

**Suggestions from the LegCo Panel on Administration of Justice and Legal Services (AJLS) on budgetary arrangements for the Judiciary
(23 May 2005)**

The Administration's Response

Statutory protection of judicial remuneration

The AJLS Panel considered that judicial remuneration should be protected by statute in line with other jurisdictions in which judicial independence is given constitutional importance, as recommended in the Judiciary's Consultancy Report on "System for the Determination of Judicial Remuneration" (the Consultancy Report).

2. The Administration attaches great importance to the provision of appropriate remuneration for judges and judicial officers. Having regard to the Judiciary's proposal to adopt the recommendations of the Consultancy Report and in full recognition of the independent status of the Judiciary, the Chief Executive has appointed the Standing Committee on Judicial Salaries and Conditions of Service (Judicial Committee) to conduct a comprehensive study on an appropriate institutional structure, mechanism and methodology for the determination of judicial remuneration, and in particular, to make recommendations on whether the Judiciary's proposal based on the Consultancy Report should be accepted. Given the importance of this matter, the Committee considers it prudent to take more time to conduct the study. The Legislative Council (LegCo) will be briefed on developments in due course.

3. In monetary terms, the estimated expenditure relating to the remuneration for judges and judicial officers for 2005-06 is \$275.2 million, which takes up about 29% of the Judiciary's estimated overall expenditure or 0.1% of the total government expenditure. It is inconceivable that the Administration would need to or wish to contemplate not seeking sufficient appropriation to meet payment of judicial remuneration.

Consultation with the Judiciary on the saving targets which are compatible with the proper administration of justice

4. The AJLS Panel suggested that the Administration should not impose on the Judiciary savings targets set for bureaux and departments. The Administration should instead consult the Judiciary as to what savings targets may be compatible with the proper administration of justice.

5. The Administration is agreeable to consulting the Judiciary on its overall resource requirements, prior to the setting of government budgetary targets. This would not preclude discussions on modifications or exempt the Judiciary from following the due process for resource bidding. We would need to preserve the system of constructive dialogue and checks and balances in the process of allocating resources.

6. As has been explained at previous Panel discussions, the process of resource allocation has never been allowed to undermine the independence of the judicial system. The Financial Secretary (FS) has emphasised the need for a pragmatic and measured approach in dealing with reductions in government expenditure and the reductions will not be uniform across departments. The Administration would continue to count on the advice of the Judiciary Administrator (JA) on the deliverability on any saving targets.

7. We believe that some degree of efficiency savings inevitably exists for an organisation with about 160 judges and judicial officers and about 1 500 supporting staff from the civil service. As reflected from the approved provisions and the actual expenditure recorded for the Judiciary for recent years, it has indeed helped contribute to the Administration's economy drive. At the same time, we have acceded to justified requests for funding from the Judiciary to meet its identified needs. The Administration would continue to adopt a pragmatic approach to see to it that the Judiciary would have adequate resources to deliver judicial services of the quality desired.

Preparation of its own budget by the Judiciary

8. The AJLS Panel requested that the Judiciary should have autonomy to prepare its own budget on the basis of some objective yardsticks or predetermined formulas as in the case of some overseas jurisdictions.

9. The Administration has always respected the independence of the Judiciary, including the autonomy in preparing its budget. According to our

understanding, JA prepares the budget of the Judiciary in consultation with the Chief Justice having regard to the requirements for effective judicial administration. The Chief Justice will also involve other Court Leaders (that is the Chief Judge of the High Court, the Chief District Judge and the Chief Magistrate) as appropriate during the process and, where necessary, in formulating bids for additional resources for the operation of the courts.

10. When preparing the annual draft Estimates of expenditure, the Treasury Branch of the Financial Services and the Treasury Bureau will examine and discuss with JA the provision sought for the Judiciary, normally on the basis of the requirements of individual expenditure components or subheads as anticipated by the JA. The latter will have opportunities to give his/her views during the preparation. The final incorporation of the draft Estimates for the Judiciary into the overall draft Estimates is also subject to consultation with the JA. The Administration is content that, through such collaboration and technical exchanges during the draft Estimates exercises, the actual resource needs of the courts have been duly taken into account. In no circumstances will judicial independence be compromised.

Rule of practice against reduction of the Judiciary's budgetary provision

11. The AJLS Panel considered that the Administration should formally adopt as a rule of practice that the budgetary proposals of the Judiciary would not normally be reduced.

12. We do not agree that there should be a general rule or practice against reduction of the Judiciary's budgetary provision. As with all other departments or organisations funded by the Government, there should be scope for efficiency savings within the Judiciary. And much as the Administration would strive to accommodate justified funding requirements for the Judiciary to the extent possible, we cannot rule out the need for downward adjustments to the Judiciary's funding provision having regard to overall economic constraints. Whilst we will not compromise judicial independence, we prefer a more pragmatic approach in discussing with and consulting the JA on the annual draft Estimates for the Judiciary rather than imposing a rigid bar on budgetary reductions.

Establishment of a consolidated fund to cater for specific resource needs of the Judiciary

13. The AJLS Panel suggested that the Administration should, in due course, consider the establishment of a consolidated fund not subject to any government appropriation process to cater for specific resource needs of the Judiciary, e.g. the payment of judicial remuneration.

14. The funding for the Judiciary forms part of the Government's overall expenditure and is subject to the annual appropriation by the LegCo and separate approvals by the Finance Committee of the LegCo or FS under the Public Finance Ordinance (Cap 2). We do not see the need for a separate fund to cater for Judiciary's resource requirements. Nor do we see how such a fund can be exempted from the LegCo appropriation process. However, if there are proposals that relate to judicial remuneration, they should be considered with reference to the final recommendation of the Judicial Committee in this regard.

The Judiciary's 2006-07 budget

15. The AJLS Panel urged that, 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 were also concerned about the warning given by the Chief Justice and had noted the problems particularly in respect of the slippage in waiting time in the High Court and the increased workload in the Magistrate's Courts resulting in unacceptable length in waiting time for trial.

16. We always accord the Judiciary the usual top priority. When the Administration receives the Judiciary Administrator's proposal on the Judiciary's resource requirements for 2006-07, we will be as facilitating and constructive as possible in considering the funding requirements. That said, the Government's operating account is still forecast to remain in deficit until 2007-08. Hence, there remains a clear need for all departments and organisations funded by the Government to put in a concerted effort to contain Government's expenditure. We will take into full account the advice offered by the AJLS Panel before taking a view.

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