

**Extract from minutes of meeting on
Panel on Administration of Justice and Legal Services on 27 March 2006**

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IV. Budgetary arrangement and resources for the Judiciary

(LC Paper No. CB(2)1489/05-06(01) – Background brief prepared by the LegCo Secretariat on "Budgetary arrangement and resources for the Judiciary"

LC Paper No. CB(2)1489/05-06(02) – Letter dated 20 March 2006 from the Judiciary Administration on "Budgetary arrangement and resources for the Judiciary"

LC Paper No. CB(2)1489/05-06(03) – Letter dated 20 March 2006 from the Financial Services and the Treasury Bureau)

4. The Judiciary Administrator (JA) briefed members on the Judiciary's position on the revised arrangement for the preparation of the Judiciary's draft Estimates for 2006-07 and the resource implications for the Judiciary arising from the Administration's legislative framework concerning interception of communications and covert surveillance as set out in her letter dated 20 March 2006. Under the revised budgetary arrangement, the Judiciary had submitted to the Administration its resource requirements for 2006-07 in August 2005 prior to the Administration drawing up the operating expenditure envelope for the Judiciary.

5. JA said that the draft Estimates for 2006-07 for the Judiciary would provide adequate resources for the implementation of measures to shorten the waiting times at different levels of court. As she had informed Members at the special meeting of the Finance Committee (FC) to examine the Estimates of Expenditure for 2006-07 on 16 March 2006, the Judiciary had started to recruit additional Deputy Judges and judicial officers since the second half of 2005. Recruitment for Magistrates had started in November 2005 and that for Judges for the District Courts and Court of First Instance (CFI) would be conducted in the coming financial year.

6. JA added that the Judiciary considered that the revised budgetary arrangement was working satisfactorily, and looked forward to the Administration's continued adoption of this arrangement for the preparation of the Judiciary's budget in future.

7. As regards the resource implications of the Interception of Communications and Covert Surveillance Bill, JA informed members that the Judiciary's position on adequate resources required had been set out in its paper for the meeting of the Panel on Security on 21 February 2006 (LC Paper No. CB(2)1189/05-06(01)). The Judiciary would continue to discuss with the Administration on this matter.

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8. Deputy Secretary for Financial Services and the Treasury (Treasury) (DS(Tsy)) reported on the implementation of the revised budgetary arrangement for the Judiciary in the context of the preparation for the 2006-07 draft Estimates. She said that the Administration would be pleased to extend the revised arrangement as a standing practice for the coming Estimates.

Revised budgetary arrangement

9. The Chairman sought clarification on the position of the Administration and the Judiciary on the Panel's earlier suggestion that the Judiciary should have autonomy to determine its budget on the basis of some objective yardsticks or predetermined formulae. Ms Emily LAU said that the Administration and the Judiciary Administration should further discuss the Panel's suggestion and adopt the suggested arrangement which was crucial to maintaining the Judiciary's independence in the administration of justice. Ms LAU added that under such arrangement, the Judicial Administration would be required to justify the resource requirements in its budget.

10. DS(Tsy) assured members that the Administration was open to the suggestion. She explained that under the revised budgetary arrangement, the Judiciary was allowed to prepare its resource requirements independently. The Administration would then consider the merits of the Judiciary's bids and overall government affordability.

11. JA said that the Judiciary was keeping an open mind on any suggested measures 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. The Judiciary would be willing to provide justification for the resource requirements included in its draft Estimates. However, as the revised budgetary arrangement had just been in place and had worked satisfactorily, the Judiciary would continue to monitor the situation closely before considering whether any further measures were necessary.

Adm and 12. The Chairman said that the Administration and the Judiciary Administration should consider whether there was further scope to improve the budgetary arrangement for the Judiciary and revert to the Panel in due course. The Panel would follow up on the matter next year.
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Resource implications for the Judiciary arising from the Administration's legislative framework concerning interception of communications and covert surveillance

13. The Chairman said that Members had expressed concern about the financial implications of the legislative framework concerning interception of communications and covert surveillance proposed in the Interception of Communications and Surveillance Bill. However, details of the financial implications of the Bill had not been provided by the Administration. The Chairman sought clarification on whether the policy bureau concerned should provide such details when a bill was introduced into the Legislative Council (LegCo).

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14. DS(Tsy) explained that it was a normal practice for the policy bureau concerned to indicate the financial implications of a new legislative proposal, except for proposals which involved controversial issues or required to be implemented urgently. This was because substantial amendments, which might have significant financial implications, might be made to such proposals as a result of the discussions of the Bills Committees concerned.

15. As regards the financial implications of the Interception of Communications and Surveillance Bill, DS(Tsy) assured members that the Administration had undertaken to provide the Judiciary with the necessary resources for implementing the proposed legislative regime, if the Bill was passed and enacted. Internal discussion among the bureaux concerned would be held on whether the additional requirements should be met from existing resources or by seeking additional resources.

16. Ms Audrey EU noted the estimated additional resources required by the Judiciary in paragraph 17 of the background brief prepared by the LegCo Secretariat for the implementation of the legislative proposals. Ms EU sought clarification on the following –

- (a) whether the estimated additional resources had accurately reflected the requirement of the Judiciary;
- (a) how long it would take to recruit additional judges, taking account of the difficulty in recruiting new judges, and the need to comply with the recruitment procedure;
- (b) whether sufficient new judges could be recruited before the Bill was passed so as to ensure that its implementation would not adversely affect the administration of justice;
- (d) whether Deputy Judges would be appointed to relieve the strains on the manpower of the Judiciary before new substantive Judges were in post, and whether the staff costs involved had been included in Judiciary's estimated resource requirements; and
- (e) whether CFI Judges would be deployed to handle the work involved in judicial authorisation in the legislative proposals, so that their daily work in CFI would have to be undertaken by Deputy Judges.

17. Ms Emily LAU also enquired about the time required for recruiting additional judges, and whether the Judiciary had planned to recruit all the additional judges required before implementation of the Bill.

18. JA responded that the estimated resource requirement had been calculated on the basis of the Administration's proposed legislative framework in the Interception of Communications and Surveillance Bill. The Judiciary had planned to commence the

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recruitment for CFI Judges within a short time. It was hoped that the timetable for recruitment of CFI Judges, as well as the provision of additional supporting staff and related resources to the Judiciary could dovetail with the that for the implementation of the legislative scheme. The Judiciary would continue to discuss with the Administration on the matter.

19. DS(Tsy) supplemented that the support of the Establishment Subcommittee had to be sought for the creation of CFI posts before the funding proposal was submitted to FC for approval. Seeking funding approval for the posts could therefore proceed in parallel with the recruitment exercise for additional judges.

20. As regards the appointment of judges to the Panel of Judges responsible for the authorisation of all interception of communications and the more intrusive covert surveillance operations, JA said that according to the proposal in the Bill, the Judges would be appointed by the Chief Executive on the recommendation of the Chief Justice (CJ). JA added that pending the appointment of additional substantive Judges, the Judiciary might consider assigning Deputy Judges to perform some of the daily duties in the CFI as an interim measure.

21. The Chairman expressed concern that the quality of the essential judicial services in the administration of justice would be affected by the proposed deployment of CFI Judges to the Panel for judicial authorisation under the legislative proposal, while leaving the essential judicial work to Deputy Judges. She commented that the Judiciary would put the cart before the horse in making such an arrangement.

22. JA responded that the Judiciary had stated in its paper to the Panel on Security that additional CFI posts would be required for the implementation of the Bill. It had also explained why Deputy Judges could not be appointed to undertake the full range of duties of CFI Judges in the paper.

23. Mr James TO pointed out that if the Bill was enacted and the proposed legislative framework was implemented, applications for judicial authorisation for interception of communications and more intrusive covert surveillance operations had to be processed on an urgent basis. Given the existing stringent conditions of the staff resources in the Judiciary, other essential judicial work would inevitably be affected. Mr TO expressed concern that the waiting time at the court would eventually be increased.

24. Mr TO was of the view that the Judiciary should stand firm on the position that the Bill should not be implemented until the Judiciary had been provided with the required resources including additional judges. The Administration would be bound to satisfy the Judiciary's requirements. Ms Emily LAU concurred with Mr TO.

25. Ms Miriam LAU said that the Bills Committee on Interception of Communications and Surveillance Bill had discussed the matter raised. The Bills Committee expected that the scrutiny of the Bill would complete and the Second Reading debate on the Bill be resumed before the end of the current legislative session,

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since the proposed legislative framework had to be put in place when the temporary validity of the Law Enforcement (Covert Surveillance Procedures) Order ordered by the Court expired in August 2006. The Bills Committee was concerned that judicial services should not be affected by the implementation of the Bill.

26. Ms Miriam LAU urged the Judiciary Administration to work out a plan for the provision of judicial manpower relating to the implementation of the proposed legislative framework together with the Administration, and explain it to Members clearly. She added that Members would support the provision of additional resources for the Judiciary.

27. Ms Emily LAU noted the explanation put forth by the Judiciary Administration in paragraph 7 of its paper to the Panel on Security that judges should be assigned to take up duties concerning judicial authorisation on a full-time basis. She also noted from paragraph 10 of the paper that there were substantial areas of duties which could not be performed by Deputy Judges. Noting that the CFI was already very substantially under-staffed, Ms LAU expressed concern that deployment of CFI Judges to the Panel of Judges for judicial authorisation would create additional pressure on the already stringent judicial staff resources. If the Bill was to be implemented before additional judges could be recruited, the operation of the Judiciary might be paralysed. She stressed that such situation would not be acceptable to Members. The Judiciary should not allow judiciary services to be adversely affected by the implementation of the Bill. She requested JA to relate members' concerns to CJ.

28. Ms Emily LAU added that proposals for creation of additional CFI posts had to be submitted to the Establishment Subcommittee and then FC for consideration by end of April 2006 if the posts were to be created in the current session. Therefore, the Judiciary Administration should work out a plan with the Administration as soon as possible.

29. JA assured members that the Judiciary Administration would continue to discuss with the Administration on the provision of adequate resources for the Judiciary for the implementation of the Bill. The Judiciary considered that it was important that while the new judicial authorisation system should be implemented properly and smoothly, disruptions should not be caused to its daily work in the administration of justice.

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30. At members' request, JA undertook to provide a written response on the estimated number of additional CFI and Deputy Judges required, the timetable on the recruitment and appointment of these judges and the plan for deployment of Judges and Deputy Judges in the event that the Bill had to be implemented before additional judges could be recruited. DS(Tsy) also undertook to co-ordinate a written response on the work plan and time schedule for the provision of additional resources for the Judiciary for the implementation of the legislative framework proposed in the Bill.

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31. The Chairman suggested that this item be placed on the agenda for the Panel meeting on 22 May 2006 tentatively, pending the written responses from the Administration and the Judiciary Administration. Members agreed.

(Post-meeting note: A special joint meeting of the Panel on Administration of Justice and Legal Services and Panel on Security has been scheduled for 22 May 2006 to discuss the financial proposal on the implementation of the Administration's legislative framework concerning interception of communications and covert surveillance.)

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