

SEPARATING THE [OFFICES OF THE] ATTORNEY GENERAL AND THE PUBLIC PROSECUTOR

JOSHUA WU KAI-MING

LL.B (*HONS*), LONDON, CLP

FUSED

1. BRUNEI

2. HONG KONG

3. SINGAPORE

4. SRI LANKA

BRUNEI

ARTICLE 81(2) & (3) OF THE CONSTITUTION OF BRUNEI DARUSSALAM

“(2) THE ATTORNEY GENERAL SHALL ADVISE ON ALL LEGAL MATTERS CONNECTED WITH THE AFFAIRS OF BRUNEI DARUSSALAM REFERRED TO HIM BY HIS MAJESTY THE SULTAN AND YANG DI-PERTUAN OR BY THE GOVERNMENT.

(3) THE ATTORNEY GENERAL SHALL HAVE POWER EXERCISABLE AT HIS DISCRETION TO INSTITUTE, CONDUCT OR DISCONTINUE ANY PROCEEDINGS FOR AN OFFENCE OTHER THAN ...”

**ATTORNEY GENERAL
THE PRINCIPAL
LEGAL ADVISOR TO
THE GOVERNMENT**

**ATTORNEY GENERAL
IN CHARGE OF
CRIMINAL
PROSECUTIONS**

HONG KONG*

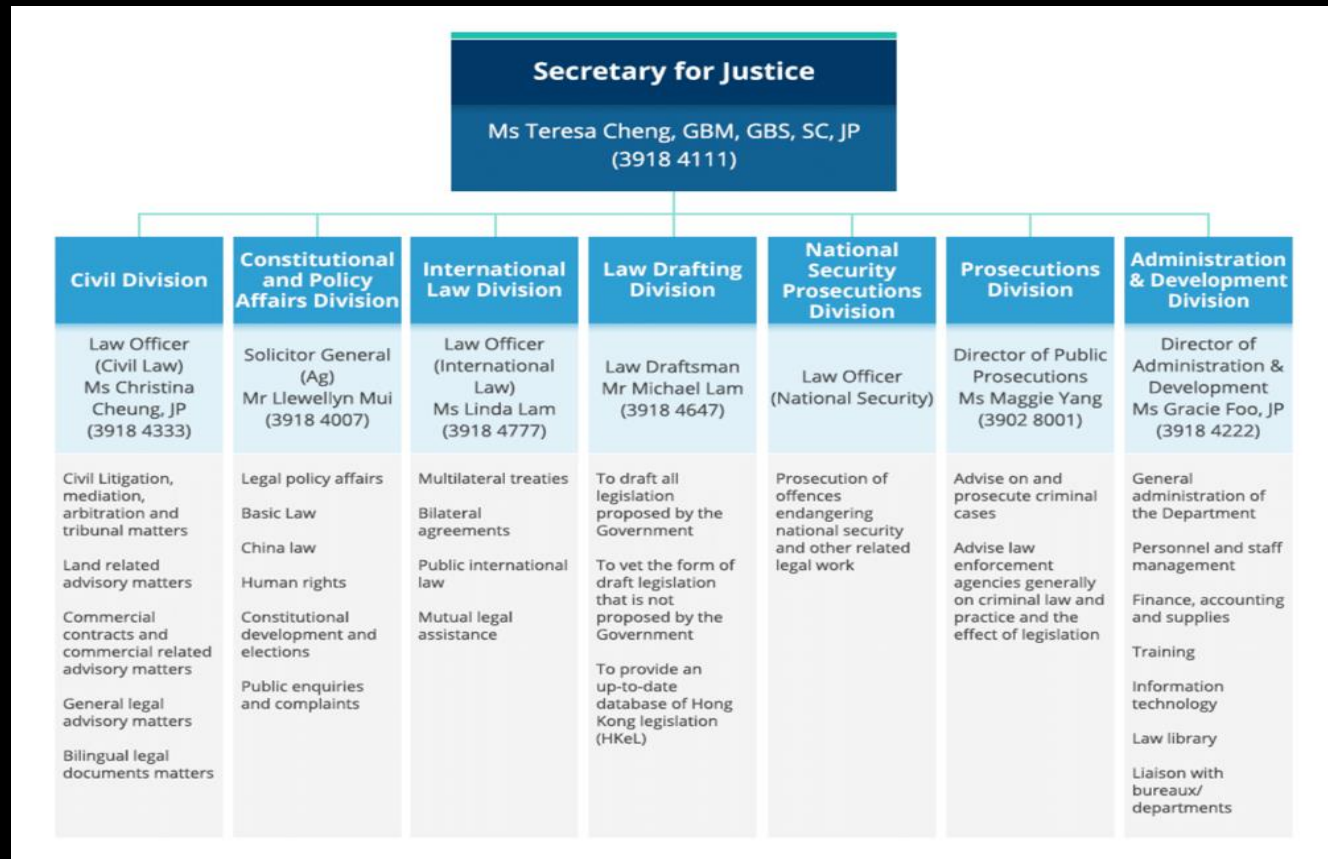
ARTICLE 63 OF THE BASIC LAW OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA

“THE DEPARTMENT OF JUSTICE OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION SHALL CONTROL CRIMINAL PROSECUTIONS, FREE FROM ANY INTERFERENCE.”

DEPARTMENT OF
JUSTICE IN CHARGE
OF CRIMINAL
PROSECUTION

HONG KONG*

DEPARTMENT OF JUSTICE'S WEBSITE



PROSECUTIONS DIVISION, HEADED BY DIRECTOR OF PUBLIC PROSECUTIONS, PROSECUTE TRIALS AND APPEALS ON BEHALF OF THE HKSAR

HONG KONG*

IN RE C (A BANKRUPT) [2006] 4 HKC 582 (CA) AT P 590

“THE PROSECUTORIAL INDEPENDENCE OF THE SECRETARY FOR JUSTICE IS A LINCHPIN OF THE RULE OF LAW ... ‘THE DECISION WHETHER ANY CITIZEN SHOULD BE PROSECUTED OR WHETHER ANY PROSECUTION SHOULD BE DISCONTINUED, SHOULD BE A MATTER FOR THE PROSECUTING AUTHORITIES TO DECIDE ON THE MERITS OF THE CASE WITHOUT POLITICAL OR OTHER PRESSURE.’ [SIR ROBERT FINLAY, 1903] ... THESE STATEMENTS ... REFLECT ACCEPTED AND APPLIED FUNDAMENTAL PRINCIPLE IN THIS JURISDICTION THE CONTINUATION OF WHICH IS PRESERVED BY THE ENTIRE THEME OF THE BASIC LAW AS WELL, SPECIFICALLY, AS BY ARTICLE 63.”

SECRETARY FOR
JUSTICE MAY
WITHDRAW CASE BY
ENTERING NOLLE
PROSEQUI

SINGAPORE

ARTICLE 35 OF THE CONSTITUTION OF THE REPUBLIC OF SINGAPORE

“(7) IT SHALL BE THE DUTY OF THE ATTORNEY-GENERAL TO ADVISE THE GOVERNMENT UPON SUCH LEGAL MATTERS AND TO PERFORM SUCH OTHER DUTIES OF A LEGAL CHARACTER, AS MAY FROM TIME TO TIME BE REFERRED OR ASSIGNED TO HIM BY THE PRESIDENT OR THE CABINET AND TO DISCHARGE THE FUNCTIONS CONFERRED ON HIM BY OR UNDER THIS CONSTITUTION OR ANY OTHER WRITTEN LAW.

(8) THE ATTORNEY-GENERAL SHALL HAVE POWER, EXERCISABLE AT HIS DISCRETION, TO INSTITUTE, CONDUCT OR DISCONTINUE ANY PROCEEDINGS FOR ANY OFFENCE.”

**ATTORNEY GENERAL
THE PRINCIPAL
LEGAL ADVISOR TO
THE GOVERNMENT**

**ATTORNEY GENERAL
IN CHARGE OF
CRIMINAL
PROSECUTIONS**

SRI LANKA

MINISTRY OF JUSTICE WEBSITE

The Hon. Attorney General is the Chief Legal Advisor representing the Democratic Socialist Republic of Sri Lanka. He performs the duties as the Head of the Department and Accounting Officer in the Department. The Attorney General's Department falls under the category of A Grade Department and by the proclamation published in the Gazette No. 1933/13 dated 21.09.2015, it came under the purview of the Ministry of Justice.

The Attorney General's Department tenders legal advice, either upon being advice sought or on its own initiative to the Central Government, Provincial Councils, Government's Departments, Statutory Boards and such other semi government institution with regard to criminal and civil matters including constitutional and commercial jurisdictions etc. Further, the Counsels attached to the Department appear before the Superior Courts, Provincial Appellate High Courts, High Courts and Courts of first instance including Labour Tribunals for the Government and Government Establishments in litigation.

**ATTORNEY GENERAL
THE PRINCIPAL
LEGAL ADVISOR TO
THE GOVERNMENT**

SRI LANKA

ATTORNEY GENERAL'S DEPARTMENT'S WEBSITE

Attorney General's Department of the Democratic Socialist Republic of Sri Lanka.

The Attorney General is the Chief Legal Advisor to the Government. In that capacity he advises the Government, Government Departments, Statutory Boards and Public Corporations in respect of all legal matters. He conducts prosecutions in criminal cases and appears on behalf of the Government, Government Departments, Statutory Boards and Public Corporations in any Court or Tribunal.

The Attorney General plays an important role with regard to criminal matters and in certain instances acts in a quasi-judicial manner. He renders advise, either upon advice being sought or on his own initiative to State Departments, public officers, officers of the Police and other armed forces and officers in Statutory Boards and Public Corporations in respect of any criminal matter of importance or complexity.

**ATTORNEY GENERAL
IN CHARGE OF
CRIMINAL
PROSECUTIONS**

SRI LANKA

SECTION 393(1) OF THE CODE OF CRIMINAL PROCEDURE ACT 1979

“(1) IT SHALL BE LAWFUL FOR THE ATTORNEY-GENERAL TO EXHIBIT INFORMATION, PRESENT INDICTMENTS AND TO INSTITUTE, UNDERTAKE, OR CARRY ON CRIMINAL PROCEEDINGS IN THE FOLLOWING CASES ...” (EMPHASIS MINE)

ATTORNEY GENERAL
IN CHARGE OF
CRIMINAL
PROSECUTIONS

SRI LANKA

SECTION 194 OF THE CODE OF CRIMINAL PROCEDURE ACT 1979

“(1) AT ANY STAGE OF A TRIAL BEFORE THE HIGH COURT UNDER THIS CODE BEFORE THE A RETURN OF THE VERDICT THE ATTORNEY-GENERAL MAY, IF HE THINKS FIT, INFORM THE COURT THAT HE WILL NOT FURTHER PROSECUTE THE ACCUSED UPON THE INDICTMENT OR ANY CHARGE THEREIN, AND THEREUPON ALL PROCEEDINGS ON SUCH INDICTMENT OR CHARGE AS THE CASE MAY BE AGAINST THE ACCUSED SHALL BE STAYED AND HE SHALL BE DISCHARGED OF AND FROM THE SAME..”

**ATTORNEY GENERAL
MAY WITHDRAW
CASE BY ENTERING
NOLLE PROSEQUI**

SPLIT

1. AUSTRALIA

2. BARBADOS

3. CANADA

4. INDIA

5. JAMAICA

6. KENYA

7. MALDIVES

8. NEW ZEALAND

9. PAKISTAN

10. UNITED KINGDOM

PARTIAL SPLIT – ATTORNEY GENERAL HAS SOME SORT OF OVERSIGHT FUNCTION
OVER PUBLIC PROSECUTOR/DIRECTOR OF PUBLIC PROSECUTIONS

FULL SPLIT – ATTORNEY GENERAL DOES NOT HAVE ANY OVERSIGHT FUNCTION
OVER PUBLIC PROSECUTOR/DIRECTOR OF PUBLIC PROSECUTIONS

	PARTIAL SPLIT	FULL SPLIT
AUSTRALIA	✓	
BARBADOS	✓	
CANADA*	✓	
INDIA		✓
JAMAICA		✓
KENYA		✓
MALDIVES	✓	
NEW ZEALAND*	?	
PAKISTAN	✓	
UNITED KINGDOM*	✓	

AUSTRALIA

**DIRECTOR OF PUBLIC
PROSECUTIONS IN
CHARGE OF CRIMINAL
PROSECUTION FOR
INDICTABLE
OFFENCES AGAINST
THE LAWS OF THE
COMMONWEALTH**

SECTION 9 OF THE DIRECTOR OF PUBLIC PROSECUTIONS ACT 1983

“FOR THE PURPOSES OF THE PERFORMANCE OF HIS OR HER FUNCTIONS, THE DIRECTOR MAY PROSECUTE BY INDICTMENT IN HIS OR HER OFFICIAL NAME INDICTABLE OFFENCES AGAINST THE LAWS OF THE COMMONWEALTH, BUT NOTHING IN THIS SUBSECTION PREVENTS THE DIRECTOR FROM PROSECUTING AN OFFENCE AGAINST A LAW OF THE COMMONWEALTH IN ANY OTHER MANNER.” (EMPHASIS MINE)

**GOVERNOR-GENERAL
APPOINTS DIRECTOR
OF PUBLIC
PROSECUTIONS**

AUSTRALIA

SECTION 18(1) OF THE DIRECTOR OF PUBLIC PROSECUTIONS ACT 1983

“(1) THE DIRECTOR SHALL BE APPOINTED BY THE GOVERNOR-GENERAL.”

**STATES HAVE
DIRECTORS OF
PUBLIC
PROSECUTIONS TO
PROSECUTE
INDICTABLE
OFFENCES UNDER
STATE LAW**

AUSTRALIA

E.G. SECTION 22(1)(A) OF THE PUBLIC PROSECUTIONS ACT 1994 (VICTORIA)

“(1) THE FUNCTIONS OF THE DIRECTOR ARE—

**(A) TO INSTITUTE, PREPARE AND CONDUCT ON BEHALF OF THE CROWN,
PROCEEDINGS IN THE HIGH COURT, SUPREME COURT OR COUNTY COURT IN RESPECT
OF ANY INDICTABLE OFFENCE ...”**

**STATES HAVE
DIRECTORS OF
PUBLIC
PROSECUTIONS TO
PROSECUTE
INDICTABLE
OFFENCES UNDER
STATE LAW**

AUSTRALIA

**E.G. SECTION 7(1)(A) OF THE DIRECTOR OF PUBLIC PROSECUTIONS ACT
1986 (NEW SOUTH WALES)**

“(1) THE PRINCIPAL FUNCTIONS AND RESPONSIBILITIES OF THE DIRECTOR ARE:

**(A) TO INSTITUTE AND CONDUCT, ON BEHALF OF THE CROWN, PROSECUTIONS
(WHETHER ON INDICTMENT OR SUMMARILY) FOR INDICTABLE OFFENCES IN THE
SUPREME COURT AND THE DISTRICT COURT...”**

AUSTRALIA

SECTION 10(1) OF THE DIRECTOR OF PUBLIC PROSECUTIONS ACT 1983

“NOTHING IN THIS ACT AFFECTS:

(A) THE POWER OF THE ATTORNEY-GENERAL, OF A PERSON APPOINTED BY THE GOVERNOR-GENERAL OR OF A SPECIAL PROSECUTOR TO PROSECUTE BY INDICTMENT IN HIS OR HER OWN NAME INDICTABLE OFFENCES AGAINST THE LAWS OF THE COMMONWEALTH.”

**ATTORNEY GENERAL
RETAINS LIMITED
PROSECUTORIAL
POWERS FOR
INDICTABLE
OFFENCES AGAINST
THE LAWS OF THE
COMMONWEALTH**

AUSTRALIA

SECTION 8(1) OF THE DIRECTOR OF PUBLIC PROSECUTIONS ACT 1983

“(1) IN THE PERFORMANCE OF THE DIRECTOR’S FUNCTIONS AND IN THE EXERCISE OF THE DIRECTOR’S POWERS, THE DIRECTOR IS SUBJECT TO SUCH DIRECTIONS OR GUIDELINES AS THE ATTORNEY-GENERAL, AFTER CONSULTATION WITH THE DIRECTOR, GIVES OR FURNISHES TO THE DIRECTOR BY INSTRUMENT IN WRITING.”
(EMPHASIS MINE)

ATTORNEY GENERAL
HAS POWER TO ISSUE
DIRECTIONS/
GUIDELINES TO
DIRECTOR OF PUBLIC
PROSECUTIONS

AUSTRALIA

SECTION 8(3) OF THE DIRECTOR OF PUBLIC PROSECUTIONS ACT 1983

“(3) WHERE THE ATTORNEY-GENERAL GIVES A DIRECTION OR FURNISHES A GUIDELINE UNDER SUBSECTION (1), HE OR SHE SHALL:

(A) AS SOON AS PRACTICABLE AFTER THE TIME THAT IS THE RELEVANT TIME IN RELATION TO THE INSTRUMENT CONTAINING THE DIRECTION OR GUIDELINE, CAUSE A COPY OF THE INSTRUMENT TO BE PUBLISHED IN THE GAZETTE ; AND

(B) CAUSE A COPY OF THAT INSTRUMENT TO BE LAI D BEFORE EACH HOUSE OF THE PARLIAMENT WITHIN 15 SITTING DAYS OF THAT HOUSE AFTER THAT TIME.”

(EMPHASIS MINE)

CHECK AND BALANCE
AGAINST DIRECTION/
GUIDELINE ISSUED
BY ATTORNEY
GENERAL TO
DIRECTOR OF PUBLIC
PROSECUTIONS

AUSTRALIA

E.G. SECTION 4(3) OF THE PUBLIC PROSECUTIONS ACT 1994 (VICTORIA)

“(3) THE DIRECTOR IS RESPONSIBLE TO THE ATTORNEY GENERAL FOR THE DUE EXERCISE OF THE DIRECTOR’S FUNCTIONS, BUT NOTHING IN THIS SUBSECTION AFFECTS OR DEROGATES FROM THE AUTHORITY OF THE DIRECTOR IN RESPECT OF THE PREPARATION, INSTITUTION AND CONDUCT OF ANY PROCEEDINGS.”

DIRECTOR OF PUBLIC
PROSECUTIONS IN
STATES
RESPONSIBLE TO
ATTORNEY GENERAL

**DIRECTOR OF PUBLIC
PROSECUTIONS IN
STATES
RESPONSIBLE TO
ATTORNEY GENERAL**

AUSTRALIA

**E.G. SECTION 10(1) OF THE DIRECTOR OF PUBLIC PROSECUTIONS ACT 1986
(NEW SOUTH WALES)**

“(1) THE DIRECTOR IS RESPONSIBLE TO THE ATTORNEY-GENERAL FOR THE DUE PERFORMANCE OF HIS OR HER FUNCTIONS AND EXERCISE OF HIS OR HER POWERS UNDER THIS OR ANY OTHER ACT.”

**GOVERNMENT
APPOINTS PUBLIC
PROSECUTORS IN
CHARGE OF CRIMINAL
PROSECUTIONS**

BANGLADESH

SECTION 492(1) OF THE CODE OF CRIMINAL PROCEDURE, 1898

“(1) THE GOVERNMENT MAY APPOINT, GENERALLY, OR IN ANY CASE, OR FOR ANY SPECIFIED CLASS OF CASES, IN ANY LOCAL AREA, ONE OR MORE OFFICERS TO BE CALLED PUBLIC PROSECUTORS.”

BANGLADESH

**PUBLIC PROSECUTOR
MAY WITHDRAW
CASE BY ENTERING
NOLLE PROSEQUI**

**CHECK AND BALANCE
AGAINST PUBLIC
PROSECUTOR POWER
OF NOLLE PROSEQUI**

SECTION 494 OF THE CODE OF CRIMINAL PROCEDURE, 1898

“ANY PUBLIC PROSECUTOR MAY, WITH THE CONSENT OF THE COURT, BEFORE THE JUDGMENT IS PRONOUNCED, WITHDRAW FROM THE PROSECUTION OF ANY PERSON EITHER GENERALLY OR IN RESPECT OF ANY ONE OR MORE OF THE OFFENCES FOR WHICH HE IS TRIED; AND UPON SUCH WITHDRAWAL,-

(A) IF IT IS MADE BEFORE A CHARGE HAS BEEN FRAMED, THE ACCUSED SHALL BE DISCHARGED IN RESPECT OF SUCH OFFENCE OR OFFENCES;

(B) IF IT IS MADE AFTER A CHARGE HAS BEEN FRAMED, OR WHEN UNDER THIS CODE NO CHARGE IS REQUIRED, HE SHALL BE ACQUITTED IN RESPECT OF SUCH OFFENCE OR OFFENCES.” [EMPHASIS MINE]

**ATTORNEY GENERAL
THE PRINCIPAL
LEGAL ADVISOR TO
THE GOVERNMENT**

BANGLADESH

WEBSITE OF THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH
LAW AND JUSTICE DIVISION

The office of the Attorney General deals with legal matters and is entrusted with the responsibility of giving legal advice to the Government and to plead Government cases before the Court. The nature of the work is highly professional. They are not permanent incumbent of the government. Their appointment is made on ad-hoc basis. At present, there are three Additional Attorney-Generals, Deputy Attorney-Generals and Assistant Attorney-Generals.

BARBADOS

**DIRECTOR OF PUBLIC
PROSECUTIONS IN
CHARGE OF CRIMINAL
PROSECUTION**

**DIRECTOR OF PUBLIC
PROSECUTIONS MAY
WITHDRAW CASE BY
ENTERING NOLLE
PROSEQUI**

ARTICLE 79(2) OF THE CONSTITUTION OF BARBADOS

“(2) THE DIRECTOR OF PUBLIC PROSECUTIONS SHALL, SUBJECT TO SECTION 79A, HAVE POWER IN ANY CASE IN WHICH HE CONSIDERS IT DESIRABLE SO TO DO—

(A) TO INSTITUTE AND UNDERTAKE CRIMINAL PROCEEDINGS AGAINST ANY PERSON BEFORE ANY COURT OTHER THAN A COURT-MARTIAL IN RESPECT OF ANY OFFENCE AGAINST THE LAW OF BARBADOS;

(B) TO TAKE OVER AND CONTINUE ANY SUCH CRIMINAL PROCEEDINGS THAT MAY HAVE BEEN INSTITUTED BY ANY OTHER PERSON OR AUTHORITY; AND

(C) TO DISCONTINUE AT ANY STAGE BEFORE JUDGMENT IS DELIVERED ANY SUCH CRIMINAL PROCEEDINGS INSTITUTED OR UNDERTAKEN BY HIMSELF OR ANY OTHER PERSON OR AUTHORITY.”

BARBADOS

GOVERNOR-
GENERAL APPOINTS
DIRECTOR OF PUBLIC
PROSECUTIONS

ARTICLE 101(1) OF THE CONSTITUTION OF BARBADOS

“(1) THE DIRECTOR OF PUBLIC PROSECUTIONS (IN THIS SECTION REFERRED TO AS “ THE DIRECTOR “) SHALL BE APPOINTED BY THE GOVERNOR-GENERAL, ACTING ON THE RECOMMENDATION OF THE JUDICIAL AND LEGAL SERVICE COMMISSION, BY INSTRUMENT UNDER THE PUBLIC SEAL.” (EMPHASIS MINE)

**DIRECTOR OF PUBLIC
PROSECUTIONS
FALLS UNDER OFFICE
OF ATTORNEY
GENERAL**

BARBADOS

WEBSITE OF OFFICE OF ATTORNEY GENERAL OF BARBADOS

About the Office

The Office of the Attorney General (OAG) advises the government on legal issues, provides support for the institutions involved in the delivery of justice and enacts legislation to keep the laws current. The following Departments fall under the OAG:

- Barbados Police Service
- Chief Parliamentary Counsel
- Community Legal Services
- Criminal Justice Research & Planning Unit
- Design and Implementation Unit
- Director of Public Prosecutions
- Financial Intelligence Unit
- Forensics Sciences Center
- Law Reform Commission
- Law Revision Office
- Police Complaints Authority
- Registration Department
- Solicitor General's Chambers

BARBADOS

**ATTORNEY GENERAL
MAY GIVE
DIRECTIONS TO
DIRECTOR OF
PUBLIC
PROSECUTIONS
IN THE CASE OF
CERTAIN OFFENCES**

ARTICLE 79A(1) OF THE CONSTITUTION OF BARBADOS

“(1) THE ATTORNEY-GENERAL MAY, IN THE CASE OF ANY OFFENCE TO WHICH THIS SECTION APPLIES, GIVE GENERAL OR SPECIAL DIRECTIONS TO THE DIRECTOR OF PUBLIC PROSECUTIONS AS TO THE EXERCISE OF THE POWERS CONFERRED UPON THE DIRECTOR OF PUBLIC PROSECUTIONS BY SECTION 79, AND THE DIRECTOR OF PUBLIC PROSECUTIONS SHALL ACT IN ACCORDANCE WITH THOSE DIRECTIONS.” (EMPHASIS MINE)

CANADA*

DIRECTOR OF
PUBLIC
PROSECUTIONS
IN CHARGE OF
CRIMINAL
PROSECUTIONS

SECTION 3(3)(A) OF THE DIRECTOR OF PUBLIC PROSECUTIONS ACT 2006

“(3) THE DIRECTOR, UNDER AND ON BEHALF OF THE ATTORNEY GENERAL,

(A) INITIATES AND CONDUCTS PROSECUTIONS ON BEHALF OF THE CROWN, EXCEPT WHERE THE ATTORNEY GENERAL HAS ASSUMED CONDUCT OF A PROSECUTION UNDER SECTION 15 ...” (EMPHASIS MINE)

CANADA*

SECTION 3(1) OF THE DIRECTOR OF PUBLIC PROSECUTIONS ACT 2006

“(1) THE GOVERNOR IN COUNCIL SHALL, ON THE RECOMMENDATION OF THE ATTORNEY GENERAL, APPOINT A DIRECTOR OF PUBLIC PROSECUTIONS (IN THIS ACT REFERRED TO AS THE “DIRECTOR”) IN ACCORDANCE WITH SECTION 4.” (EMPHASIS MINE)

GOVERNOR IN
COUNCIL APPOINTS
DIRECTOR OF
PUBLIC
PROSECUTIONS

CANADA*

**DIRECTOR OF
PUBLIC
PROSECUTIONS
IS DEPUTY ATTORNEY
GENERAL**

SECTION 3(4) OF THE DIRECTOR OF PUBLIC PROSECUTIONS ACT 2006

“(4) FOR THE PURPOSE OF EXERCISING THE POWERS AND PERFORMING THE DUTIES AND FUNCTIONS REFERRED TO IN SUBSECTION (3), THE DIRECTOR IS THE DEPUTY ATTORNEY GENERAL OF CANADA.” (EMPHASIS MINE)

CANADA*

**CHECK AND BALANCE
AGAINST DIRECTIVES
ISSUED BY
ATTORNEY GENERAL**

**ATTORNEY GENERAL
MAY ISSUE
DIRECTIVE TO
DIRECTOR OF PUBLIC
PROSECUTIONS**

SECTION 10(1) & (2) OF THE DIRECTOR OF PUBLIC PROSECUTIONS ACT 2006

“(1) ANY DIRECTIVE THAT THE ATTORNEY GENERAL ISSUES TO THE DIRECTOR WITH RESPECT TO THE INITIATION OR CONDUCT OF ANY SPECIFIC PROSECUTION MUST BE IN WRITING AND BE PUBLISHED IN THE CANADA GAZETTE.

(2) THE ATTORNEY GENERAL MAY, AFTER CONSULTING THE DIRECTOR, ISSUE DIRECTIVES RESPECTING THE INITIATION OR CONDUCT OF PROSECUTIONS GENERALLY. ANY SUCH DIRECTIVES MUST BE IN WRITING AND BE PUBLISHED IN THE CANADA GAZETTE.”

**PUBLIC
PROSECUTORS IN
CHARGE OF CRIMINAL
PROSECUTIONS**

**PUBLIC
PROSECUTORS
APPOINTED BY
CENTRAL
GOVERNMENT/STATE
GOVERNMENT AFTER
CONSULTATION WITH
HIGH COURT**

INDIA

SECTION 24(1) OF THE CODE OF CRIMINAL PROCEDURE 1973

“(1) FOR EVERY HIGH COURT, THE CENTRAL GOVERNMENT OR THE STATE GOVERNMENT SHALL, AFTER CONSULTATION WITH THE HIGH COURT, APPOINT A PUBLIC PROSECUTOR AND MAY ALSO APPOINT ONE OR MORE ADDITIONAL PUBLIC PROSECUTORS, FOR CONDUCTING IN SUCH COURT, ANY PROSECUTION, APPEAL OR OTHER PROCEEDING ON BEHALF OF THE CENTRAL GOVERNMENT OR STATE GOVERNMENT, AS THE CASE MAY BE.” (EMPHASIS MINE)

CHECK AND BALANCE
AGAINST PUBLIC
PROSECUTOR'S
POWER OF NOLLE
PROSEQUI

INDIA

SECTION 321 OF THE CODE OF CRIMINAL PROCEDURE 1973

“THE PUBLIC PROSECUTOR OR ASSISTANT PUBLIC PROSECUTOR IN CHARGE OF A CASE MAY, WITH THE CONSENT OF THE COURT, AT ANY TIME BEFORE THE JUDGMENT IS PRONOUNCED, WITHDRAW FROM THE PROSECUTION OF ANY PERSON EITHER GENERALLY OR IN RESPECT OF ANY ONE OR MORE OF THE OFFENCES FOR WHICH HE IS TRIED ...” (EMPHASIS MINE)

INDIA

**ATTORNEY GENERAL
THE PRINCIPAL
ADVISOR TO THE
GOVERNMENT**

ARTICLE 76(2) OF THE CONSTITUTION OF INDIA

“(2) IT SHALL BE THE DUTY OF THE ATTORNEY-GENERAL TO GIVE ADVICE TO THE GOVERNMENT OF INDIA UPON SUCH LEGAL MATTERS, AND TO PERFORM SUCH OTHER DUTIES OF A LEGAL CHARACTER, AS MAY FROM TIME TO TIME BE REFERRED OR ASSIGNED TO HIM BY THE PRESIDENT, AND TO DISCHARGE THE FUNCTIONS CONFERRED ON HIM BY OR UNDER THIS CONSTITUTION OR ANY OTHER LAW FOR THE TIME BEING IN FORCE.”

JAMAICA

ARTICLE 94(3) OF THE CONSTITUTION OF JAMAICA

“(3) THE DIRECTOR OF PUBLIC PROSECUTIONS SHALL HAVE POWER IN ANY CASE IN WHICH HE CONSIDERS IT DESIRABLE SO TO DO—

A. TO INSTITUTE AND UNDERTAKE CRIMINAL PROCEEDINGS AGAINST ANY PERSON BEFORE ANY COURT OTHER THAN A COURT-MARTIAL IN RESPECT OF ANY OFFENCE AGAINST THE LAW OF JAMAICA;

...

C. TO DISCONTINUE AT ANY STAGE BEFORE JUDGMENT IS DELIVERED ANY SUCH CRIMINAL PROCEEDINGS INSTITUTED OR UNDERTAKEN BY HIMSELF OR ANY OTHER PERSON OR AUTHORITY.”

**DIRECTOR OF PUBLIC
PROSECUTIONS IN
CHARGE OF CRIMINAL
PROSECUTIONS**

**DIRECTOR OF PUBLIC
PROSECUTIONS MAY
WITHDRAW CASE BY
ENTERING NOLLE
PROSEQUI**

**GOVERNOR GENERAL
APPOINTS DIRECTOR
OF PUBLIC
PROSECUTIONS**

JAMAICA

WEBSITE OF THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

The Jamaican (Constitution) Order in Council 1962 in Section 94(1) established the Office of the Director of Public Prosecutions and its functions. First and foremost, the Office is described as a public office headed by the Director of Public Prosecutions who is appointed by the Governor General.

The Director of Public Prosecutions heads the Office of the Director of Public Prosecutions. The Director is appointed by the Governor General.

JAMAICA

**ATTORNEY GENERAL
THE PRINCIPAL
ADVISOR TO THE
GOVERNMENT**

ARTICLE 79(1) OF THE CONSTITUTION OF JAMAICA

**“(1) THERE SHALL BE AN ATTORNEY-GENERAL WHO SHALL BE THE PRINCIPAL
LEGAL ADVISER TO THE GOVERNMENT OF JAMAICA.”**

**DIRECTOR OF PUBLIC
PROSECUTIONS IN
CHARGE OF CRIMINAL
PROSECUTIONS**

**DIRECTOR OF PUBLIC
PROSECUTIONS MAY
WITHDRAW CASE BY
ENTERING NOLLE
PROSEQUI**

KENYA

ARTICLE 157(6) OF THE CONSTITUTION OF KENYA 2010

“(6) THE DIRECTOR OF PUBLIC PROSECUTIONS SHALL EXERCISE STATE POWERS OF PROSECUTION AND MAY—

(A) INSTITUTE AND UNDERTAKE CRIMINAL PROCEEDINGS AGAINST ANY PERSON BEFORE ANY COURT (OTHER THAN A COURT MARTIAL) IN RESPECT OF ANY OFFENCE ALLEGED TO HAVE BEEN COMMITTED ...

(C) SUBJECT TO CLAUSES (7) AND (8), DISCONTINUE AT ANY STAGE BEFORE JUDGMENT IS DELIVERED ANY CRIMINAL PROCEEDINGS INSTITUTED BY THE DIRECTOR OF PUBLIC PROSECUTIONS OR TAKEN OVER BY THE DIRECTOR OF PUBLIC PROSECUTIONS UNDER PARAGRAPH (B).”

**PRESIDENT, ON
NOMINATION OF
PRESIDENT AND
APPROVAL OF
NATIONAL
ASSEMBLY,
APPOINTS DIRECTOR
OF PUBLIC
PROSECUTIONS**

KENYA

ARTICLE 157(2) OF THE CONSTITUTION OF KENYA 2010

“(2) THE DIRECTOR OF PUBLIC PROSECUTIONS SHALL BE NOMINATED AND, WITH THE APPROVAL OF THE NATIONAL ASSEMBLY, APPOINTED BY THE PRESIDENT.”

**CHECK AND BALANCE
AGAINST PUBLIC
PROSECUTOR'S
POWER OF NOLLE
PROSEQUI**

KENYA

ARTICLE 157(8) OF THE CONSTITUTION OF KENYA 2010

“(8) THE DIRECTOR OF PUBLIC PROSECUTIONS MAY NOT DISCONTINUE A PROSECUTION WITHOUT THE PERMISSION OF THE COURT.” (EMPHASIS MINE)

**ATTORNEY GENERAL
THE PRINCIPAL
ADVISOR TO THE
GOVERNMENT**

KENYA

ARTICLE 156(4) OF THE CONSTITUTION OF KENYA 2010

“(4) THE ATTORNEY-GENERAL—

(A) IS THE PRINCIPAL LEGAL ADVISER TO THE GOVERNMENT;

(B) SHALL REPRESENT THE NATIONAL GOVERNMENT IN COURT OR IN ANY OTHER LEGAL PROCEEDINGS TO WHICH THE NATIONAL GOVERNMENT IS A PARTY, OTHER THAN CRIMINAL PROCEEDINGS; AND

(C) SHALL PERFORM ANY OTHER FUNCTIONS CONFERRED ON THE OFFICE BY AN ACT OF PARLIAMENT OR BY THE PRESIDENT.”

**PROSECUTOR
GENERAL IN CHARGE
OF CRIMINAL
PROSECUTIONS**

**PROSECUTOR
GENERAL MAY
WITHDRAW CASE BY
ENTERING NOLLE
PROSEQUI**

MALDIVES

ARTICLE 223 OF THE CONSTITUTION OF THE REPUBLIC OF MALDIVES, 2008

“THE PROSECUTOR GENERAL'S RESPONSIBILITIES AND POWERS INCLUDE THE FOLLOWING:-

- A. TO SUPERVISE THE PROSECUTION OF ALL CRIMINAL OFFENCES IN THE MALDIVES;**
- B. TO CONSIDER AND ASSESS EVIDENCE PRESENTED BY INVESTIGATING BODIES TO DETERMINE WHETHER CHARGES SHOULD BE PURSUED;**
- C. TO INSTITUTE AND CONDUCT CRIMINAL PROCEEDINGS AGAINST ANY PERSON BEFORE ANY COURT IN RESPECT OF ANY ALLEGED OFFENCE ...**
- H. TO REVIEW OR REVERT ANY DECISION TO PROSECUTE OR NOT TO PROSECUTE ANY ALLEGED OFFENDER, OR TO DISCONTINUE ANY PROSECUTION”**

MALDIVES

ARTICLE 221 OF THE CONSTITUTION OF THE REPUBLIC OF MALDIVES, 2008

“THE PRESIDENT SHALL APPOINT AS PROSECUTOR GENERAL A PERSON APPROVED BY A MAJORITY OF THE TOTAL MEMBERSHIP OF THE PEOPLE'S MAJLIS FROM THE NAMES SUBMITTED TO THE PEOPLE'S MAJLIS AS PROVIDED FOR IN LAW.” (EMPHASIS MINE)

PRESIDENT, WITH
APPROVAL OF
MAJORITY OF TOTAL
MEMBERSHIP OF
PEOPLE'S MAJLIS,
APPOINTS
PROSECUTOR
GENERAL

**ATTORNEY GENERAL
THE PRINCIPAL
ADVISOR TO THE
GOVERNMENT**

MALDIVES

ARTICLE 133(B) OF THE CONSTITUTION OF THE REPUBLIC OF MALDIVES, 2008

“(B) IT IS THE DUTY OF THE ATTORNEY GENERAL TO ADVISE THE GOVERNMENT ON ALL LEGAL MATTERS AFFECTING THE STATE. THE ATTORNEY GENERAL’S DUTIES INCLUDE PERFORMANCE OF ALL LEGAL DUTIES PERTAINING TO HIS OFFICE, AND DISCHARGE OF ALL RESPONSIBILITIES REQUIRED TO BE DISCHARGED BY THE ATTORNEY GENERAL, BY THE CONSTITUTION AND BY LAW.”

**ATTORNEY GENERAL
MAY ISSUE
DIRECTIVE TO
PROSECUTOR
GENERAL**

MALDIVES

**ARTICLE 133(G) OF THE CONSTITUTION OF THE REPUBLIC OF MALDIVES,
2008**

**“(G) THE ATTORNEY GENERAL SHALL HAVE POWER TO ISSUE GENERAL DIRECTIVES TO THE
PROSECUTOR GENERAL ON THE CONDUCT OF CRIMINAL PROCEEDINGS.”**

NEW ZEALAND*

**SOLICITOR GENERAL
IN CHARGE OF
CRIMINAL
PROSECUTIONS**

SECTION 185(1) OF THE CRIMINAL PROCEDURE ACT 2011

**“(1) THE SOLICITOR-GENERAL IS RESPONSIBLE FOR MAINTAINING GENERAL
OVERSIGHT OF THE CONDUCT OF PUBLIC PROSECUTIONS.”**

NEW ZEALAND*

OFFICIAL WEBSITE OF NEW ZEALAND GOVERNMENT

The Solicitor-General is appointed by the Governor-General on the advice of the Attorney-General. The State Services Commissioner was asked to manage the recruitment process in order to ensure a merit-based and professional process.

**GOVERNOR GENERAL,
ON ADVICE OF
ATTORNEY GENERAL,
APPOINTS SOLICITOR
GENERAL**

NEW ZEALAND*

**ATTORNEY GENERAL
RESPONSIBLE FOR
ADMINISTRATION OF
CRIMINAL LAW**

SECTION 186 OF THE CRIMINAL PROCEDURE ACT 2011

“NOTHING IN SECTION 185 LIMITS OR AFFECTS—

**(A) THE RESPONSIBILITIES OF THE ATTORNEY-GENERAL RELATING TO THE
ADMINISTRATION OF THE CRIMINAL LAW; OR**

**(B) THE EXERCISE OF ANY POWER BY THE ATTORNEY-GENERAL UNDER ANY
ENACTMENT OR RULE OF LAW.**

NEW ZEALAND*

**ATTORNEY GENERAL
HAS POWER TO STAY
CRIMINAL
PROCEEDINGS**

SECTION 176(1) OF THE CRIMINAL PROCEDURE ACT 2011

“(1) THE ATTORNEY-GENERAL MAY, AT ANY TIME AFTER A PERSON HAS BEEN CHARGED WITH AN OFFENCE AND BEFORE JUDGMENT IS GIVEN, DIRECT THAT THE PROCEEDINGS BE STAYED.”

PAKISTAN

SECTION 4(1)(T) OF THE CODE OF CRIMINAL PROCEDURE 1898

"PUBLIC PROSECUTOR" MEANS ANY PERSON APPOINTED UNDER SECTION 492, AND INCLUDES ANY PERSON ACTING UNDER THE DIRECTIONS OF A PUBLIC PROSECUTOR AND ANY PERSON CONDUCTING A PROSECUTION ON BEHALF OF THE STATE IN ANY HIGH COURT IN THE EXERCISE OF ITS ORIGINAL CRIMINAL JURISDICTION." (EMPHASIS MINE)

**PUBLIC
PROSECUTORS IN
CHARGE OF CRIMINAL
PROSECUTIONS**

**PROVINCIAL
GOVERNMENT
APPOINTS PUBLIC
PROSECUTORS**

PAKISTAN

SECTION 492(1) OF THE CODE OF CRIMINAL PROCEDURE 1898

**“(1) THE PROVINCIAL GOVERNMENT, MAY APPOINT, GENERALLY, OR IN ANY CASE, OR FOR;
ANY. SPECIFIED CLASS OF CASES, IN ANY LOCAL AREA, ONE OR MORE OFFICERS TO BE
CALLED PUBLIC PROSECUTORS.”**

PAKISTAN

**PUBLIC PROSECUTOR
MAY WITHDRAW
CASE BY ENTERING
NOLLE PROSEQUI**

**CHECK AND BALANCE
AGAINST PUBLIC
PROSECUTOR'S
POWER OF NOLLE
PROSEQUI**

SECTION 494 OF THE CODE OF CRIMINAL PROCEDURE 1989

"ANY PUBLIC PROSECUTOR MAY, WITH THE CONSENT OF THE COURT, BEFORE THE JUDGMENT IS PRONOUNCED, WITHDRAW FROM THE PROSECUTION OF ANY PERSON EITHER GENERALLY OR IN RESPECT OF ANY ONE OR MORE OF THE OFFENCES FOR WHICH HE IS TRIED; AND UPON SUCH WITHDRAWAL,--

(A) IF IT IS MADE BEFORE A CHARGE HAS BEEN FRAMED, THE ACCUSED SHALL BE DISCHARGED IN RESPECT OF SUCH OFFENCE OR OFFENCES;

(B) IF IT IS MADE AFTER A CHARGE HAS BEEN FRAMED, OR WHEN UNDER THIS CODE NO CHARGE IS REQUIRED, HE SHALL BE ACQUITTED IN RESPECT OF SUCH OFFENCE OR OFFENCES" (EMPHASIS MINE)

**ATTORNEY GENERAL
THE PRINCIPAL
ADVISOR TO THE
GOVERNMENT**

PAKISTAN

ARTICLE 100(3) OF THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN

“(3) IT SHALL BE THE DUTY OF THE ATTORNEY-GENERAL TO GIVE ADVICE TO THE FEDERAL GOVERNMENT UPON SUCH LEGAL MATTERS, AND TO PERFORM SUCH OTHER DUTIES OF A LEGAL CHARACTER, AS MAY BE REFERRED OR ASSIGNED TO HIM BY THE FEDERAL GOVERNMENT, AND IN THE PERFORMANCE OF HIS DUTIES HE SHALL HAVE THE RIGHT OF AUDIENCE IN ALL COURTS AND TRIBUNALS IN PAKISTAN”

UNITED KINGDOM*

**CROWN
PROSECUTION
SERVICES IN CHARGE
OF CRIMINAL
PROSECUTIONS**

SECTION 1(1) OF THE PROSECUTION OF OFFENCES ACT 1985

“(1) THERE SHALL BE A PROSECUTING SERVICE FOR ENGLAND AND WALES (TO BE KNOWN AS THE “CROWN PROSECUTION SERVICE ”) CONSISTING OF—

(A)THE DIRECTOR OF PUBLIC PROSECUTIONS, WHO SHALL BE HEAD OF THE SERVICE;

(B)THE CHIEF CROWN PROSECUTORS, DESIGNATED UNDER SUBSECTION (4) BELOW, EACH OF WHOM SHALL BE THE MEMBER OF THE SERVICE RESPONSIBLE TO THE DIRECTOR FOR SUPERVISING THE OPERATION OF THE SERVICE IN HIS AREA; AND

(C)THE OTHER STAFF APPOINTED BY THE DIRECTOR UNDER THIS SECTION.”

UNITED KINGDOM*

**ATTORNEY GENERAL
APPOINTS DIRECTOR
OF PUBLIC
PROSECUTIONS**

SECTION 2(1) OF THE PROSECUTION OF OFFENCES ACT 1985

“(1) THE DIRECTOR OF PUBLIC PROSECUTIONS SHALL BE APPOINTED BY THE ATTORNEY GENERAL.”

**ATTORNEY GENERAL
THE PRINCIPAL
ADVISOR TO THE
GOVERNMENT**

UNITED KINGDOM*

UK GOVERNMENT'S WEBSITE ON THE ATTORNEY GENERAL

Responsibilities

The Attorney General is chief legal adviser to the Crown and has a number of independent public interest functions, as well as overseeing the Law Officers' departments.

UNITED KINGDOM*

DIRECTOR OF PUBLIC
PROSECUTIONS
UNDER
SUPERINTENDENCE
OF ATTORNEY
GENERAL

SECTION 3(1) OF THE PROSECUTION OF OFFENCES ACT 1985

“(1) THE DIRECTOR SHALL DISCHARGE HIS FUNCTIONS UNDER THIS OR ANY OTHER ENACTMENT UNDER THE SUPERINTENDENCE OF THE ATTORNEY GENERAL.” (EMPHASIS MINE)

**DIRECTOR OF PUBLIC
PROSECUTIONS
EXERCISES
INDEPENDENCE IN
PROSECUTIONS**

UNITED KINGDOM*

FRAMEWORK AGREEMENT BETWEEN THE LAW OFFICERS AND THE DIRECTOR OF PUBLIC PROSECUTIONS

13. The Director is responsible for deciding which cases the CPS should prosecute. The Director exercises independence in individual casework decisions.

ARGUMENTS AGAINST SPLITTING

1. PRACTICALLY ALREADY SPLIT

2. IF IT AIN'T BROKE, WHY FIX IT?

3. NOT A PRIORITY REFORM

POSSIBLE MODELS IF SPLITTING

**1. FULL SPLIT WITH PUBLIC PROSECUTOR/DIRECTOR OF PUBLIC PROSECUTIONS
ACCOUNTABLE TO PARLIAMENT**

VS

**2. FULL SPLIT WITH PUBLIC PROSECUTOR/DIRECTOR OF PUBLIC PROSECUTIONS
ACCOUNTABLE TO COURT**

VS

**3. PARTIAL SPLIT WITH PUBLIC PROSECUTOR/DIRECTOR OF PUBLIC PROSECUTIONS
ACCOUNTABLE TO AG WHO IS ACCOUNTABLE TO PARLIAMENT**

VS

**4. PARTIAL SPLIT WITH PUBLIC PROSECUTOR/DIRECTOR OF PUBLIC PROSECUTIONS
ACCOUNTABLE TO EXECUTIVE/GOVERNMENT**

**CHECK AND BALANCE IF
NOT SPLITTING**

1. AG'S DIRECTIONS OR GUIDELINES MUST BE IN WRITING AND (I) PUBLISHED IN GAZETTE AND/OR (II) TABLED IN PARLIAMENT

2. AG CAN ONLY WITHDRAW CHARGES WITH CONSENT OF COURT

3. AG CAN ONLY GIVE DIRECTIONS/GUIDELINES ON POLICY

4. AG TO BE APPOINTED WITH APPROVAL OF PARLIAMENT