the Department and the General Counsel the lawyer/advisor for the Secretary (Minister).

The structure of the Office of the General Counsel (OGC) parallels the structure of the Department, with more than 400 attorneys and support staff in ten client (bureau/agency) offices,⁵ three offices that handle, respectively, Legislation & Regulation, Finance and Litigation and Administration for the entire Department, a Commercial Law Development office, a Law Library and an administrative office. This structure allows the OGC to provide cross-cutting legal services to the entire department through its three specialized offices and to have its other lawyers integrated but independent, sitting within the offices of the clients they serve.

Personnel and Career Path. Lawyers are covered by a special schedule under the civil service laws to allow greater freedom in hiring and promotion. Competition for good lawyers is intense, with starting lawyers in the private sector often making double the salary of the General Counsel so these modified rules help to recruit and retain good lawyers. While salary is a problem, lawyers are attracted to government service for other reasons including a belief in serving one's country, job security, a more flexible work week, excellent training and benefits and an opportunity to become involved with legal issues of national significance. The OGC focuses on improving these aspects to remain competitive and engages in extensive recruitment outreach on its own, in addition to the outreach from the DOC Human

¹ Department of Commerce, Department Organizational Order, DOO 1-1, 04-04-2005

² Some of the legal units remain within the client's organization but the General Counsel has final say as to all legal matters and has dotted line authority over these positions, which are treated as part of the OGC.

³ The exception to this rule is the hiring of patent attorney positions, which is handled by the Patent Office.

⁴ Department of Commerce, Department Organizational Order DOO 10-6,12-11-2003

⁵ Two offices work with the International Trade Administration, one handling international trade remedy issues, *e.g.*, anti-dumping, and the other handling general international law including treaties.

Resources office, including postings on targeted Web sites and on-site recruiting at law schools across the country

In the U.S. civil service system, staff can be hired at any level from within other government agencies and from outside the government. Lawyers come in to the government at a relatively high civil service rank and if their performance is excellent can move to the top rank of the ordinary civil service classification within 4-6 years. With many offices, the OGC offers a variety of options for career advancement, both as a manager and as a technical expert and the highest ranking OGC lawyers can compete for a Senior Executive Service slot with greater salary, training and bonus options. Lawyers do not generally move from the OGC to non-lawyer positions within the Department but may leave for greater opportunities in the private sector, with the specialized knowledge gained in the OGC giving them a competitive edge in the job market.

Training opportunities are offered within offices through mentoring, teams and office focused programs. The OGC offers training of interest to all lawyers in programs ranging from legal drafting and online research to law and time management. External programs are another training option as are internships in other government agencies and study fellowships.

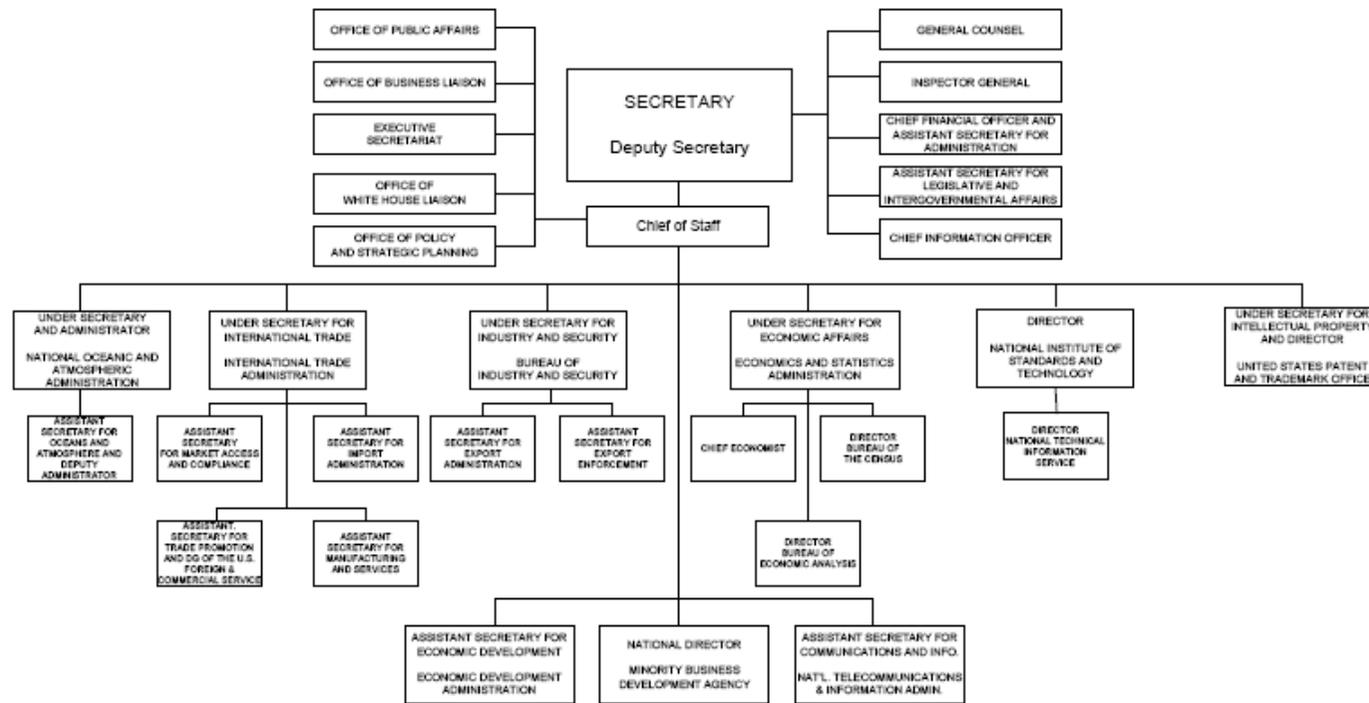
History of Changes. The current Department of Commerce was created over a number of years as independent agencies that worked on issues related to economic development and technological advancement were brought under its umbrella. During this period there was a small central legal office engaged primarily in drafting and litigation. As agencies with legal staff were added, they remained within that organizational structure, reporting to the agency and not the central law office.

There were many problems with this structure. Lawyers had little training, recruiting was difficult and there was no clear career path. Legal opinions from so many sources were inconsistent, many lawyers lacked independence, and there was a high degree of risk resulting from failure to review or poor legal work when reviews were undertaken. Clients did not want to use the central law office as it was understaffed and its staff lacked training. The central unit was seen primarily as a roadblock on the way to obtaining approval rather than an office that could provide useful services.

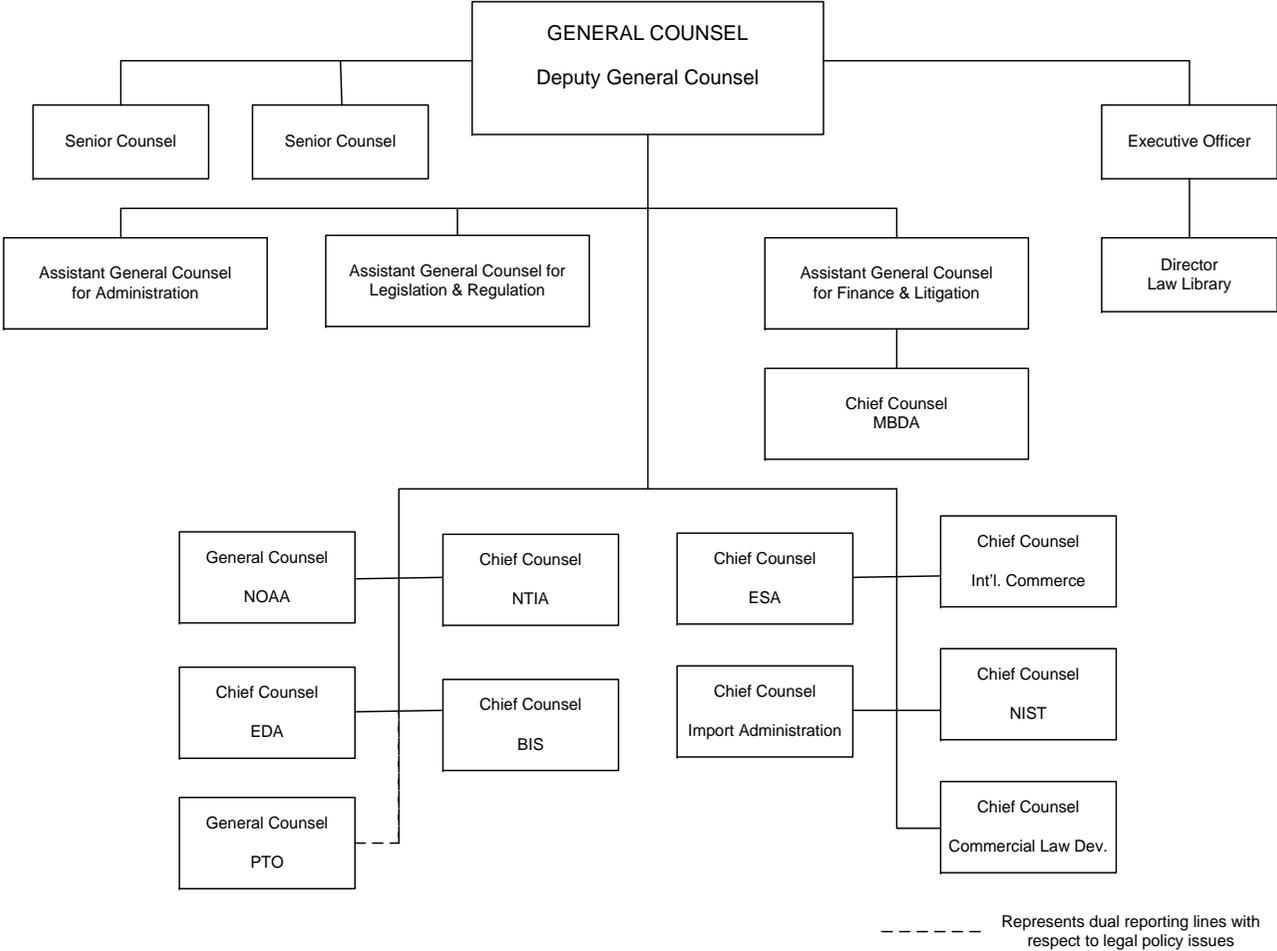
The decision was made to centralize all legal services within the OGC, with the General Counsel having the final say on all legal positions taken by the Department. Over a period of time, all lawyers became a part of OGC and the General Counsel played an increasingly important role within the Department, ranking number three within the Departmental structure and acting as a key advisor to the Secretary.

Results. With all lawyers under one roof, the increase in rank of the General Counsel and an emphasis on quality, consistency and independence to minimize risk and maximize benefit, lawyers are now involved in all aspect of the Department's work where a legal opinion is needed. The Department is better able to meet its goals and to avoid the mistakes and inconsistencies that caused problems in the past.

U.S. DEPARTMENT OF COMMERCE



OFFICE OF THE GENERAL COUNSEL



G-I-1

Annex Nine: Description of the Bank Indonesia Directorate of Legal Affairs

Bank Indonesia

Directorate of Legal Affairs

Overview. Bank Indonesia (BI) is Indonesia's independent central bank with a mission to achieve and maintain rupiah stability by maintaining monetary stability and promoting financial system stability for Indonesia's long term sustainable development.

BI has the status and position of an independent state institution with relative freedom from interference by the Government or any other external parties.¹ Bank Indonesia has a special position within the civil structure of the Republic of Indonesia so that BI can implement its role and function more effectively and efficiently. As an independent state institution, the position of Bank Indonesia is different from both other state high offices and other GOI Departments and is fully autonomous in formulating and implementing each of its tasks and authority.

BI is managed by a Board of Governors. It is not subject to MenPAN rules and has its own classification system (Levels 1-8) and rules for hiring and promoting employees. BI has four main divisions: monetary, banking, payment system, and internal management as a supporting division.

Structure of legal services. There is a centralized Directorate of Legal Affairs (DLA)² that reports to the BI Board of Governors and handles high risk matters related to strategic and operational policy and all issues that will go before the Board. There are also lawyers inside all Directorates or Bureaus (about 100 lawyers) that handle low risk matters³ and the Auditors have their own lawyers for all activities save for litigation, which is handled by the DLA.

The DLA is headed by a Director (Level 8) (equivalent to DG rank) and three Deputies (Level 7) that supervise 2-3 teams each from among eight units: a Secretariat and seven Legal Advisory Teams that handle: Banking and Enquiry Points; Legislation and Legal Research; Internal Management; Monetary & Payment; Legal Information and Publication; Litigation and Strategic Legal Problems & Legal Assistance. (See attached Directorate of Legal Affairs Organization Chart).

Personnel and career path. There are 60 lawyers within the DLA in both structural and functional positions. Staff lawyers are functional. The four management positions (Director and three Deputies) are structural. Lawyers come into the DLA at a Level 3 (Junior Legal Assistant) and can move to the highest

¹ Created by the Central Bank Act enacted in 1999.

² A Directorate at the BI is the equivalent of a Directorate General in the MOT

³

Risk Classifications

| Degree of Harm | Policy | Products | Officials in Charge |
|----------------|--|---|----------------------------------|
| High Risk | <ul style="list-style-type: none"> • Strategic Policy • Operational Policy | BI Regulations, Governor of BI Decree | The Directorate of Legal Affairs |
| Low Risk | Operation | Internal Circular Regulations, Contracts, Director of BI Decree | Directorate/Office Units |

level of advisor (Level 6) within about 15 years based on time in position and testing. While it is possible to move out of DLA, it is rare and most lawyers remain in the DLA for their entire career.

BI is seen as a top place to work within the GOI so there are few problems recruiting. The pay is higher than in government agencies and is augmented through allowances (up to 2/3 of a lawyer's income) based on DLA performance appraisals that include input from their clients.

There is a strong emphasis on the job and outside training to improve skills and provide experience. There is no formal mentoring system. The DLA relies on the specialized team structure to provide relevant experience, where junior lawyers work with more senior lawyers and weekly meetings of each team keep all staff current. Meetings for all Directorate staff are held on issues of critical importance. After 2 years of service, lawyers can pursue a Master's Degree and about 80% of DLA attorneys have Masters degrees, mostly from overseas institutions.

In addition, there are a variety of other possibilities that include short courses in country and nearby, internships in other government entities and with outside legal counsel and training provided by banks and international organizations (ILI, IMF, BIS). Knowledge is also kept up to date via a good library, their Web site, which has all BI regulations and all Indonesian law after 1999⁴ and a central database that tracks all DLA opinions and has helped greatly to maintain consistency among this large legal staff. The staff is on the same network and online discussions on legal questions help to reduce inconsistency further.

History of Changes. Coming out of the financial crisis of the 90's, many in the banking industry, and BI officials in particular, felt the need for independent, consistent and high quality legal advice to minimize risk. With the issuance of the banking regulations in 1999, independent lawyers were needed to opine on how these new rules should be interpreted. In 2004, these views culminated in the change of the Legal Bureau into a Directorate, thus greatly increasing its power and influence. The then Legal Bureau played a major role in upgrading the status of the unit. To achieve this change, the Bureau had to present their argument to the Board of Governors for approval, which emphasized the role of lawyers in reducing the risk to BI and the need for an independent legal voice.

Changes are still in process, with another request expected to the Board before the end of 2008. One of the issues will be the problem of the management (structural) job positions, which are totally management focused and do not provide for these senior officials to give legal advice.

Results. The changes have elevated the status and role of the DLA lawyers within BI, involving them at the table as all critical decisions are being discussed and have resulted in a track record of high quality legal opinions that reduce risk to BI.

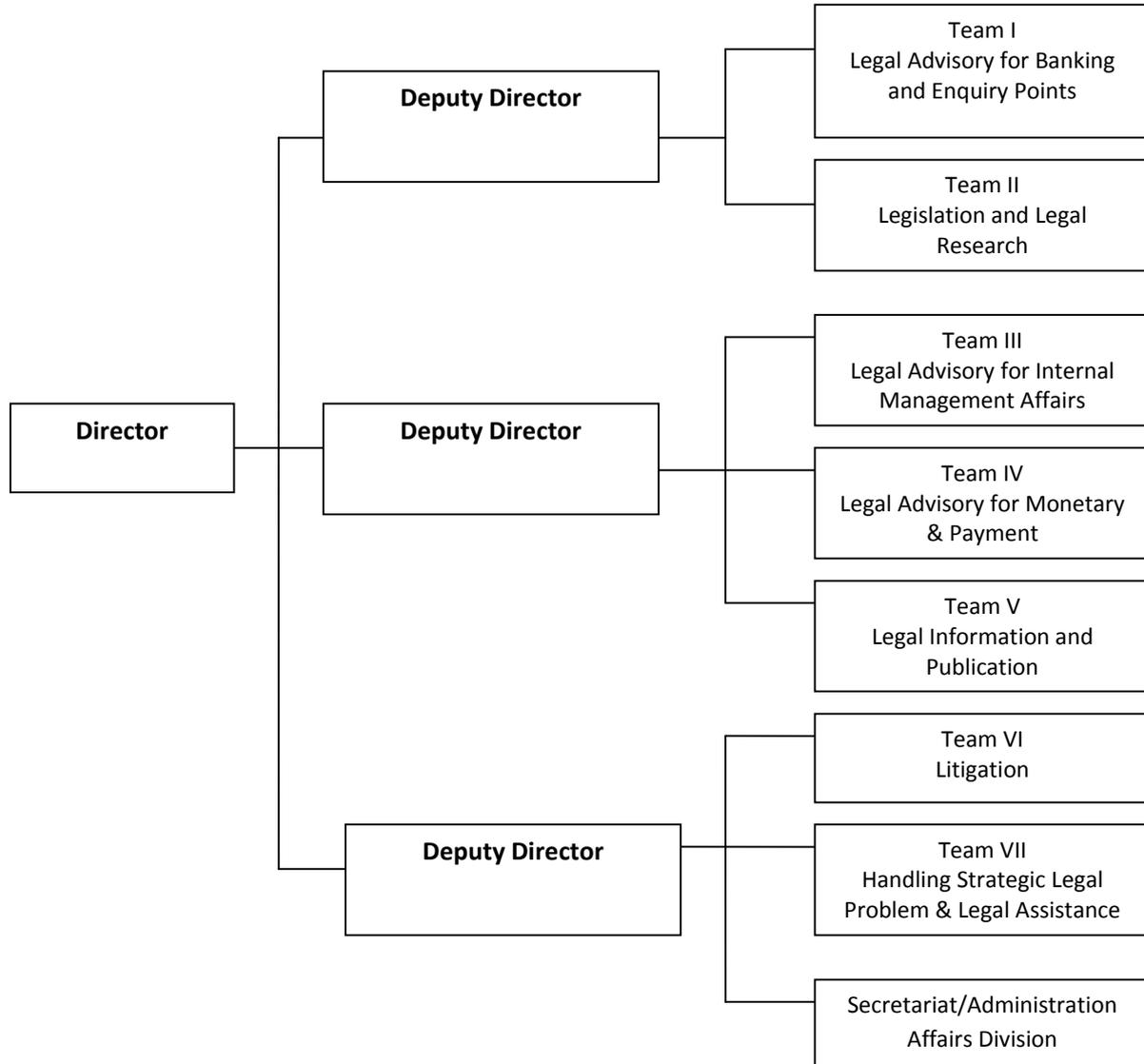
⁴ NB that these laws are publicly available through the Web site and can be used by MOT lawyers for research.

Structure of the Central Bank

1. Directorate of Economic Research and Monetary Policy
2. Directorate of Economic and Monetary Statistic
3. Directorate of Monetary Management
4. Directorate of Reserve Management
5. Directorate of International Affairs
6. Bureau of Credit
7. Directorate of Banking Research and Regulation
8. Directorate of Banking Licensing and Banking Information
9. Directorate of Bank Supervision 1
10. Directorate of Bank Supervision 2
11. Directorate of Bank Supervision 3
12. Directorate of Rural Bank Supervision
13. Directorate of Shariah Banking
14. Special Unit for Banking Investigation
15. Directorate of Currency Circulation
16. Directorate of Accounting and Payment System
17. Directorate of Logistic and Security
18. Directorate of Information Technology
19. Directorate of Human Resource
20. Directorate of Internal Affairs
21. Directorate of Internal Audit
22. Center for Education and Central Banking Studies
23. Office of the Governor
24. Office of the Secretarial Affairs
25. Special Unit for Information Management
26. Special Unit for Bank Indonesia Museum
27. Special Unit for Asset Settlement

Directorate of Legal Affairs Organization Chart

Director: Level 8
Deputy Director: Level 7
Team Leader: Level 6



Annex Ten: Description of the Ministry of Finance Legal Bureau

Ministry of Finance

Legal Bureaus

Overview. The Ministry of Finance assists the President in managing the state finances and wealth.¹ The primary functions of the Ministry of Finance² are formulating, governing, implementing, monitoring and reporting national policies, implementing policies and technical policies in the field of finance and state assets. The Department is divided into a Secretary General, seven Directorate Generals, an Inspectorate General, three independent institutions and centers as well as five expert staff that report directly to the Minister of Finance.³

Structure of legal services. The Legal Bureau and the Legal Assistance Bureau (Legal Units) are two of eight bureaus that report to the Secretary General. The Ministry also has lawyers in most, but not all, of its Bureaus that report to the Bureau DG. Each of the Legal Units reports to an Echelon II lawyer, with five sub-units in the Legal Bureau and two sub-units in the Legal Assistance Bureau each headed by Echelon III lawyers.

MOF is a holding company and the Legal Bureau is organized to serve the client needs of its primary operating units. The Legal Bureau handles all non-litigation legal matters and each division's substantive responsibilities dovetail with the client office served. The Legal Bureau handles cross bureau problems and issues of higher risk and importance that have an impact on the Ministry as a whole. If there are issues of great importance that arise at the Bureau level, the Legal Bureau will be called in to assist.

Personnel and Career Path. There are 26 lawyers in the Legal Bureau and 22 lawyers in the Legal Assistance Bureau. All lawyers in the Legal Bureau are currently classified as structural.

The MOF lawyer career path depends upon whether the lawyer works at the Ministry or Bureau level or for a DG in a bureau. Legal Bureau lawyers follow a more traditional career path and most remain within the Legal Bureau for their entire careers, leaving only after they have reached Echelon II level and have enough time at that level to move to an Echelon I job elsewhere in the Ministry. Bureau lawyers move in and out of the legal function and also are required to serve in regional offices outside of Jakarta. DG lawyers and Legal Bureau lawyers do not switch from one career path to the other.

The MOF personnel office is responsible for the hiring of all staff. The Legal Bureau used to recruit on its own but that has not happened for 10 or more years. The MOF has had success in recruiting high-quality law graduates. The Legal Bureau has had some problems with internal

¹ Presidential Decree No 102/2001.

² Ministry of Finance Decree No.131/PMK.01/2006 as amended by the Ministry of Finance Decree No.54/PMK.01/2007

³ See following organizational chart of Bureaus reporting to the SecGen of the MOF.

competition for new MOF recruits as DG offices as are sometimes seen as a more exciting place for a career, but the Legal Bureau is known for having high quality lawyers that can specialize so for some this is more appealing. Also, Legal Bureau lawyers do not staff regional offices and there are many who want to remain in Jakarta.

Mentoring, outside courses and advanced degrees are all part of legal training in the Legal Bureau. Outside courses include those provided by their outside counsel, courses in other GOI Ministries such as the drafting course taught by MenPAN and MOF internal courses such as accounting. A substantial percentage, but less than 50% of the Legal Bureau lawyers, have Masters Degrees. Legal Bureau lawyers compete with staff from other areas of the Ministry for coveted study abroad slots.

History of Changes. MOF law offices are going through a transition as part of the overall Ministry and GOI reforms. The MOF is one of the leaders of the reform movement so the Legal Bureau does not have to lead the efforts on its own.

Historically, the centralized Legal Bureau had three sections assigned to client offices and two sections that handled litigation. Recently, as part of the reform plan, the lawyers that handle litigation were transferred to a separate Legal Assistance Bureau that reports to the Secretary General and has two sections, general litigation and litigation relating to the financial crisis (IBRA).

The change was made because the volume of legal work was increasing overall and litigation in particular was growing and swamping the resources of the Legal Bureau. Under the new structure, as a Bureau of its own, Legal Assistance can specialize further and hire additional lawyers to handle its work and the Legal Bureau retains its original five section structure, using the two slots vacated by the litigators to split the work of the Bureau to permit further client and knowledge specialization. Because of the Ministry's culture, which values independent legal input, lawyers play a key role even though the head of the Bureau remained an Echelon II rather than moving to an Echelon I as in the other GOI entities we reviewed.

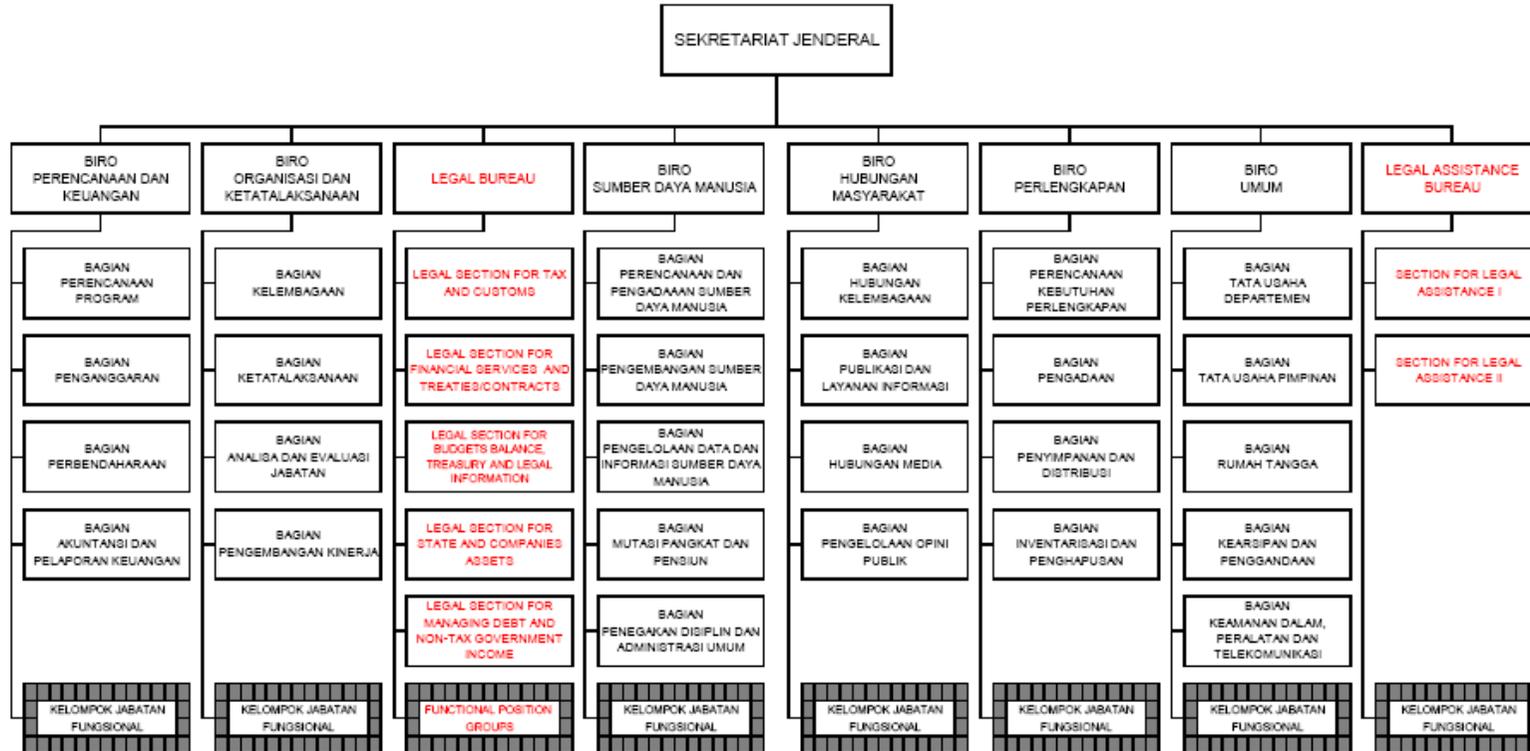
The original changes to the Legal Bureau, prior to even those described above, were made in reaction to the financial crisis and resulted in a greater reliance on lawyers within the Ministry. Lawyers are involved from the beginning in the decision making process and the culture is such that the legal opinions carry great weight. The echelon level of the Legal Bureau head and of the lawyers is not critical as there is a top down insistence by MOF management on the role of independent, consistent and high quality legal opinions. The Legal Bureau is supported also by the Ministry's regulations that detail the use and authority of the Legal Bureau.

As noted above, the legal reforms are part of a Ministry-wide plan handled by the Ministry's Reform Committee. While some of the desired changes for the Legal Bureau are still awaiting approval by MenPAN, like the movement of certain lawyers, e.g. drafters, to functional

positions, others have been phased in over time and an interim structure has been created that has allowed the division of the original Legal Bureau into two offices. Additional Ministry-wide reforms such as use of a balanced scorecard, new job descriptions with key performance indicators and development of strategy maps are underway.

Results. Reforms were possible because of the Ministry's structure as a holding company, regulations and culture, all of which support the role of lawyers. The Legal Bureau is able to maintain high quality because of their specialization and expertise, which are in turn supported by the Legal Bureau's career path.

MINISTRY OF FINANCE
BAGAN ORGANISASI
SEKRETARIAT JENDERAL



Annex Eleven: Description of the MOFA Directorate General for Legal Affairs and International Treaties

Ministry of Foreign Affairs

Directorate General for Legal Affairs and International Treaties

Overview. The primary function of the Department of Foreign Affairs, as stated in a 2005 Presidential decree,¹ is to formulate and administer national policy, realization policy and technical policy in the area of politics and foreign relations. The Department is divided into seven Directorates, offices of the Inspector General and Secretary General, a research agency and a consular office, all of which report to the Minister of Foreign Affairs.

Structure of legal services. All lawyers are centralized in three divisions that report to the Directorate General of Legal Affairs and International Treaties (DG-LAIT) that in turn reports to the Minister. The DG-LAIT serves as the legal advisor to the Minister and views itself as a solid team of lawyers practicing public international law. The DG-LAIT serves as Counsel as well to the various Bureaus, except for the IG office, although the IG in certain cases coordinates with the DG of Legal Affairs and International Treaties. The DG-LAIT is organized into a Secretariat and three Directorates. The Director General of Legal Affairs and International Treaties is an Echelon I, with the three Sub Directorate heads at Echelon II.

Personnel and career path. There are more than 42 lawyers in the DG-LAIT, 75% of them with Master's Degrees. All lawyers are classified in structural positions and are Foreign Service Officers, which means that they will move in and out of the DG-LAIT throughout their career to take overseas assignments. Law graduates that want initially to follow a path as a lawyer will spend their first three years in the DG-LAIT and will then take an overseas assignment. Upon their return they will be given a choice between following a subject matter interest or going back to work in the DG-LAIT.

There are established recruiting systems for Foreign Service Officers with 60,000 candidates for 90 slots each year. Of those chosen, about 10% will be lawyers. The DG-LAIT takes an active role in recruiting at the top Indonesian law schools, requesting a list of the 10 highest ranking students at each university so they can go after the best.

Substantial training opportunities are offered, including the chance to obtain a Masters degree and to intern in other agencies and outside law firms.

History of Changes. The DG-LAIT reorganized in 2006. All lawyers were centralized in the Directorate General on Legal Affairs and International Treaties, with the highest ranking lawyer serving as an *Echelon I* DG thereby increasing the authority and status of the office. The primary reason given for reorganization was to achieve consistency by placing all lawyers under one roof for better coordination of services and to ensure that all lawyers will have the same ideology and perspective and speak with one voice. Another impetus behind the MoFA changes was the ratification of WTO and the resulting problems with implementation of the changes required, which pointed out the need for highly qualified and independent lawyers.

¹ Article 31, in Article 32 Presidential Regulation No. 9 Year 2005

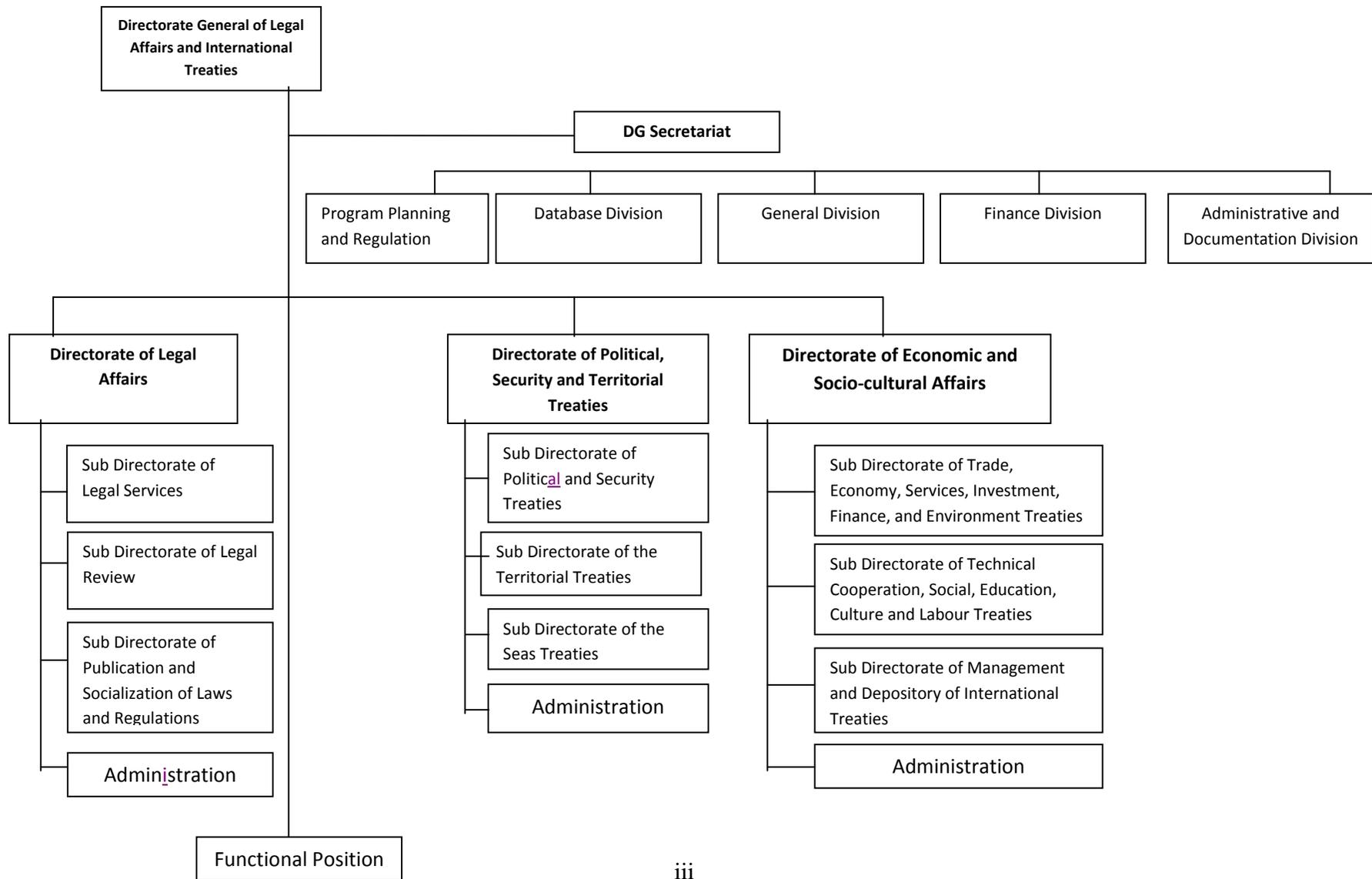
The original structure was a Legal Bureau under the Secretary General of MoFA with additional lawyers in DG offices, a similar structure to that found in other ministries that have not yet reformed. The old structure was not efficient nor coordinated and resulted in the adoption of conflicting negotiation positions, which became an institutional problem for MoFA.

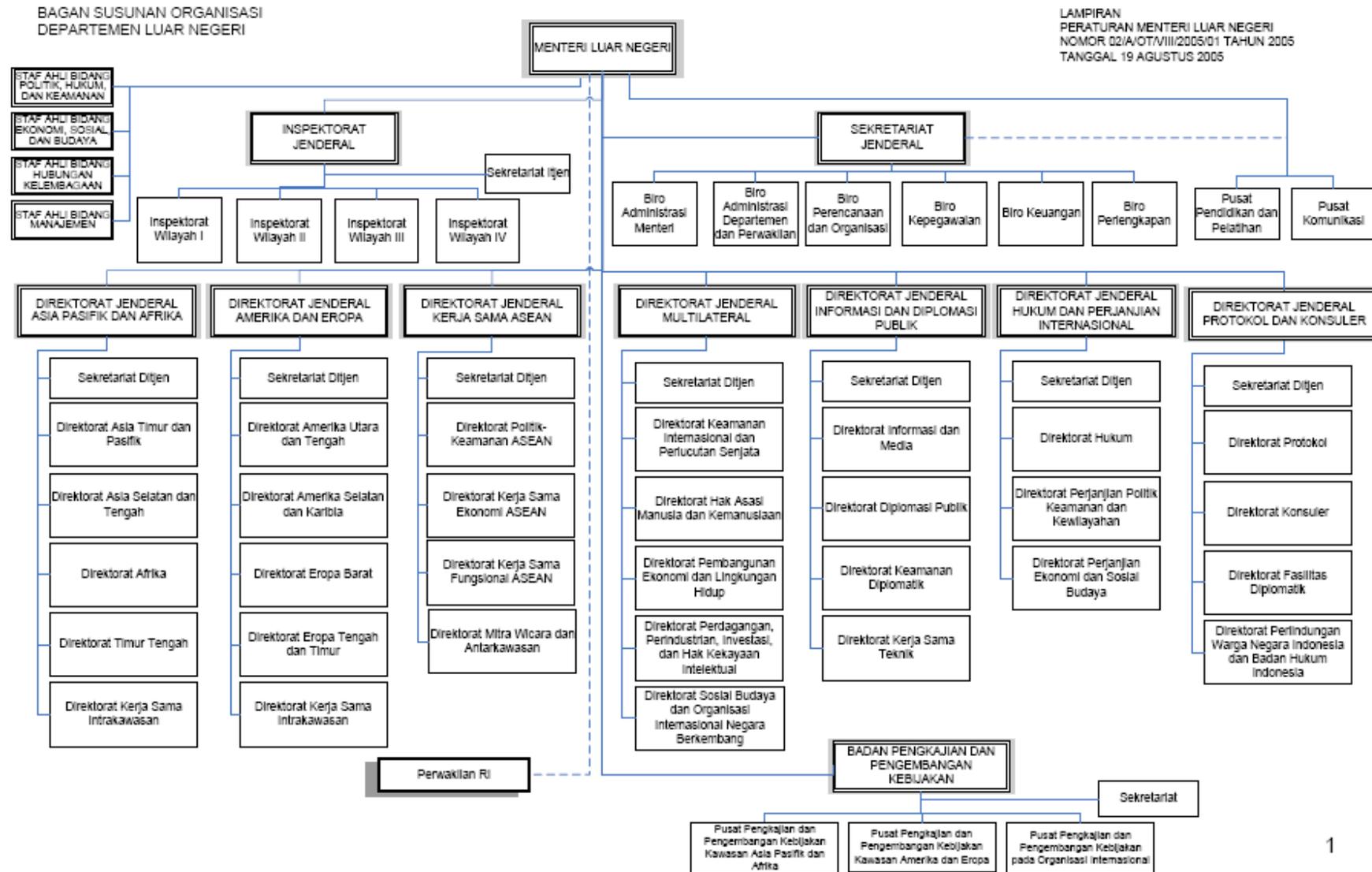
The new structure was proposed to and approved by MenPAN. In the first round of discussion, MenPAN discounted the role of lawyers stating that they were merely advisors to those that act and therefore the Legal Bureau should not be elevated to Echelon I status. The Legal Bureau countered, using what they described to us as the MOT argument, that the adoption of the WTO and other international treaties is having a major impact on Indonesia and its laws and lawyers play a key role in helping the GOI understand how these agreements will impact the country before they are adopted. They emphasized their role as the Counsel to the Minister and as international lawyers for other GOI ministries, taking a lead in negotiations as well as supporting other ministries in the negotiation of bilateral, regional or multilateral agreements.

In addition to the changes described above, MoFA under a 2005 ministry decree, has established a policy that also covers the DG-LAIT emphasizing three areas for change:

- Management organization
- Enhance skills through better recruitment and training
- Physical changes.

Results. Because of these changes, the DG of Legal Affairs and International Treaties is now in a position to provide higher quality, more specialized service to other DGs. With all legal services under one roof, better coordination is possible resulting in greater efficiency and consistency.





Annex Twelve: Legal Needs of the Ministry

What are the legal needs of the Ministry?

- Drafting of decrees, regulations, trade agreements and contracts.
- Evaluating existing regulations and agreements for conflicts and best practices.
- Litigation in Indonesian courts and WTO dispute settlement.
- Consulting on substantive legal issues.

The Ministry needs specialized legal consultants with knowledge and experience in the substantive areas handled by the various directorates.

- Administrative
 - Labor/personnel
 - Procurement
 - Internal regulations
 - Ethics
 - Contracts/MOUs
- Domestic Trade
 - Business registration and regulations
 - Consumer protection
 - Market development and distribution
 - Metrology
 - Goods and services supervision
- Foreign Trade
 - Export and import facilitation
 - Import licensing
 - Export controls
 - Industrial and mining exports
 - Agricultural and forest exports
- International Trade and Cooperation / KADI and KPPI
 - Bilateral, regional and multilateral agreements
 - Trade remedies--antidumping, subsidies and safeguards (domestic and foreign)
- TREDATA
 - Contracts
 - Administrative disputes
 - Legal and regulatory impact assessment

Annex Thirteen: Secretary General Decree Regarding Issuance of Regulations

| | | |
|---|---|--|
|  | | |
| DEPARTEMEN PERDAGANGAN REPUBLIK INDONESIA | | |
| SEKRETARIAT JENDERAL | | |
| <small>Jalan M. I. Ridwan Rais No. 5 Jakarta 10110 Telp. 021-3841961, 3858171</small> | | |
| Nomor | : 911/SJ-DAG/10/2007. | Jakarta, 31 Oktober 2007 |
| Lampiran | : ---- | |
| Perihal | : Prosedur Penyusunan Rancangan Peraturan Perundang-undangan | Kepada Yth. 1. Para Pejabat Eselon I 2. Ses Itjen 3. Para Ses Ditjen 4. Para Ses Badan 5. Para Kepala Biro dan Pusat di Lingkungan Departemen Perdagangan |
| <u>Jakarta</u> | | |
| <p>Dalam rangka mewujudkan tertib prosedur dalam perumusan dan penyusunan peraturan perundang-undangan di lingkungan Departemen Perdagangan, serta untuk meminimalisir kemungkinan terjadinya cacat hukum suatu produk hukum dari masing-masing unit, dengan ini kami sampaikan hal-hal sebagai berikut :</p> | | |
| <ol style="list-style-type: none">1. Setiap Rancangan Peraturan/Keputusan Menteri Perdagangan ataupun peraturan perundang-undangan lainnya yang disusun atas prakarsa Departemen Perdagangan, sejak awal penyusunannya sudah memperhatikan Undang-Undang Nomor 10 Tahun 2004 tentang Pembentukan Peraturan Perundang-undangan, agar <i>legal drafting</i> konsep peraturan sudah sesuai dengan ketentuan yang ada.2. Rancangan Peraturan/Keputusan Menteri Perdagangan atau peraturan perundang-undangan lainnya yang telah disusun oleh Unit Eselon II dalam pembahasan intern sudah melibatkan bagian hukum masing-masing unit Eselon I dan Biro Hukum Departemen Perdagangan.3. Pembahasan Rancangan Peraturan/Keputusan, apabila substansinya mengatur hal-hal yang terkait dengan pelaku usaha, agar dilibatkan dalam pembahasan termasuk bersama pemangku kepentingan/unit/instansi teknis terkait lainnya. Hal ini sesuai dengan arahan Menteri Perdagangan dan sebagai langkah untuk menerima masukan yang relevan agar materi/substansi yang akan diatur lebih lengkap. Selain itu juga sebagai upaya untuk membahas kemungkinan terdapat rumusan yang potensial menimbulkan sengketa/masalah, baik antara pelaku usaha dengan pelaku usaha, pelaku usaha dengan pemerintah maupun pemerintah dengan pemerintah.4. Apabila Rancangan Peraturan/Keputusan tersebut telah dianggap selesai, baik dari segi substansi maupun <i>legal drafting</i>, maka Unit Eselon II menyampaikan pokok-pokok materi pengaturan dalam | | |

Rancangan Peraturan/Keputusan kepada Sekretaris Jenderal cq. Biro Hukum dan rancangan Peraturan/Keputusan tersebut belum menggunakan kop Menteri.

5. Biro Hukum secara intern akan melakukan pembahasan kembali untuk melihat dari aspek hukum serta aspek *legal drafting*, meskipun Biro Hukum telah terlibat dalam pembahasan awal. Dalam jangka waktu minimal 4 (empat) hari kerja konsep tersebut akan disampaikan kembali ke unit Eselon II untuk :
 - a. melakukan perbaikan terhadap Rancangan Peraturan/Keputusan Menteri sesuai dengan hasil koreksi Biro Hukum; atau
 - b. apabila Rancangan Peraturan/Keputusan Menteri ternyata telah dianggap benar, maka agar dipersiapkan dengan kertas kop Menteri dan dibubuhi paraf Pimpinan Eselon II pemrakarsa terkait pada setiap lembar naskah. Sedangkan Pimpinan unit Eselon I membubuhkan paraf pada samping kanan tanda tangan Menteri, disertai lembar kontrol yang telah diparaf oleh konseptor, pemeriksa (Eselon II pemrakarsa) dan Eselon I yang bersangkutan (contoh terlampir).
6. Rancangan Peraturan/Keputusan Menteri tersebut selanjutnya disampaikan ke Sekretaris Jenderal oleh Pimpinan Eselon I yang bersangkutan dan akan diproses untuk ditandatangani oleh Menteri Perdagangan oleh Biro Hukum.
7. Peraturan/Keputusan Menteri yang telah ditandatangani akan dipersiapkan Salinan Peraturan/Keputusan sesuai dengan aslinya yang ditandatangani oleh Kepala Biro Hukum, untuk diteruskan ke Unit Eselon II pemrakarsa.
8. Lebih lanjut perlu dinformasikan bahwa substansi pengaturan dari peraturan perundang-undangan tersebut sepenuhnya merupakan tanggung jawab unit Eselon I pemrakarsa, sedangkan Biro Hukum bertugas meninjau dari segi atau aspek hukum dan *legal drafting*.
9. Penyusunan rancangan peraturan perundang-undangan lain dalam bentuk Peraturan Presiden, Peraturan Pemerintah, dan Undang-Undang tetap berpedoman pada Undang-Undang Nomor 10 Tahun 2004.

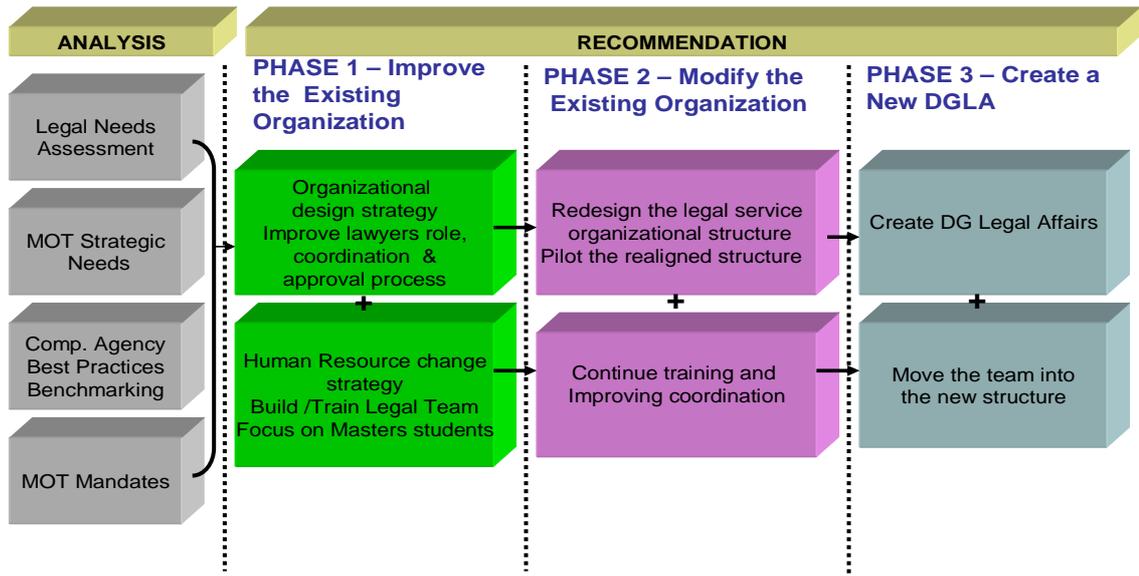
Demikian untuk menjadi maklum dan atas perhatian serta kerjasamanya kami ucapkan terima kasih.


Sekretaris Jenderal,
HATANTO REKSODIPOETRO

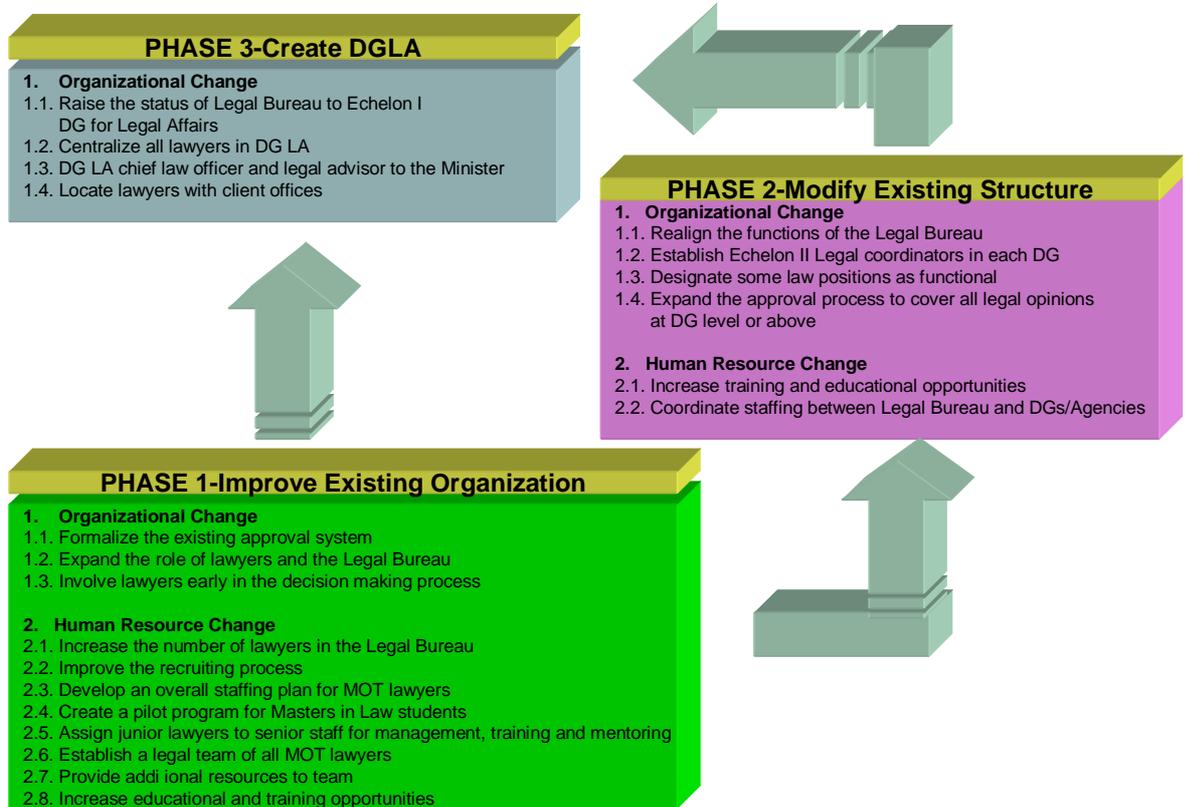
Tembusan :
Menteri Perdagangan (sebagai laporan).

Annex Fourteen: Roadmap, Flow Chart and Action Steps for Implementation

ROADMAP FOR IMPLEMENTATION (OVERVIEW)



ROADMAP FOR IMPLEMENTATION (THE FLOW)



(SEE THE ATTACHMENT FOR THE ACTION STEPS)

| Recommendation | Action | Responsibility | 2008-2010 | | | | | | | | | | | Comments | |
|---|---|---|-----------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|----------|---|
| | | | Q2 08 | Q3 08 | Q4 08 | Q1 09 | Q2 09 | Q3 09 | Q4 09 | Q1 10 | Q2 10 | Q3 10 | Q4 10 | | |
| PHASE II | | | | | | | | | | | | | | | |
| Organizational Changes | | | | | | | | | | | | | | | |
| Realign the functions of the Legal Bureau | Create client counterpart & specialized task forces - See Annex Sixteen for org chart | BPO & Legal Bureau with approval from SecGen/Minister | | | | X | | | | | | | | | |
| | Move Legal Bureau lawyers working on domestic and foreign trade issues to sit with their client offices | Legal Bureau | | | | | X | | | | | | | | |
| Establish Echelon II legal coordinators | Establish Echelon II legal coordinators in DG/Agency - See Annex Seventeen for org chart | BPO & Sec Gen | | | | | | X | | | | | | | Coordinators act as liaisons with Legal Bureau to plan legal work. |
| Designate some law positions as functional | Decide which positions, develop credit points & job descriptions and pilot | BPO & Sec Gen | | | X | X | X | X | X | X | | | | | Petition MenPan after 1 year experience |
| Expand approval process to policy & legal issues | SecGen memo | Legal Bureau & Sec Gen | | | | X | | | | | | | | | |
| Human Resource Changes | | | | | | | | | | | | | | | |
| Coordinate staffing between Legal Bureau and DG/Agency | Decree from SecGen to be implemented by BPO | BPO & Sec Gen | | | | X | X | X | X | | | | | | To prepare for DGLA, focus on how staff would work together in unified law office. |
| Increase training & educational opportunities | Establish internships at other Ministries & law firms | Legal Bureau & BPO | | | | X | X | X | X | | | | | | |
| PHASE III | | | | | | | | | | | | | | | |
| Organizational Changes | | | | | | | | | | | | | | | |
| Raise the status of the Legal Bureau to DG. | Petition MenPAN | SecGen & BPO & MenPan | X | X | X | X | X | X | X | X | | | | | Need approval from MenPAN, begin conversations in Phase I, submit documents in Phase II, start in Phase III |
| | Create a Directorate General for Legal Affairs (DG-LA) - See Annex Eighteen for org chart | | | | | | | | | X | X | | | | |
| Give DG of LA power as chief law officer | Need opinion from Legal Bureau & then draft of Ministerial decree | Legal Bureau & SecGen | | | | | | | | | X | | | | |
| Centralize all MOT lawyers into this new Directorate General | SecGen decree | BPO & Sec Gen | | | | | | | | | X | | | | |
| Move DG-LA lawyers to sit with their client offices, where applicable | DGLA decree | SecGen/DGLA | | | | | | | | | X | | | | Lawyers for DG-DT, DG-FT and DG-ITC should be moved to sit with their operational units. |

Annex Fifteen: Number of Legal Bureau Lawyers Needed

1. Proposed Team Structure and Estimated Legal Staffing for Foreign Trade Law Division

| Foreign Trade Law Division | Current Lawyers | Total Lawyers Needed |
|-----------------------------------|------------------------|-----------------------------|
| International Trade Cooperation | 2 | 7 |
| Foreign Trade/ Import-Export | 3 | 8 |
| Trade Remedies | 0 | 8 |
| International Commercial Law | 0 | 4 |
| Head of Division | 0 | 1 |
| Total | 5 | 28 |

2. Proposed Team Structure and Estimated Legal Staffing for Domestic Trade Law Division

| Domestic Trade Law Division | Current Lawyers | Total Lawyers Needed |
|--|-------------------------------|-----------------------------|
| Business Development and Company Registration | 1 | 5 |
| Market Development and Distribution | 2 | 8 |
| Commodity Futures, Warehouse Receipts, and Regulatory Laws (COFTRA issues) | 0 (excl. COFTRA Legal Bureau) | 3 |
| Metrology and Standards | 1 | 2 |
| Distributed Goods and Service Supervision /Consumer Protection | 1 | 10 |
| Head of Division | 1 | 1 |
| Total | 6 | 29 |

3. Proposed Team Structure and Estimated Legal Staffing for Litigation Division

| Litigation Division | Current Lawyers | Total Lawyers Needed |
|----------------------------|------------------------|-----------------------------|
| Domestic Litigation | 3 | 8 |
| International Litigation | 1 | 4 |
| Head of Division | 1 | 1 |
| Total | 5 | 13 |

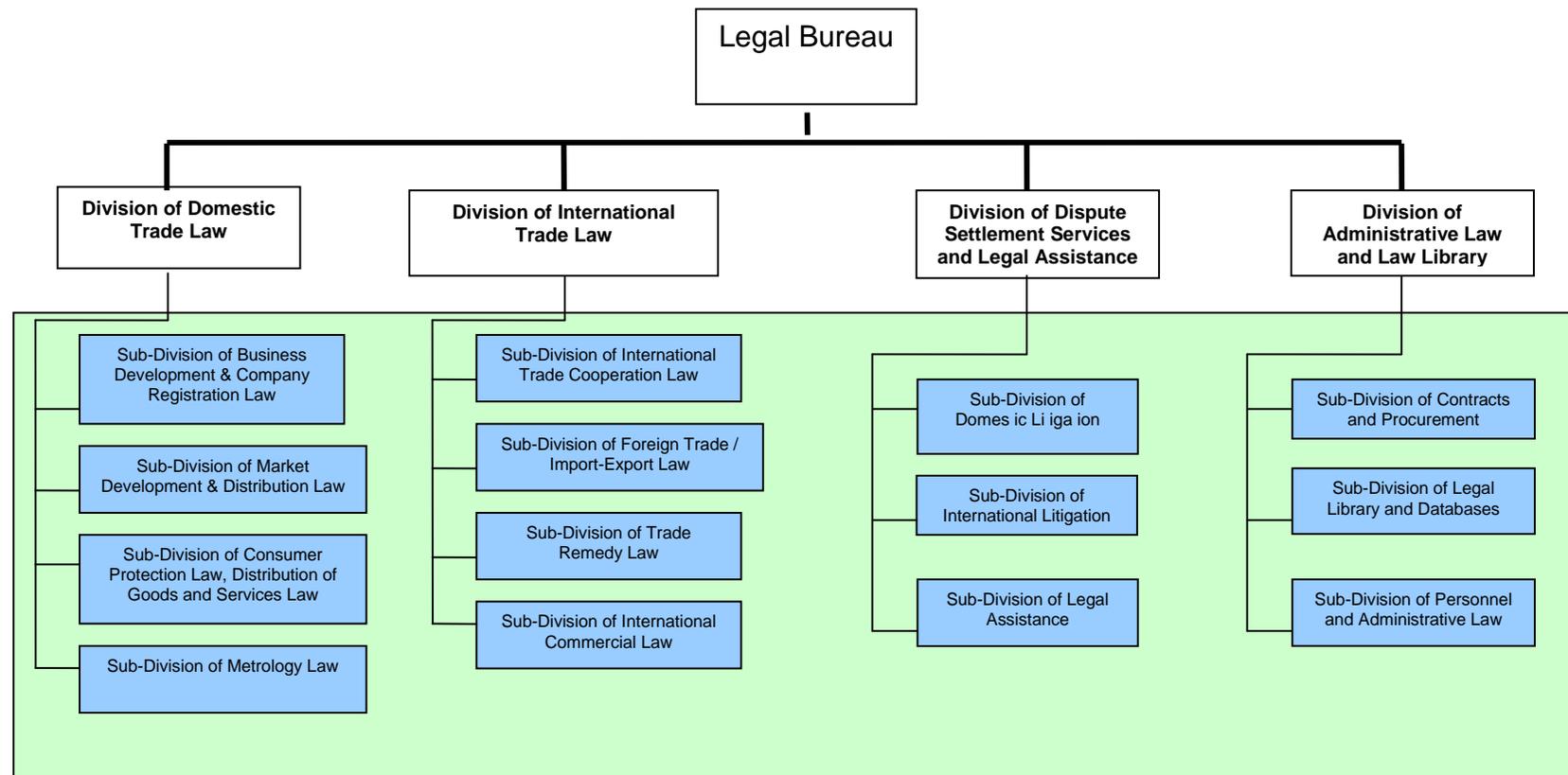
4. Proposed Team Structure and Estimated Legal Staffing for Documentation Division

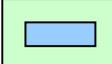
| Documentation / Admin Law Division | Current Lawyers | Total Lawyers Needed |
|---|------------------------|-----------------------------|
| Administrative law | 1 | 2 |
| Procurement law | 0 | 2 |
| Law Librarian | 2 | 2 |
| Head of Division | 1 | 1 |
| Total | 4 | 7 |

5. Legal Bureau: Summary of Overall Legal Personnel Needs

| Legal Bureau Division | Current Lawyers | Total Lawyers Needed |
|--|------------------------|-----------------------------|
| Foreign Trade Law | 5 | 28 |
| Domestic Trade Law (excluding COFTRA Legal Bureau) | 6 | 29 |
| Litigation | 5 | 13 |
| Documentation/Admin Law | 4 | 7 |
| Head of Legal Bureau | 1 | 1 |
| Total | 21 | 78 |

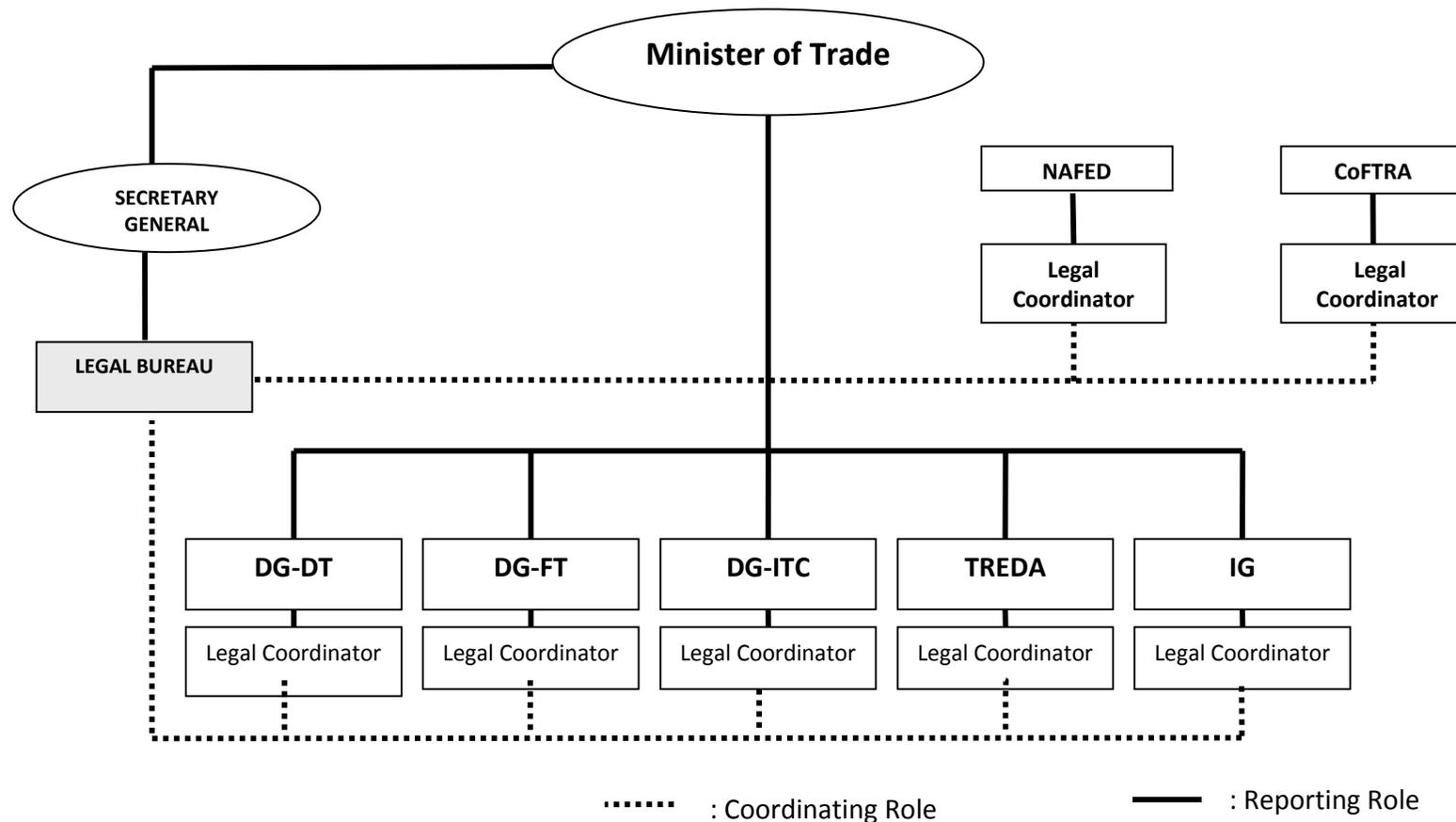
Annex Sixteen: Proposed Organizational Structure of the Legal Bureau of the Ministry of Trade



 Proposal changes the name of each Division to clarify that focus is not only on analysis and drafting, but all legal work. It adds two new sub-divisions to Domestic Trade and one new sub-division to International Trade. All sub-divisions would correspond directly to their clients in the DGs.

Annex Seventeen: Proposed Organizational Structure of Coordination of Legal Affairs in the Ministry of Trade

Organizational Chart of Coordination of Legal Affairs in the Ministry



Annex Eighteen: Proposed Organizational Chart of Directorate General for Legal Affairs

