

(By fax and by post)
Total : 3 pages

CB2/PL/AJLS
2869 9253
2509 9055

25 May 2005

Secretary for Financial Services and the Treasury
(Attn : Ms Elizabeth TSE)
Financial Services and the Treasury Bureau
8th floor, West Wing
Central Government Offices
Hong Kong

Dear Ms TSE,

Panel on Administration of Justice and Legal Services

Follow up to meeting on 25 April 2005

Budgetary arrangement for the Judiciary

On the instruction of the Panel, I write to follow up the discussion of the Panel on the budgetary arrangements for the Judiciary.

At the meeting on 25 April 2005, members expressed concern that the constitutional responsibility of the Judiciary for administering justice and upholding the rule of law would be affected by budgetary constraints. Members noted that the savings measures introduced by the Judiciary to cope with budgetary constraints since 2003-04, such as the closure of Magistrates' Courts and the reduction in the number of judges and temporary judges, had already brought about problems in the face of increasing workload, i.e. the lengthening of waiting time at all levels of court. Further savings measures introduced to minimise the impact on waiting time, such as Saturday sittings in Magistrates' Courts and the District Court, would pose additional strain on judges and judicial officers and might adversely impact on the quality of justice. The Judiciary considered the situation no longer acceptable, and that the question of additional resources to the Judiciary would have to be addressed by the Administration.

Members agreed that there should be better protection of the Judiciary's budgetary arrangement to ensure that judicial independence would not be subject to executive influence, and the Judiciary should be provided with adequate resources to

administer justice without undue delay. Taking note of the budgetary arrangements in the overseas judiciaries, members considered that the existing arrangement for the Administration to set savings targets to be achieved by the Judiciary, and to determine the approved provisions for the Judiciary in the annual resource allocation exercise, should be reviewed.

Members noted that under Article 62(4) of the Basic Law, the Government should draw up and introduce budgets and final accounts. Members considered that there was scope under the Basic Law for the Administration to provide greater flexibility and autonomy for the Judiciary to prepare its budget.

In the light of the Panel's discussion, members agreed at the Panel meeting on 23 May 2005 that the Administration and the Judiciary Administration should be requested to consider a number of suggestions which are set out below –

- (a) judicial remuneration should be protected by statute in line with other jurisdictions in which judicial independence is given constitutional importance, as recommended in Sir Anthony Mason's Consultancy Report on "System for the Determination of Judicial Remuneration";
- (b) the Administration should not impose savings targets set for bureaux and departments on the Judiciary, but consult the Judiciary as to what savings targets may be compatible with the proper administration of justice;
- (c) the Judiciary should have autonomy to prepare its own budget on the basis of objective yardsticks, such as existing resources, projected needs, workload and staff remuneration. Members have pointed out that in the United States, the bulk of the funds allotted to individual courts are determined by formulas which are developed by the judiciary as an objective means for determining the workload and resource needs of the judiciary;
- (d) the Administration should formally adopt as a rule of practice that the budgetary proposals of the Judiciary would not normally be reduced;
- (e) the Administration should, in due course, consider the establishment of a consolidated fund to cater for specific resource needs of the Judiciary, e.g. the payment of judicial remuneration. Members consider that a continuing security for the payment of remuneration is a necessary element in safeguarding judicial independence. Members have pointed out that in the United Kingdom, judicial remuneration is paid out of a consolidated fund which is not subject to parliamentary authorisation, any government appropriation process or budget legislation; and

- (f) as a matter of urgency, the Administration should give special consideration to the Judiciary's 2006-07 budget, to ensure that the quality of administration of justice is not compromised as a result of accumulated budgetary constraints. Members are concerned about the warning given by the Chief Justice, and have noted the problems particularly with respect to the slippage in waiting time in the High Court and the increased workload in the Magistrates' Courts resulting in unacceptable length in waiting time for trial.

The Administration (the Financial Services and the Treasury Bureau and the Administration Wing, Chief Secretary for Administration's Office) and the Judiciary Administration are requested to consider the suggestions and revert to the Panel with a written response (in bilingual versions) in Adobe Acrobat (i.e. xxx.pdf) format via e-mail (ftsang@legco.gov.hk) at a meeting to be scheduled in mid July 2005. I shall let you know the exact date of the meeting once fixed.

Yours sincerely,

(Mrs Percy MA)
Clerk to Panel

c.c. Judiciary Administrator
Director of Administration
(Attn : Miss Eliza LEE)