

**For information
on 25 April 2005**

**Paper for the Panel on
Administration of Justice and Legal Services (“AJLS”)**

Budgetary Arrangements for the Judiciary

Purpose

This paper sets out the Judiciary’s position on its budgetary arrangements, having regard to (i) LegCo’s Research Report on “Budgetary Arrangements for Overseas Judiciaries” (“LegCo’s Report”) and (ii) the circumstances in Hong Kong.

Background

2. At the LegCo AJLS Panel meeting on 24 November 2003, Members discussed -

- (a) the LegCo’s Report which examines the budgetary arrangements in the United States, the United Kingdom and Canada, and compares them with the budgetary arrangements for the Judiciary in Hong Kong; and
- (b) the Administration’s paper on “Budgetary Arrangements for the Judiciary”, which sets out the budgetary arrangements for the Judiciary, including how the budget is approved, and the respective roles of the parties involved in the apportionment of resources for the administration of justice.

3. At the Panel meeting, the general sentiment of Members was that there should be better protection of the Judiciary’s budgetary arrangement, to ensure that the Judiciary’s independence would not be subject to the Executive influence, and the quality of justice should not be adversely affected by budgetary constraints.

4. The Judiciary has been requested to revert to the AJLS Panel on this subject at the meeting on 25 April 2005.

Judiciary's Position on its Budgetary Arrangements

Constitutional Arrangement

5. The budgetary arrangements for the Judiciary in Hong Kong must be in accordance with the relevant provisions in the Basic Law ("BL") -

- (a) BL 59 – The Government of the Hong Kong Special Administrative Region ("HKSAR") shall be the executive authorities of the Region;
- (b) BL62(4) - The Government of the HKSAR shall ... draw up and introduce budgets and final accounts;
- (c) BL 73(2) - The Legislative Council ("LegCo") of the HKSAR shall ... examine and approve budgets introduced by the government; and
- (d) BL 85 - The courts of the HKSAR shall exercise judicial power independently, free from any interference.

Savings Targets and Resources for the Judiciary

6. As from 2000-01, the Judiciary has delivered the following savings targets set by the Administration -

- (a) under the Enhanced Productivity Programme over 2000-01 to 2002-03, a 5% reduction in the Judiciary's baseline expenditure with savings amounting to about \$48 million;
- (b) 3.8% efficiency savings for 2003-04 to 2005-06, with saving amounting to about \$39 million; and
- (c) additional savings of 6% from 2004-05 to 2005-06, with savings amounting to \$61 million.

The savings target for 2006-07 has not been finally set by the Administration.

7. As from 2003-4, with the roll-out of the one-line vote arrangement, the Judiciary Administrator may flexibly deploy the

operational expenses approved by the Administration among various components of expenditure.

8. Despite the savings targets for recurrent expenditure over the years, the Administration has approved capital funding including \$9.85 million for the Judiciary to enhance its information technology systems to support the Civil Justice Reform. In addition, the Administration has earmarked the necessary funding for the relocation of the Labour Tribunal to the South Kowloon Law Courts Building.

Judiciary's Response to Budgetary Constraints So Far

9. The Judiciary is fully conscious of the budgetary difficulties facing the Hong Kong Government, and has made its best efforts to contribute to the Government-wide effort to reduce operating expenditure. In the face of the budgetary constraints and in order to achieve the savings targets in paragraph 6(a) - (c), the Judiciary has been doing its best to cope by re-engineering, organizational restructuring and re-prioritizing.

10. Since 2003-04, the Judiciary has adopted various measures to achieve the savings targets. These include -

- (a) shelving of capital projects;
- (b) merging of Magistrates' Courts;
- (c) reducing the number of temporary judges at all levels;
- (d) leaving some judicial posts vacant; and
- (e) deletion of posts and streamlining of tasks and procedures in the Judiciary Administration.

11. The Chief Justice has repeatedly emphasized in public that in relation to the budgetary constraints faced by the Judiciary, it is of fundamental importance that the quality of justice must not be compromised. And that the inevitable consequence is that waiting times will be lengthened at all levels of court.

12. The Judiciary has adopted a number of measures to minimise the adverse impact on waiting times. For example, (i) Saturday sittings have been introduced in the Magistrates' Courts and the District Court, and (ii) increasing judicial manpower temporarily in areas facing particularly great pressure where budgetary constraints permit.

Present Position

13. However, it has to be recognised that the inevitable consequence of budgetary constraints over a period of time will be that the waiting times will be lengthened at all levels of court. It will take a longer time to obtain a hearing date. This has happened particularly in the High Court and the Magistrates' Courts.

14. To enable the Judiciary to administer justice without undue delay, it must be provided with adequate resources. The Basic Law and the Bill of Rights provide for constitutional rights to justice in the courts without undue delay. Government has the obligation to make adequate provision for the Judiciary to enable these rights to be safeguarded. Should the resources provided be inadequate, there may be adverse implications for the protection of those rights. It should also be noted that Article 41 of the Beijing Statement of Principles of the Independence of the Judiciary¹ provides that it is essential for judges to be provided with the resources necessary to enable them to perform their functions. And Article 42 provides that where there are economic constraints, the maintenance of the Rule of law requires that the needs of the Judiciary and the court system be accorded a high level of priority in the allocation of resources.

15. At the Legal Year Opening 2005, the Chief Justice stated that if there comes a point of time when the waiting times are considered to be unacceptable, the question of providing additional resources to the Judiciary will have to be raised and addressed by the Administration and the Legislature. Having reviewed the waiting times at the various levels of courts, the Judiciary considers that this point has come particularly for the High Court and the Magistrates' Courts.

16. In order to avoid possible worsening of the waiting times, the Judiciary is exploring various options, including - (i) the withdrawal of some savings measures submitted to the Government, and (ii) making a bid to the Government for a reasonable increase of resources. In relation to (i), we have decided that the Tsuen Wan Magistrates' Courts will not be closed in January 2006 as planned. The position will be reviewed later.

¹ The Beijing Statement has been adopted by the Chief Justices of Asia and the Pacific, including that of Hong Kong. It is referred to in the LegCo's Report paras. 2.2.4 - 2.2.6 and footnotes thereto.

In relation to (ii), we trust and expect that any future bid for additional resources by the Judiciary will be supported.

Longer-term Arrangements

17. The Judiciary has taken note of the budgetary arrangements in the overseas jurisdictions in relation to the maintenance of the independent operation of their Judiciaries. For instance -

- (a) In the United States, there is statutory protection against Executive influence on the Judiciary's budget. The Court's budget is determined largely by objective formulas based on the workload and staffing;
- (b) In the United Kingdom, the Lord Chancellor has reassured in the Framework Document of the Court Service that while court resources are voted by the Parliament, "*judges and judicial officers who sit in the courts act independently by both Parliament and the Executive*"; and
- (c) In the province of Ontario of Canada, there is a Memorandum of Understanding signed between the Attorney General of Ontario and the Chief Justice of the Ontario Court of Justice. In its preamble, it is stated clearly that both the Executive and the Judiciary are committed to "*the principle of judicial independence*" and "*the furtherance of the efficiency of the courts and the administration of justice*".

18. Having regard to the relevant constitutional provisions governing budgetary arrangements in the Basic Law as set out in para. 5(a) – (c) above, the Judiciary keeps 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 is provided with adequate resources to administer justice without undue delay.