

立法會
Legislative Council

LC Paper No. CB(2)2057/04-05
(These minutes have been seen
by the Administration)

Ref : CB2/PL/AJLS

Panel on Administration of Justice and Legal Services

**Minutes of meeting
held on Monday, 25 April 2005 at 4:30 pm
in Conference Room A of the Legislative Council Building**

- Members present** : Hon Margaret NG (Chairman)
Hon LI Kwok-ying, MH (Deputy Chairman)
Hon Albert HO Chun-yan
Hon Martin LEE Chu-ming, SC, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon KWONG Chi-kin
- Member absent** : Hon MA Lik, JP
- Public Officers attending** : Item IV
Mr Wilfred TSUI
Judiciary Administrator
Mr Augustine CHENG
Deputy Judiciary Administrator (Operations)
Ms Sally WONG
Deputy Judiciary Administrator (Development)
Miss Vega WONG
Assistant Judiciary Administrator (Development)
- Item V
Mr Wilfred TSUI
Judiciary Administrator
Mr Augustine CHENG
Deputy Judiciary Administrator (Operations)

Ms Sally WONG
Deputy Judiciary Administrator (Development)

Miss Vega WONG
Assistant Judiciary Administrator (Development)

Ms Elizabeth TSE
Deputy Secretary for Financial Services and the Treasury
(Treasury)

Miss Eliza LEE
Deputy Director of Administration

Mr Martin SIU
Principal Assistant Secretary for Financial Services and the
Treasury (Treasury)

Attendance by invitation : Item IV
The Hong Kong Bar Association

Mr Valentine YIM

Clerk in attendance : Mrs Percy MA
Chief Council Secretary (2)3

Staff in attendance : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Mr Paul WOO
Senior Council Secretary (2)3

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I. Confirmation of minutes of meeting
(LC Paper No. CB(2)1254/04-05 –Minutes of special meeting on 28 February 2005)

The minutes of the meeting held on 28 February 2005 were confirmed.

II. Information papers issued since the last meeting
(LC Paper No. CB(2)1212/04-05(01) – The Administration's letter dated 4 April 2005 on "Pilot Scheme on Mediation of Legally Aided Matrimonial Cases")

LC Paper No. CB(2)1334/04-05(01) – Paper provided by the Administration

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setting out the systems in other jurisdictions concerning appointment of special advocates and the conditions and guidelines in relation to the procedure for appointment of special advocates

LC Paper No. CB(2)1334/04-05(02) – Secretary for Justice (SJ)’s letter dated 19 July 2004 in reply to the letter dated 29 June 2004 from the Chairman of the Hong Kong Bar Association on appointment of special advocates

LC Paper No. CB(2)1334/04-05(03) – Letter dated 26 June 2004 from the Chairman of the Panel to SJ on appointment of special advocates

LC Paper No. CB(2)1334/04-05(04) – SJ’s letter dated 19 July 2004 in reply to the letter from the Chairman of the Panel on appointment of special advocates)

2. Members noted that the above papers had been issued to the Panel.

Appointment of special advocates

3. The Chairman requested the Clerk to invite the two legal professional bodies to provide written views on the item in the light of the Panel’s discussion at the last meeting and the further paper provided by the Administration (LC Paper No. CB(2)1334/04-05(01)).

(Post-meeting note : The Clerk wrote to the two legal professional bodies on 10 May 2005 for their written response.)

III. Items for discussion at the next meeting

(LC Paper No. CB(2)1338/04-05(01) – List of outstanding items for discussion

LC Paper No. CB(2)1338/04-05(02) – List of follow-up actions)

4. Members agreed that the following items should be discussed at the next meeting on 23 May 2005 –
 - (a) Establishment of a third law school; and
 - (b) Limited liability partnership for professional practices.

Professional Indemnity Scheme of the Law Society

5. Members noted that at the meeting on 22 November 2004, the Law Society informed the Panel that the initial draft of the rules to implement a Qualifying Insurers Scheme to replace the existing indemnity scheme would be available before the end of 2004, and the draft rules would be circulated among members of the profession in early January 2005. Members agreed that the Panel should write to the Law Society to enquire about the present position.

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(Post-meeting note : The Clerk wrote to the Law Society on 10 May 2005 for a written response.)

Chambers hearings

6. The Chairman referred to a press report on 25 April 2005 on a review of the practice of chambers hearings, including opening the hearings to members of the public to further the concept of open justice. Members agreed to seek written views from the Judiciary on the latest development of the review and the way forward.

(Post-meeting note : Information provided by the Judiciary Administrator was issued to the Panel vide LC Paper Nos. CB(2)1772/04-05(01) to (03) on 2 June 2005.)

IV. Court procedure for repossession of premises – Review of the Lands Tribunal Ordinance (Cap. 17) and the Lands Tribunal Rules (Cap. 17A)
(LC Paper No. CB(2)1320/04-05(01) – Background brief prepared by the LegCo Secretariat on "Court procedure for repossession of premises"

LC Paper No. CB(2)1320/04-05(02) – Paper provided by the Judiciary Administration on "Review of the Lands Tribunal Ordinance (Cap. 17) and the Lands Tribunal Rules (Cap. 17A)

LC Paper No. CB(2)1360/04-05(01) – Submission from the Hong Kong Bar Association)

7. Judiciary Administrator (JA) said that the Panel had previously discussed measures to streamline the court procedure for repossession of premises. At the meeting on 24 May 2004, the Judiciary informed the Panel that the Chief Justice (CJ) had directed that the Lands Tribunal Rules (LTR) as a whole should be reviewed, and the Panel would be consulted when the review was completed. The review, which covered both the Lands Tribunal Ordinance (LTO) and the LTR, had been completed. Most of the recommendations made in the review were related primarily to application for possession of premises with a view to streamlining the procedure. Recommendations were also made in respect of the jurisdiction and other practice and procedure of the Lands Tribunal (the Tribunal), with a view to making the processing of claims in the Tribunal more efficient and expeditious.

8. JA briefed members on the paper provided by the Judiciary Administration which highlighted the recommendations of the review and the proposed way forward (LC Paper No. CB(2)1320/04-05(02)). A summary of the 14 recommendations were listed at Annex A to the paper. JA informed members that other than the revised administrative procedures which had already been put into practice as from 21 February 2005, other improvement measures would require legislative amendments for implementation. Subject to the Panel's views and the outcome of the consultation with the legal professional bodies, the Judiciary would –

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- (a) implement the recommendations requiring legislative amendments to the LTR by introducing amendment rules for LegCo's negative vetting in due course; and
- (b) liaise with the Administration on the implementation of recommendations requiring legislative amendments to the LTO and the District Court Ordinance.

Submission from the Hong Kong Bar Association

9. At the invitation of the Chairman, Mr Valentine YIM briefed members on the submission provided by the Bar Association (LC Paper No. CB(2)1360/04-05(01)). The comments of the Bar Association on the recommendations in the review were summarised as follows –

Notice of opposition in application for possession of premises

- (a) The proposed reduction of the period for filing and service of the notice of opposition by the respondent in all possession claims to seven days might cause hardship for respondents in cases where the claim was instituted on ground of forfeiture for non-payment of rent. At present, respondents in cases other than non-payment of rent cases (the omnibus-grounds case) were allowed to file and serve a notice of opposition within seven days of the service of the notice of application for possession, while respondents in non-payment of rent cases were allowed 14 days to do so. In the omnibus-grounds cases, such as cases in which the tenancy had been terminated by notice of termination or notice to quit, the respondent usually had advance notice of the landlord's intention to take proceedings to repossess the premises, and hence seven days would be sufficient for the respondent to file a notice of opposition. However, respondents in non-payment of rent cases would normally not have this benefit of prior notice of the landlord's intention to repossess, and might face problems in complying with the seven-day limit for filing a notice of opposition;

Interlocutory procedure for all types of cases

- (b) Rule 4(5) of LTR conferred in essence a right on a non-party to be heard on an interlocutory application. Although section 10(1) of LTO enabled the Tribunal to follow the practice and procedure of the Court of First Instance (CFI), it was not mandatory on the Tribunal to follow such practice and procedure. In other words, the Tribunal might or might not allow a non-party's request or application to be heard on an interlocutory application made by a party. Therefore, if Rules 4(3) and 4(5) of LTR were to be deleted, a non-party might no longer have a right to be heard on such application;

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- (c) Moreover, it was desirable that the law should be easily and readily understood by and accessible to the users. The deletion of certain provisions in the LTR and relying on a roundabout way of referring to enabling provisions in the Rules of the High Court, which were not expressly mentioned in the LTR, would create problems for the parties, in particular the litigants in person who did not have the benefit of legal advice;

Jurisdiction of the Tribunal

- (d) It was proposed that section 8 of the LTO should be amended to confer comprehensive jurisdiction on the Tribunal to adjudicate all types of possession claims regardless of the basis of such claims. However, whether or not such jurisdiction was exclusive to the Tribunal was uncertain. In this connection, the Bar Association had noted that the Tribunal had exclusive jurisdiction in relation to Parts I, II, IV and V of the Landlord and Tenant (Consolidation) Ordinance. However, it did not have any common law or equitable landlord and tenant jurisdiction, which was shared by the District Court and the CFI;

Award of damages

- (e) The Bar Association considered that it might not be necessary to amend section 8 of LTO to give the Tribunal the jurisdiction to award damages solely as well as in addition to rent and mesne profits, because section 8(9) of LTO, which was a general savings provision, appeared to have empowered the Tribunal to award damages; and

Practice and procedure of the Tribunal

- (f) The judiciary proposed to amend section 10 of LTO with the intention to make it clear that the Tribunal should generally have the same power and jurisdiction as that of the CFI on matters of practice and procedures, so as to afford the Tribunal the flexibility to deal with each case depending on its circumstances. The Bar Association, however, considered that section 10 already provided the desired flexibility. The Bar Association also considered that it was not clear whether under the proposed amendment the Tribunal would be empowered to grant injunctions, bearing in mind that the District Court in its jurisdiction did not generally have the power to do so.

10. Mr Valentine YIM informed members that the written submission of the Bar Association was subject to the approval of its Council at a meeting to be held on 28 April 2005. The Bar Association would provide further comments if necessary.

(Post-meeting note : A revised submission from the Bar Association was issued to the Panel vide LC Paper No. CB(2)1466/04-05(01) on 5 May 2005.)

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JA 11. JA thanked the Bar Association for its comments and said that the Judiciary Administration would provide a written response after studying the Bar Association's submission.

Issues raised

12. Ms Miriam LAU said that she welcomed the amendments proposed by the Judiciary to streamline the procedure for repossession of premises. Commenting on the Bar Association's view that the proposed reduction of the period for filing and serving notice of opposition in non-payment of rent cases from 14 to seven days might create hardship for the respondents, Ms LAU said that as had been explained in the Judiciary's paper, the Tribunal could allow an extension of time should there be any need for a longer period for the preparation of the notice of opposition.

13. In response to Ms Miriam LAU's enquiries, JA informed members that –

- (a) the proposed recommendations to streamline the procedure for possession of premises would result in a maximum reduction of 18 days from the statutory limits of the various steps in applying for possession. As illustrated in paragraph 20 and Annex B of the Judiciary Administration's paper, for a straightforward case other than a non-payment of rent case, the period from application for possession to application for writ of possession would be reduced from 47 days to 29 days. The period for non-payment of rent cases was 36 days; and
- (b) updated information showed that successful execution of writs of possession by the bailiff service took about 19 to 23 days. Continuous efforts would be made to minimise the period subject to the workload situation. Where considered necessary, private security companies might be engaged to keep watch over the seized property.

14. Ms Miriam LAU pointed out that where a respondent to an application for possession of premises applied for legal aid, a stay of the court proceedings for 42 days would be granted. She said that she was aware of cases in which the respondent re-applied for legal aid after the first application was refused and obtained another stay of 42 days, and hence successfully delayed the proceedings. Ms LAU considered that the situation of possible abuse of court process should be looked into. Mr KWONG Chi-kin said that if the stay of proceedings was automatic upon re-application of legal aid, the procedure might need to be reviewed.

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Way forward

15. JA informed members that legislative amendments to implement the recommendations were expected to be introduced into LegCo in 2006. The Chairman requested the Judiciary Administration to revert to the Panel on its position on the proposed amendments after completing consultation with the two legal

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JA professional bodies.

V. Budgetary arrangement for the Judiciary

(LC Paper No. CB(2)1333/04-05(01) – Background brief prepared by the LegCo Secretariat on "Judiciary's cost saving measures, budgetary arrangements and fees and charges"

LC Paper No. CB(2)1333/04-05(02) – Paper provided by the Judiciary Administration on "Budgetary arrangements for the Judiciary"

LC Paper No. CB(2)1271/04-05(01) – Paper provided by the Judiciary Administration on "Closure and Merger of Magistrates' Courts"

LC Paper No. CB(2)1333/04-05(03) – Paper provided by the Secretary for Financial Services and the Treasury on "Expenditure estimates and charges for the Judiciary")

16. JA briefed the Panel on the Judiciary Administration's paper which set out the Judiciary's position on its budgetary arrangements (LC Paper No. CB(2)1333/04-05(02)), as summarised below –

- (a) the Judiciary had made its best efforts to contribute to the Government-wide effort to reduce operating expenditure. Since 2003-04, it had adopted various measures to achieve the savings targets, including shelving of capital projects; merging of Magistrates' Courts; reducing the number of temporary judges at all levels; leaving some judicial posts vacant; and deletion of certain posts in the Judiciary. As it was of fundamental importance that the quality of justice must not be compromised, the inevitable consequence of these savings measures was that waiting times for obtaining a hearing date had been lengthened at all levels of courts, particularly in the High Court and the Magistrates' Courts;
- (b) to avoid possible worsening of the waiting times, the Judiciary was exploring various options, including the withdrawal of some saving measures submitted to the Government. It had been decided that the Tsuen Wan Magistrates' Court would not be closed in January 2006 as planned, subject to a review to be conducted at a later stage. Moreover, the Judiciary would make a bid to the Government for a reasonable increase of resources; and
- (c) as for the longer-term arrangements, the Judiciary would keep an open mind on any suggested measures, statutory or otherwise, within the parameters of the Basic Law which would enhance judicial independence and ensure that the Judiciary was provided with adequate resources to administer justice without delay.

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17. Deputy Secretary for Financial Services and the Treasury (Treasury) (DS(Tsy)) briefed the Panel on the paper prepared by the Treasury Branch (LC Paper No. CB(2)1333/04-05(03)), which provided information on the estimated and outturn expenditure for the Judiciary in recent years, and an update on the costing review for the Judiciary's fees and charges. She highlighted the major issues as follows –

- (a) funding for the Judiciary formed part of the overall expenditure requirements of the Government. The Judiciary and the Government bureaux and departments together should continue to make efforts to achieve the efficiency savings demanded on the public sector as a whole, particularly in view of the stringent budgetary situation facing the Government;
- (b) a total provision of \$944.4 million was sought by the Judiciary for the financial year 2005-06. The figure was more or less the same as the revised estimate of \$945.9 million for 2004-05. Regarding the estimated operational expenses of \$917.7 million for 2005-06, which formed the bulk of the Judiciary's total estimated provision, was also comparable to the revised estimate of \$919.7 million for 2004-05;
- (c) the reduction in the estimates of total recurrent operating expenses from \$1,013.4 million in 2002-03 to \$925.2 million in 2005-06, a decrease of \$88.2 million (or 8.7%), was mild when compared with other bureaux and departments. Of the reduction of \$88.2 million, \$39 million resulted from the salary reduction of non-judicial staff; and
- (d) the savings target for 2006-07 had yet to be decided by the Administration. The Administration appreciated the importance of safeguarding the independent operation of the Judiciary and maintaining judicial independence and would give positive consideration to the Judiciary's requests for resources.

Issues raised

Savings measures and resources for the Judiciary

18. The Chairman said that given the unique role of the Judiciary in administering justice, the Administration should give special consideration to the funding requests of the Judiciary. She pointed out that as reflected in the Research Report on "Budgetary Arrangements for Overseas Judiciaries" prepared by the Research and Library Services Division of the Legislative Council Secretariat in November 2003, constitutional safeguards against reduction of judicial remuneration existed in other jurisdictions. In Sir Anthony Mason's Consultancy Report on "System for the Determination of Judicial Remuneration" published in February 2003, it was recommended that legislation should be enacted prohibiting any reduction in judicial remuneration. The Chairman said that as remuneration of judges and judicial

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officers formed a substantial part of the Judiciary's annual recurrent operational expenses, and coupled with the budgetary constraints imposed on the Judiciary, there would be very limited scope for the Judiciary to further reduce its expenditure. She expressed concern that further cuts on the resources requirements of the Judiciary would adversely impact on the quality of justice.

19. The Chairman further said that the savings measures introduced by the Judiciary had already created problems in the face of increasing workload, such as lengthening of the waiting times at all levels of court. She made the following comments on the factors affecting the quality of service of the Judiciary –

- (a) as shown in the paper provided by the Judiciary Administration on closure and merger of Magistrates Courts (LC Paper No. CB(2)1271/04-05(01)), the total caseloads of Magistrates' Courts had increased from 197 419 in 2003 to 219 912 in 2004. However, the Western Magistrates' Court and North Kowloon Magistrates' Court had been closed in January 2004 and January 2005 respectively, resulting in a net reduction of three courts in the Magistrates' Courts;
- (b) according to the information provided to the Panel at its meeting on 24 November 2003, the establishment posts in the Judiciary as at 31 March 2004 was estimated to be 1 853, including 180 directorate posts. Of the 180 directorate posts, 174 were posts for judges and judicial officers. Updated information provided by the Administration indicated that the estimated establishment posts in the Judiciary as at 31 March 2006 were 1 592, including 177 directorate posts. Of the 177 directorate posts, 172 were posts for judges and judicial officers. This reflected that there was a reduction in the posts of judges and judicial officers;
- (c) since 2003-04, the Judiciary had reduced the number of temporary judges at all levels; and
- (d) measures to reduce the lengthening of waiting times, such as Saturday sittings in Magistrates' Courts and the District Court, had posed additional strain on judges and judicial officers and adversely impacted on their quality of work.

20. The Chairman considered that instead of requiring the Judiciary to introduce more savings measures in the coming year, additional resources should be provided to the Judiciary to ensure that its constitutional responsibility for administering justice and upholding the rule of law would not be affected by budgetary constraints.

21. Mr Albert HO said that as had repeatedly been emphasised by the Chief Justice (CJ) in public, despite the budgetary constraints faced by the Judiciary, it was of fundamental importance that the quality of justice must not be compromised. While the caseload handled by the Judiciary had been increasing, the public expected continuous improvement in the provision of judicial services by the Judiciary. Mr

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HO was concerned that budgetary constraints had already affected the services delivered by the Judiciary. He particularly pointed out that because of the increasing number of trial cases, judges did not have sufficient time to undertake some important judicial duties such as writing thorough judgments. The adverse impact on the quality of work could not be easily quantified in statistics. Mr HO added that he had also heard of complaints that cases listed in the plea courts of the Magistrates' Courts had increased to such a level that went beyond the limit that could be properly handled by the magistrates. He cautioned that judges should not be overburdened with work to the extent that the quality of justice was compromised.

22. Mr Martin LEE echoed Mr HO's views. He said that due to increased court sittings, many judges had to work late to finish work they could not complete in normal working hours. He considered that the situation was undesirable and should not be allowed to continue.

23. Mr KWONG Chi-kin said that he had come across complaints from workers and trade unions against the Presiding Officers (POs) of the Labour Tribunal for repeatedly adjourning cases and asking the parties to attempt private settlement. He said that this could well be due to the heavy workload of the Tribunal. In his opinion, to press for private settlement by the parties concerned was not fair as it deprived the parties of the opportunity to obtain a judicial hearing. Mr KWONG further said that he was aware of POs quitting the job possibly due to heavy work pressure.

JA

24. Ms Emily LAU said that she was aware that the Small Claims Tribunal had been taken out from the programme of the coming visit to the Judiciary due to time constraint. She suggested that the workload situation of the Small Claims Tribunal should also be looked into by the Judiciary as she had heard of complaints about long waiting time for hearings at the Tribunal, and the Panel would follow up the matter in due course if necessary.

25. On the issue raised by Mr KWONG Chi-kin, JA informed members that as a result of a review undertaken in June 2004 by a Working Party appointed by the CJ, a number of measures recommended by the Working Party to improve the operation of the Labour Tribunal had been implemented. One of the implemented measures was that the Tribunal should continue to assist the parties to resolve their disputes by settlement. However, there should only be one attempt at settlement conducted by the Tribunal at the call-over hearing. Mr KWONG Chi-kin said that he welcomed the improvement measure.

26. Referring to paragraph 12 of the Judiciary Administration's paper, Ms Emily LAU said that she did not support the introduction of Saturday sittings in the Magistrates' Court and the District Court as a measure to reduce the adverse impact on waiting times. She said that the new practice was contrary to the Administration's effort to promote a five-working-day week which she supported. JA replied that whether or not certain cases should be listed for Saturday sittings would be decided by the judges, having regard to the circumstances and the views of the parties concerned.

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27. At the request of the Chairman, JA agreed to provide information on the number of Saturday sittings conducted in the Magistrates' Courts and the District Court in the past 12 months.

(Post-meeting note : The information provided by the Judiciary Administration was issued to the Panel vide LC Paper No. CB(2)1899/04-05(01) on 10 June 2005.)

28. Mr Albert HO said that the adoption of the existing budgetary arrangement for the Judiciary, i.e. the Administration would determine the approved provisions in the annual resource allocation exercise and would set savings targets to be achieved by the bureaux and departments, was objectionable in principle from the perspective of safeguarding judicial independence. He said that the Judiciary should decide its own budget on the basis of its assessment of the workload and resource requirements. This was all the more important in the face of increasing caseload for the Judiciary and the increasing number of cases involving constitutional and human rights issues. Mr HO further suggested that a consolidated fund should be set up for allocation of resources for the Judiciary without the Administration's approval. He said that the Administration could make reference to the practice of overseas jurisdictions where resources provided to the judiciary were independent from the government's budget.

29. JA responded that he was accountable to the CJ and not to the Administration in carrying out duties relating to the administration of the Judiciary. Being the Controlling Officer who prepared the Judiciary's estimates of expenditure, he had sought the views of the Court Leaders of various levels of court on resources requirements for 2005-06 and submitted the estimates for the approval of CJ before providing them to the Administration. He stressed that as CJ had stated, maintenance of the quality of justice was of paramount importance to the Judiciary. If the consequence brought by implementation of savings measures to cope with budgetary constraints was considered to be unacceptable, the question of providing additional resources to the Judiciary would have to be raised and addressed by the Administration and the Legislature. The Judiciary considered that this point of time had come as the waiting times at all levels of court had been lengthened, particularly for the High Court and the Magistrates' Courts. Hence, in addition to withdrawing some savings measures previously submitted to the Government, the Judiciary would make a bid to the Government for a reasonable increase of resources where necessary.

30. With regard to members' concern about increasing caseloads affecting the work of judges, JA said the Judiciary would monitor the caseload position and assured members that the situation of judges being overburdened with work to the extent that the quality of justice were affected would not arise.

31. DS(Tsy) said that the Administration, in considering the Judiciary's requests in the annual resource allocation exercises, would not "micro-examine" individual items in the estimates of expenditure but would look at the Judiciary's overall resources requirement, taking into consideration the need to uphold the Judiciary's independent

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and efficient operation. Full autonomy was vested in the JA in preparing his Controlling Officer's Report regarding the Judiciary's requests for resources. In reaching agreement with the Judiciary on the allocation of resources, the Treasury Branch would fully consider the justifications given by the Judiciary for its requests. The decision process would also involve the Chief Secretary of Administration (CS) and the Financial Secretary (FS).

32. Concerning personal emoluments for the Judiciary, DS(Tsy) informed members that remuneration for judges and judicial officers represented about 29% of the Judiciary's overall estimates of expenditure of \$944.4 million for 2005-06. For the past financial year, the pay cuts of staff of the Judiciary other than judges and judicial officers resulted in savings of about \$10 million. However, the reduction in the estimated provision for 2005-06 was less than \$10 million.

33. DS(Tsy) further informed members that the issue of an appropriate system for the determination of remuneration of judges and judicial officers was being separately considered by the Administration.

34. Mr Albert HO reiterated that he could not accept that the Administration should set savings targets to be observed by the Judiciary. Referring to paragraph 6 of the Judiciary's paper, which set out the savings targets delivered by the Judiciary from 2000-01 to 2005-06, Mr HO said that the reduction of funding and resources for the Judiciary was substantial, taking into account the fact that judges and judicial officers had been protected from the salary cuts applicable to non-judicial staff.

35. DS(Tsy) said that in view of the budgetary constraints, it was necessary for the Government to set, on a yearly basis, an overall direction for efficiency savings, and for that purpose, savings targets for various bureaux and departments including the Judiciary. She added that in implementation, nevertheless, the Government would not adopt a rigid across-the-board approach. Allocation of resources would be decided, with due flexibility and having regard to the overall requirements of the bidders, on the basis of justifiable needs and priorities. In considering and approving the Judiciary's estimates of expenditure, the Administration would, as in the past, engage in thorough discussion with the Judiciary and give favourable consideration to the Judiciary's requests based on its resources needs and the prevailing financial situation of the Government. The views of the Judiciary could go directly to the CS and the FS for their consideration. DS(Tsy) added that a budgetary system for the Judiciary involving the participation of the Executive was also practised in overseas jurisdictions such as the United Kingdom (UK) and the province of Ontario of Canada, as noted in the Research Report prepared by the Research and Library Services Division of the LegCo Secretariat.

36. DS(Tsy) further pointed out that in addition to the existing constitutional safeguards under the Basic Law to protect the independent operation of the Judiciary, the relevant provisions of the Beijing Statement of Principles of the Independence of the Judiciary provided, among other things, that where there were economic constraints, the maintenance of the rule of law required that the needs of the Judiciary

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and the court system be accorded a high level of priority in the allocation of resources. The Government was closely observing these principles and requirements.

37. Ms Emily LAU opined that subject to the constitutional requirements prescribed under the Basic Law, the Judiciary should be given greater autonomy in determining its own budgetary arrangements to enhance the independence of its operation. Useful reference could be drawn from overseas budgetary systems in this regard. She pointed out that in UK, the Lord Chancellor appointed the Chief Executive of the Court Service to determine the priorities of the Court Service and to ensure that all courts were provided with adequate resources to meet their workload. In the United States (US), the budget for the judiciary was determined according to workload and resources.

38. The Chairman said that Article 62(4) of the Basic Law required that the Government of the Hong Kong Special Administrative Region should draw up and introduce budgets and final accounts. She considered that within the parameter of Article 62(4), there was scope for increasing the autonomy of the Judiciary in relation to its budgetary arrangements. She pointed out that under the system in the US, the bulk of the funds allocated to the courts were determined by formulas based on the courts' projected needs, workload and staffing etc. The formulas were developed as an objective means for determining the resource needs of the judiciary, and were used to justify budget estimates submitted to the Congress. In the province of Ontario of Canada, both the Executive and the Judiciary were committed to the principle of judicial independence and the furtherance of the efficiency of the courts and the administration of justice. The Estimate of the Court of Justice was jointly prepared by the Judiciary and the Executive.

39. DS(Tsy) said that in the view of the Administration, in conducting the yearly resource allocation exercises which covered the Judiciary, regard should be given to the overall budgetary condition of the Government. In order to better cater for the needs of the Judiciary and to ensure that the resource requirements of the Judiciary could be considered at an early stage, the Administration could consider providing flexibility by reversing the existing procedure, i.e. the Judiciary could submit its annual estimates of expenditure to the Administration, prior to the Administration drawing up the operating expenditure envelope for the Judiciary. Ms Emily LAU opined that this would be an approach worth taking.

Appointment of Deputy Judges

40. In reply to the Chairman's enquiry, JA informed members that the number of external Deputy Judges at various levels of court as at 1 April 2005 was 12, as compared with 10 and 13 as at 1 April 2004 and 1 April 2003 respectively. There were no external Deputy Judges of the Court of First Instance as at 1 April 2005. He said that no financial constraints had been imposed on the appointment of Deputy Judges which would be considered on a need basis.

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Fees and charges of the Judiciary

41. The Chairman pointed out that the Panel had previously discussed the issue of fees charged by the Judiciary and had requested the Administration to review the existing method of determining judiciary fees and charges on the basis of the global costing methodology.

42. Principal Assistant Secretary for Financial Services and the Treasury (Treasury) informed members that the overall objective of the Administration's policy on charging of fees was to achieve full cost recovery of services provided to the public. Noting that the more conventional approach of costing on the basis of individual services had not been widely used, the Judiciary and the Treasury Branch had been examining the feasibility of replacing the global costing basis with the individual costing basis. JA said that the review of those Judiciary fees and charges not directly related to court proceedings, based on the individual costing approach, was expected to be completed by 2006-07.

43. Regarding the fees for the production of transcripts of court proceedings, JA informed members the existing fees charged for one page of the transcripts was \$85 per page. The Judiciary had engaged a new contractor for the production of transcripts and a new fee charging mechanism would be introduced under which fees would be calculated on the basis of the number of words contained in the transcripts. JA said that the Judiciary Administration would revert to the Panel on the issue of charging of transcript fees at the Panel's meeting in June 2005.

Way forward

44. The Chairman requested the Clerk to summarise the suggestions made by members on the budgetary arrangement for the Judiciary in a paper for the Panel's consideration at the next meeting on 23 May 2005. Subject to the Panel's agreement, the Administration and the Judiciary Administration would be requested to respond to the suggestions in about two months' time.

(Post-meeting note : The paper prepared by the Secretariat was issued to the Panel vide LC Paper No. CB(2)1621/04-05(03) on 20 May 2005 and provided to the Administration and the Judiciary Administration for consideration and response after the Panel meeting on 23 May 2005.)

45. The meeting ended at 6:45 pm.