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Panel on Administration of Justice and Legal Services

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 26 May 2008**

System for the determination of judicial remuneration

Purpose

This paper summarises the past discussions of the Panel on Administration of Justice and Legal Services (the Panel) on issues relating to the system for the determination of judicial remuneration.

Background

2. In May 2002, the Judiciary commissioned Sir Anthony Mason to undertake a consultancy study with a view to recommending the appropriate system for the determination of judicial remuneration in Hong Kong. The Consultancy Report on "System for the Determination of Judicial Remuneration" (the Mason Report) was completed in February 2003. Chapter Six of the Report on "Recommendations" is in **Appendix I**.

3. Following completion of the Mason Report, the Chief Justice established a Working Party comprising 15 judges and judicial officers from all levels of court to advise and for that purpose to consult all judges. On the basis of the Working Party's advice, which was based on the judges' overwhelming support, the Chief Justice put forward to the Chief Executive the Judiciary's proposal that the recommendations and views contained in the Mason Report should be adopted as the appropriate system for the determination of judicial remuneration in Hong Kong. A copy of the press release issued by the Judiciary on 23 April 2003 is in **Appendix II**.

4. On 21 January 2004, the Chief Executive appointed the Standing Committee on Judicial Salaries and Conditions of Service (the Judicial Committee) to make recommendations to him on the 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 Mason Report should be accepted.

Deliberations of the Panel

5. At its meeting on 26 May 2003, the Panel had a preliminary discussion on some of the recommendations in the Mason Report. Both the Hong Kong Bar Association and the Law Society of Hong Kong supported the recommendations set out in the Report. The Administration advised that it had yet to form a view on the Judiciary's proposal which raised some points of principle and required careful consideration.

6. The Panel discussed the meaning of "absolute prohibition of any reduction" in Recommendation 1 of the Mason Report. The Chief Justice had subsequently discussed the matters raised by the Panel with Sir Mason, and a copy of the reply from the Judiciary Administration is in **Appendix III**.

7. The Panel also discussed the budgetary arrangement and resources for the Judiciary on a number of occasions. In the course of the discussions, the Panel requested the Administration to consider the following suggestions in 2005 -

- (a) judicial remuneration should be protected by statute in line with other jurisdictions in which judicial independence was given constitutional importance, as recommended in the Mason Report; and
- (b) a consolidated fund should be established to cater for specific resource needs of the Judiciary (e.g. judicial remuneration). Members pointed out that in the United Kingdom, judicial remuneration was paid out of a consolidated fund which was not subject to parliamentary authorisation, government appropriation process or budget legislation.

8. The Administration had responded as follows -

- (a) the funding for the Judiciary formed part of the Government's overall expenditure and was subject to the annual appropriation by LegCo and separate approvals by the LegCo's Finance Committee or the Financial Secretary under the Public Finance Ordinance (Cap. 2). The Administration did not see the need for a separate fund which was exempted from the LegCo appropriation process to cater for the Judiciary's resource requirements; and
- (b) on the system for the determination of judicial remuneration, the Judicial Committee had submitted a report to the Chief Executive on 25 November 2005. Before a new mechanism was put in place, the Administration would continue with the existing mechanism in reviewing the remuneration for judges and judicial officers, i.e. the Administration would consult the Judiciary on whether the proposed pay adjustment for the civil service should also apply to judges and judicial officers. There had been no salary reduction for judges in the recent past.

Relevant papers

9. A list of the relevant papers available on the LegCo website (<http://www.legco.gov.hk>) is in **Appendix IV**.

Council Business Division 2
Legislative Council Secretariat
21 May 2008

CHAPTER SIX

RECOMMENDATIONS

6.1 This Chapter sets out the recommendations which I make for the consideration of the Hong Kong judiciary. The recommendations, in my view, are a natural and desirable development of the Judicial Service Pay System in Hong Kong as described in Chapter Two and are completely consistent with the principle of judicial independence as discussed in Chapter Three.

6.2 The recommendations have been framed in the light of the experience of the various systems for fixing judicial remuneration in the jurisdictions reviewed in Chapter Four and reflect the most recent consideration given to some of the issues by the Review Body in the United Kingdom and the Remuneration Tribunal (Commonwealth) in Australia.

Recommendation 1:

Legislation should be enacted prohibiting absolutely any reduction in judicial remuneration.

6.3 Constitutional or legislative prohibition of reduction in judicial remuneration is an essential element of judicial independence. The prohibition is absolute in all the jurisdictions reviewed in this Report except Canada. In addition to England and Wales, the United States, Australia, New Zealand and Singapore, other major jurisdictions (with a common law tradition or elements) which have absolute prohibitions include India, Ireland, Malaysia, Philippines and South Africa

6.4. The presence of the absolute prohibition in all such major jurisdictions means that it is a widely accepted safeguard for the protection of judicial independence. The rationale of an absolute prohibition is that the principle of judicial independence is so fundamental that any risk of its jeopardy must be avoided.

6.5 The prohibition is qualified in Canada (see para. 3.46). Subject to prior recourse to an independent body, it permits reduction of judicial remuneration as part of an overall economic measure which affects the salaries of all or some persons who are remunerated from public funds or as part of a measure directed at provincial judges as a class. In these respects, the Canadian position is inconsistent with the widely accepted safeguard of an absolute prohibition against reduction for the

protection of judicial independence in many jurisdictions. Further, although the independent body's recommendations are non-binding, any departure from them must be justified according to a standard of rationality. The burden will be heavy, particularly when judges are singled out as a class for a pay reduction. The principle or criterion to be applied in relation to the rationality test is uncertain. This is another fundamental weakness in the Canadian position.

6.6 The Beijing Statement of Principles of the Independence of the Judiciary in the Lawasia Region in 1995 signed by the Chief Justices of the Region including Hong Kong, provides for a prohibition against reduction with a more limited qualification than the Canadian qualification. Article 31 states

Judges must receive adequate remuneration and be given appropriate terms and conditions of service. The remuneration and conditions of service of judges should not be altered to their disadvantage during their term of office, except as part of a uniform public measure *to which the judges of a relevant court, or a majority of them, have agreed.*" (emphasis supplied)

6.7 The Beijing Statement appears to contemplate that the views of a majority of judges in a particular court would bind the minority. The Beijing qualification could, if invoked, bring about different situations regarding reduction of remuneration between various levels of courts in the same jurisdiction. This would be most unsatisfactory.

6.8 But the principal objection to the Beijing qualification is that, if invoked, it would generate disagreement among the Judges on an extremely divisive issue. Cohesion and morale, which are vital elements in a well-functioning judiciary, would be set at risk by differences and disputes over the issue. The issue would also create or aggravate tension between the Executive and the Judiciary and would politicise the Judiciary.

6.9 The same objections apply to a qualified prohibition or proposal that provides for a waiver by the judges of a prohibition against reduction.

6.10 An absolute prohibition should be adopted in Hong Kong. It fully protects judicial independence and does not suffer from the flaws of the alternatives discussed above. The case for an absolute prohibition in Hong Kong is stronger than in other jurisdictions such as Canada, Australia and the United States where judges, after retiring, can return to private practice. Retired judges cannot do so in Hong Kong (see paras 2.19-2.20). Hong Kong Judges, who sacrifice higher remuneration

on appointment to the Bench, are therefore more dependent on their judicial remuneration than judges in these jurisdictions.

Recommendation 2:

Provision should be made by Ordinance for a standing appropriation to meet the payment of judicial remuneration.

6.11 In Hong Kong, judges do not have the benefit of a standing statutory appropriation to meet payment of their remuneration. They depend on an appropriation made annually in the Appropriation Ordinance.

6.12 Elsewhere in the United Kingdom, Australia, Canada, New Zealand and Singapore, a statutory standing appropriation is a necessary element in safeguarding the independence of the judges by providing continuing security for the payment of remuneration.

6.13 The absence of a statutory provision charging the judges' remuneration on, and making it payable out of, general revenue is a major weakness in the current arrangements relating to judicial remuneration in Hong Kong (see paras 3.30-3.31).

Recommendation 3:

Judicial remuneration should be fixed by the Executive after considering recommendations by an independent body

6.14 An appropriate system for assessing judicial remuneration must respect (a) judicial independence and (b) the responsibility of the Executive to draw up and introduce budgets for the expenditure of public money and the responsibility of the Legislature to examine and approve budgets and public expenditure.

6.15 Direct negotiation between the Executive and the Judiciary about judicial remuneration is inconsistent with judicial independence. For this reason, it is desirable to have an independent body which makes recommendations to the Executive for its consideration before it fixes judicial remuneration. Determination of remuneration (as opposed to recommendation) by such a body would intrude into the roles of the Legislature and the Executive.

6.16 Accordingly, judicial remuneration should be fixed by the Executive after considering recommendations made to the Executive by an independent body established for that purpose.

6.17 The Executive will then seek the necessary additional funding from the Legislature. Once the additional funding is approved, judicial remuneration at the new levels should then be covered by the standing statutory appropriation. This arrangement is consistent with the Basic Law. Under the Basic Law the Executive draws up and introduces budgets, while the power to examine and approve budgets and public expenditure is vested in the Legislature: Basic Law, Articles 62(4) and 73.

6.18 This proposed model has worked well in the United Kingdom and it builds on traditions already established in Hong Kong. It is superior to other models.

Recommendation 4:

The independent body should be established by statute.

6.19 Although the Review Body in the United Kingdom was set up by executive decision and is not statute-based, an independent body should be established with defined statutory functions and powers. There are various reasons for adopting this approach. They are:

- (1) a statutory foundation strengthens the independent character of the body;
- (2) a statutory foundation enhances the notion of structural permanence and continuity;
- (3) statute will confer appropriate powers on the body; and
- (4) statute will result in transparent definition of functions and powers.

6.20 The independent body should have power to deal with all aspects of judicial remuneration. It should have power also to commission surveys, reports, job evaluation studies and academic research (for example, those commissioned by the Judicial Sub-Committee in the United Kingdom) as it may consider appropriate, and to consult with interested parties and generally.

Recommendation 5:

The independent body's role should be confined to judicial remuneration exclusively.

6.21 A specialist body should be established to deal exclusively with judicial remuneration. The reasons are –

- (1) a specialist body will have the skills and experience appropriate to assessing that class of remuneration;
- (2) judges are a discrete class and the methodology by which their remuneration is to be assessed necessarily differs from that applicable to others in the public sector; and
- (3) factors such as performance bonus pay and productivity bonuses which may be taken into account in fixing public sector remuneration have no place in the assessment of judicial remuneration (see Recommendation 8).

Recommendation 6:

The members of the independent body should be appointed by the Executive. The statute should contain provisions relating to membership such as providing for members from the legal profession and for members possessing certain experience and expertise, those ineligible for membership, terms of office and grounds for removal.

6.22 As is the case in many jurisdictions (such as Australia at the Commonwealth level, New South Wales, Victoria, New Zealand and the United Kingdom), the members of the independent body should be appointed by the Executive. This is consistent with the position in Hong Kong in relation to the appointment of judges and judicial officers. Members of the independent commission responsible for their appointment, namely the Judicial Officers Recommendation Commission (established by statute Cap. 92) are, apart from the ex officio members, appointed by the Chief Executive.

6.23 For its effective functioning, the independent body need not be large. A body consisting of five members would be sufficient.

- (1) The Chairman should be a prominent person of high reputation, preferably with public sector experience.
- (2) There should be a barrister and a solicitor. Their knowledge of court work and conditions in the private sector will be of assistance. As with the Judicial Officers Recommendation Commission, there should be a requirement of consultation with the governing bodies of the Bar and the Law Society on the barrister or solicitor to be appointed.
- (3) Of the other two members, preferably one should have accounting experience.

Having regard to the considerations which have led to Recommendation 5 that the independent body should deal exclusively with judicial remuneration, no member of the independent body should serve concurrently as a member of any body assessing

civil service remuneration. The independent body should have a secretariat independent of the Executive and the Judiciary.

6.24 The following persons should be ineligible for membership:

- (1) Judges and retired judges. They should be excluded because, in order to maintain public confidence, it is important to avoid any actual or possible conflict of interest or perception of conflict of interest.
- (2) Persons serving in the Executive¹. They should be excluded because the Executive will receive and consider the recommendations made to it by the independent body.
- (3) Members of the Legislature. They should be excluded because they are required to consider additional funding proposals relating to judicial remuneration. Such proposals will be made by the Executive to the Legislature after the Executive has considered and decided on the recommendations made by the independent body.

6.25 Members of the independent body should be appointed for a fixed term of say 2 or 3 years and should be eligible for re-appointment.

6.26 Once appointed, they should during their term be removable by the Executive only on grounds specified in the statute, such as bankruptcy and conviction for a criminal offence.

Recommendation 7:

The methodology, that is the factors which should be considered, should be specified in the statute.

6.27 In no jurisdiction has a particular formula been specified. The prescription of a formula would be impracticable. The determination of judicial remuneration is not a science. It is ultimately a matter of judgment after having regard to a number of factors. The weighing of the factors would be a matter for the independent body.

6.28 The relevant factors should be specified in the statute. In the light of experience in other jurisdictions, the factors to be specified in the statute should be:

- (1) the maintenance of judicial independence;
- (2) the need to maintain the Judiciary's standing in the community;
- (3) recruitment and retention of judges;
- (4) changes in workload;

¹ This would include all civil servants employed by the executive branch.

- (5) relativities between different judicial offices;
- (6) comparisons with public and private sector remuneration;
- (7) broad relativities between judicial remuneration and the remuneration of Principal Officials and civil servants;
- (8) external economic factors (e.g. wage and consumer price indices);
- (9) general economic policy; and
- (10) any other matter which the independent body considers relevant.

Recommendation 8:

Performance pay and productivity bonuses should not form part of judicial remuneration.

6.29 As with the private sector, performance pay and productivity bonuses are becoming increasingly an element in public sector remuneration in many jurisdictions. In Singapore, there is a performance bonus pay system which applies to the judiciary and is administered by the Chief Justice in relation to the Supreme Court (see paras 4.95 and 4.96).

6.30 Elsewhere, in the jurisdictions surveyed in this Report, there is no provision for judicial performance pay. In the United Kingdom and Australia, it has been strongly opposed by the judiciary and rejected by the Review Body and the Remuneration Tribunal (Commonwealth) as inappropriate for the judiciary (see paras 5.15, 5.33-5.35).

6.31 There are two objections to judicial performance pay. The first is that it is inconsistent with judicial independence. Assessment may operate, or be seen to operate, as an inducement to a judge to deal with cases in such a way as to maximise the prospects of earning performance pay. The second is the difficulty of measuring judicial performance for the purpose of calculating bonus or productivity remuneration.

6.32 Because the Judiciary does not receive performance pay, there is the problem, mentioned earlier (para. 5.15), of maintaining an appropriate relativity with senior public servants and others who receive performance pay which does not form part of the base remuneration on which pension entitlement is calculated. This problem might be overcome by equating the function, for example, of a High Court Judge with that of a category of senior officials so that each should be regarded as receiving the same basic remuneration, while adding to the basic remuneration of the High Court Judge the median performance pay received by the senior official

category. Other solutions could be worked out. It is a problem for consideration by an independent body.

Recommendation 9:

The independent statutory body should adopt a procedure which is transparent and its reports containing its recommendations to the Executive should be published.

6.33 The independent body should adopt procedures which are transparent. This is important for the maintenance of public confidence in its work. Secrecy invites suspicion and criticism. And the Judiciary should support a process that is open. As is the case in many jurisdictions, the independent body should call for submissions and undertake consultation to assist it in its work.

6.34 Consistently with transparency, it should give favourable consideration to making public the submissions made to it or a summary of them. Reports to the Executive containing the body's recommendations should be made public.

Press Release

**System for the Determination
of Judicial Remuneration**

The Chief Justice has put forward to the Chief Executive today [23 April] the Judiciary's proposal that the recommendations and views contained in Sir Anthony Mason's Consultancy Report should be adopted as the appropriate system for the determination of judicial remuneration in Hong Kong. These recommendations and views are summarized in the attachment.

2. The Chief Justice said, "The Judiciary's proposal is not concerned with actual levels and amounts of remuneration but deals with the appropriate system for the determination of judicial remuneration. The Judiciary's proposal is based on the principle of judicial independence. It takes into account the experience of and is consistent with the widely accepted position in numerous common law jurisdictions."

3. "In May 2002 and subsequently, the Judiciary publicly stated that the Judiciary's proposal would be made to the Administration in early 2003 and the Administration has recently inquired when it will be done. The Judiciary's proposal is accordingly submitted at this time. I of course fully understand that at the present time, there are many pressing matters of the greatest concern to the community requiring the Administration's urgent attention," continued the Chief Justice.

4. The Chief Justice also said, "When the Administration at an appropriate time in due course considers the Judiciary's proposal, I am confident that it will give it the most careful consideration, since an appropriate system for the determination of judicial remuneration is of course fundamental to the maintenance of judicial independence. On behalf of the Judiciary, I would urge the Administration to accept the Judiciary's proposal when it is considered."

5. The Judiciary noted that as has been publicly announced, the Administration will be proposing legislation to reduce civil service pay back to the levels as at 1 July 1997.

6. The Chief Justice said, “Before the Administration makes any decision on the Judiciary’s proposal (which includes statutory prohibition of reduction in judicial remuneration in line with numerous jurisdictions), it would be inappropriate for the Administration to evade the issue by further cutting the Judiciary’s budget by an amount equivalent to the amount involved if judicial remuneration were reduced back to the levels as at 1 July 1997. Further, assuming the Administration in due course accepts the Judiciary’s proposal, it would also be inappropriate for the Administration to circumvent the statutory prohibition by such a further cut in the Judiciary’s budget.”

7. “It must be recognized that a further cut in the Judiciary’s budget by such an amount would adversely affect the proper functioning of the courts to a serious extent, bearing in mind that the Judiciary is already facing a substantial reduction in its budget in the coming years in line with the rest of the public sector.”

8. In May 2002, the Judiciary commissioned Sir Anthony Mason to undertake a Consultancy Study with a view to recommending the appropriate system for the determination of judicial remuneration in Hong Kong.

9. Following the completion of the Consultancy Report in February 2003, the Chief Justice established a Working Party comprising 15 judges and judicial officers (collectively “judges”) from all levels of court to advise and for that purpose to consult all judges.

10. On the basis of the Working Party’s advice, which was based on the judges’ overwhelming support, the Chief Justice has put forward to the Administration the Judiciary’s proposal.

11. The Chief Justice has also assured the Chief Executive that the Judiciary is fully conscious of the budgetary difficulties facing Hong Kong.

12. The Chief Justice said, “The Judiciary will do its best to cope with the challenging problems posed by the substantial reduction in its budget in the coming years. As I have stated publicly, the quality of justice must not be compromised.”

Ends.

**Summary of
the recommendations and views
contained in the Consultancy Report (Chapter 6)**

- (1) **Recommendation 1: Legislation should be enacted prohibiting absolutely any reduction in judicial remuneration.**

Constitutional or legislative prohibition of reduction is an essential element of judicial independence. The prohibition is absolute in Australia, New Zealand, Singapore, England and Wales and the United States of America. In addition, other major jurisdictions (with a common law tradition or elements) which have an absolute prohibition include India, Ireland, Malaysia, the Philippines and South Africa. The presence of an absolute prohibition in all such major jurisdictions means that it is a widely accepted safeguard for the protection of judicial independence. Its rationale is that the principle of judicial independence is so fundamental that any risk of its jeopardy must be avoided.

The case for it is stronger in Hong Kong. In Hong Kong, retired judges at District Court level and above are prohibited from returning to private practice and are therefore more dependent on their remuneration than judges in jurisdictions where no such prohibition exists.

There are objections to any qualified prohibition such as one providing for agreement by a majority of judges of a relevant court; or one which provides for a waiver by the judges of a prohibition against reduction. The principal objection is that this would generate disagreement among the judges on an extremely divisive issue. Cohesion and morale, which are vital elements in a well-functioning judiciary, would be set at risk by differences and disputes over the issue. The issue would also create or aggravate tension between the Executive and the Judiciary and would politicise the Judiciary.

(See paras 6.3 to 6.10).

- (2) **Recommendation 2: Provision should be made by Ordinance for a standing appropriation to meet the payment of judicial remuneration.**

The provision of such a continuing security for the payment of remuneration is a necessary element in safeguarding judicial independence. Its absence is a major weakness.

(See paras 6.11 to 6.13).

- (3) **Recommendation 3: Judicial remuneration should be fixed by the Executive after considering recommendations by an independent body.**

The Executive will then seek the necessary funding from the Legislature. Such a system would respect (a) judicial independence and (b) the responsibility of the Executive to draw up and introduce budgets for the expenditure of public money and the responsibility of the Legislature to examine and approve budgets and public expenditure. This arrangement is consistent with the Basic Law and builds on traditions already established in Hong Kong.

(See paras 6.14 to 6.18).

- (4) **Recommendation 4: The independent body should be established by statute.**

A statutory foundation would strengthen its independent character and would enhance the notion of structural permanence and continuity. And statute would confer appropriate powers and would result in transparent definition of functions and powers.

(See paras 6.19 and 6.20).

- (5) **Recommendation 5: The independent body's role should be confined to judicial remuneration exclusively.**

The reasons are: (1) A specialist body would have the skills and experience appropriate to assessing this class of remuneration; (2) Judges are a discrete class and the methodology for assessment necessarily differs from that applicable to others in

the public sector; and (3) Factors such as performance bonus pay and productivity bonuses which may be taken into account in fixing public sector remuneration have no place in the assessment of judicial remuneration.

(See para 6.21).

- (6) **Recommendation 6: The members of the independent body should be appointed by the Executive. The statute should contain provisions relating to membership such as providing for members from the legal profession and for members possessing certain experience and expertise, those ineligible for membership, terms of office and grounds for removal.**

A body consisting of 5 members would be sufficient.

- (1) The Chairman should be a prominent person of a high reputation, preferably with public sector experience.
- (2) There should be a barrister and a solicitor. Their knowledge of court work and conditions in the private sector will be of assistance. As with the Judicial Officers Recommendation Commission, there should be a requirement of consultation with the governing bodies of the Bar and the Law Society on the barrister or solicitor to be appointed.
- (3) Of the other two members, preferably one should have accounting experience.

Members should serve for a fixed term of say 2 to 3 years and would be removable during their terms only on specified grounds such as bankruptcy and conviction for a criminal offence. No member should serve concurrently as a member of any body assessing civil service remuneration. The independent body should have a secretariat independent of the Executive and the Judiciary.

The following persons should be ineligible for membership:

- (1) Judges and retired judges since to maintain public confidence, any actual or possible conflict of interest or perception of conflict of interest should be avoided.
- (2) Persons serving in the Executive since the Executive will be required to consider the recommendations made by the independent body.
- (3) Members of the Legislature since they are required to consider funding proposals additional to the standing appropriation.

(See paras 6.22 to 6.26).

- (7) **Recommendation 7: The methodology, that is the factors which should be considered, should be specified in the statute.**

In no jurisdiction has a particular formula been specified. The prescription of a formula would be impracticable. The determination of judicial remuneration is not a science. It is ultimately a matter of judgment to be exercised by the independent body after weighing the factors.

In the light of experience in other jurisdictions, the factors to be specified in the statute should be:

- (1) the maintenance of judicial independence;
- (2) the need to maintain the Judiciary's standing in the community;
- (3) recruitment and retention of judges;
- (4) changes in workload;
- (5) relativities between different judicial offices;
- (6) comparisons with public and private sector remuneration;
- (7) broad relativities between judicial remuneration and the remuneration of Principal Officials and civil servants;

- (8) external economic factors (e.g. wage and consumer price indices);
- (9) general economic policy; and
- (10) any other matter which the independent body considers relevant.

(See paras 6.27 and 6.28).

- (8) **Recommendation 8: Performance pay and productivity bonuses should not form part of judicial remuneration.**

The reasons are: (1) It is inconsistent with judicial independence. Assessment may operate, or be seen to operate, as an inducement to a judge to deal with cases in such a way as to maximize the prospects of earning performance pay. (2) There is the difficulty of measuring judicial performance for the purpose of calculating bonus or productivity remuneration.

Although as with the private sector, performance pay and productivity bonuses are becoming increasingly an element in public sector remuneration in many jurisdictions, apart from Singapore, there is no provision for such an element in other jurisdictions for judicial remuneration. In the United Kingdom and Australia, it has been strongly opposed by the judiciary and rejected recently by the review body in both jurisdictions as inappropriate for the Judiciary.

(See paras 6.29 to 6.31).

- (9) **Recommendation 9: The independent statutory body should adopt a procedure which is transparent and its report containing its recommendations to the Executive should be published.**

This is important for the maintenance of public confidence in its work.

(See paras 6.33 and 6.34).

10 June 2003

Mrs Percy Ma
Clerk to Panel on Administration of
Justice and Legal Services
Legislative Council
8 Jackson Road,
Central
Hong Kong

Dear Mrs Ma,

I refer to your letter of 30 May 2003 and am instructed by the Chief Justice to reply. I should note that the Chief Justice has discussed the matters raised in your letter with Sir Anthony Mason who agrees with the contents of this reply.

- (1) Reduction of judicial remuneration including salaries to account for the effects of deflation would be in breach of the absolute prohibition against reduction in judicial remuneration (see Recommendation 1). It would be a prohibited reduction.
- (2) There is judicial decision in the United States that failure to increase judicial salaries for inflation did not amount to a breach of the absolute prohibition against reduction provided for in Article III of the United States Constitution (See paras 3.15 to 3.17 of the Consultancy Report).
- (3) Deflation and inflation would be external economic factors which would be relevant for the independent body to consider when making recommendations on judicial remuneration (see Recommendation 7). While any

reduction of judicial remuneration, (including reduction to account for the effects of deflation), would be in breach of the absolute prohibition against reduction (see Recommendation 1), the independent body could take past deflation into account in deciding on its recommendations when there is inflation, including whether judicial remuneration should be increased at a particular time and at what rate.

Yours sincerely,

(Wilfred Tsui)
Judiciary Administrator

c.c. Director of Administration

System for the determination of judicial remuneration

Relevant documents

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper</u>
Panel on Administration of Justice and Legal Services	--	Judiciary Administration's press release and Consultancy Report on "System for the Determination of Judicial Remuneration" [LC Paper No. CB(2)1871/02-03(01)]
	26 May 2003	<p>Administration's letter dated 20 May 2003 [LC Paper No. CB(2)2181/02-03(03)]</p> <p>Hong Kong Bar Association's letter dated 7 May 2003 [LC Paper No. CB(2)2181/02-03(04)] (English version only)</p> <p>Justice's submission on "Consultancy Report : System for Determination of Judicial Remuneration" [LC Paper No. CB(2)2208/02-03(01)]</p> <p>Law Society of Hong Kong's paper on "Judicial remuneration" [LC Paper No. CB(2)2231/02-03(01)] (English version only)</p> <p>Hong Kong Bar Association's letter dated 18 June 2003 on "Consultancy Report : System for Determination of Judicial Remuneration" [LC Paper No. CB(2)2635/02-03(01)] (English version only)</p> <p>Law Society of Hong Kong's letter dated 14 July 2003 on "Consultancy Report : System for Determination of Judicial Remuneration" [LC Paper No. CB(2)2854/02-03(01)] (English version only)</p>

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper</u>
		Minutes of meeting [LC Paper No. CB(2)2889/02-03]
	--	Administration's letter dated 10 June 2003 on "Consultation Report on System for the Determination of Judicial Remuneration" [LC Paper No. CB(2)2512/02-03(01)]
	--	Administration's letter dated 21 January 2004 and a press release on "System for the Determination of Judicial Remuneration" [LC Paper No. CB(2)1079/03-04(01)]
	23 May 2005	Paper prepared by the LegCo Secretariat on "Budgetary arrangements for the Judiciary" [LC Paper No. CB(2)1621/04-05(03)] Minutes of meeting [LC Paper No. CB(2)2232/04-05]
	12 July 2005	Letter dated 25 May 2005 from Clerk to Panel to Secretary for Financial Services and the Treasury [LC Paper No. CB(2)2234/04-05(01)] Judiciary Administrator's letter dated 5 July 2005 setting out the Judiciary's position on the suggestions made by Panel members at the meeting on 23 May 2005 [LC Paper No. CB(2)2234/04-05(02)] Financial Services and the Treasury Bureau's paper on "The Administration's Response" [LC Paper No. CB(2)2234/04-05(03)] Minutes of meeting [LC Paper No. CB(2)2621/04-05]

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper</u>
	28 May 2007	<p>Background brief prepared by the LegCo Secretariat on "Budgetary arrangement and resources for the Judiciary" [LC Paper No. CB(2)1968/06-07(06)]</p> <p>Judiciary Administration's paper on "Budgetary arrangement and resources for the Judiciary" [LC Paper No. CB(2)1940/06-07(01)]</p> <p>Administration's paper on "Budgetary arrangement and resources for the Judiciary" [LC Paper No. CB(2)1940/06-07(02)]</p> <p>Bar Association's letter dated 10 May 2007 [LC Paper No. CB(2)1940/06-07(03)]</p> <p>Minutes of meeting [LC Paper No. CB(2)2540/06-07]</p>