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Panel on Administration of Justice and Legal Services

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 28 June 2010**

Trial in the District Court

Purpose

At the meetings of the Panel on Administration of Justice and Legal Services ("the Panel") in January and October 2009, concerns were raised about issues relating to the criminal justice system, including the discretion of the Secretary for Justice ("SJ") in determining the venue for trial, whether the jury system should be extended to the District Court, and the conviction rates in Hong Kong. At the suggestion of the Department of Justice ("DoJ"), these issues, which are considered inter-related, will be discussed under the item of "Trial in the District Court" at the Panel meeting on 28 June 2010. This paper seeks to provide background information to facilitate the Panel's discussions on these issues.

Background

2. The District Court has both criminal and civil jurisdiction. In respect of criminal jurisdiction, the District Court deals with indictable offences transferred to it from the Magistrates' Court. Indictable offences are criminal offences triable on indictment before a Judge alone or with a jury. The District Court may try all serious criminal cases except murder, manslaughter and rape. The maximum term of imprisonment it can impose is seven years.

3. In Hong Kong, there are two modes of trial. One is by judicial officer alone which takes place in the magistracy and the District Court. The other is jury trial which only takes place in the Court of First Instance of the High Court. The prosecution determines the venue for trial.

Relevant issues raised by the Panel

Discretion of SJ in determining the venue for trial

4. At its meeting on 13 January 2009, the Panel noted the concern expressed by the Chairman of the Hong Kong Bar Association, in his speech delivered at the Ceremonial Opening of the Legal Year 2009, that many commercial fraud cases,

including substantial and complex ones, were heard before the District Court rather than in the Court of First Instance before a jury. The concern was that the current practice of resting the choice of Court solely with the Prosecution would deny the defendant the right to a jury trial.

5. In response to the Panel's request, DoJ provided in February 2009 information on the factors to which the prosecution would have regard in selecting the venue for trial as summarized in Chapter 14 of "The Statement of Prosecution Policy and Practice (2009)" [LC Paper No. CB(2)756/08-09(01)] wherein it is stated that -

"In the selection of venue, the sentence which is likely to be imposed upon an accused after trial is an important factor for the prosecution to examine. The prosecutor will also wish to consider the general circumstances of the case, the gravity of what is alleged, the antecedents of the accused and any aggravating factors. Matters such as the length of trial or the possibility of a guilty plea are usually not relevant."

6. Members may wish to note that in his judgment delivered on 9 February 2009 on the judicial review proceedings concerning the decision of the prosecution to seek trials in the District Court rather than in the Court of First Instance in two separate cases of conspiracy to defraud (HCAL 42/2008 and HCAL 107/2008), Hon Justice Wright has pointed out that there does not exist in Hong Kong any absolute right to a jury trial nor any mechanism by which a person to be tried of an indictable offence may elect to be so tried. The decision as to whether an indictable offence should be tried in the Court of First Instance by a judge and jury or in the District Court by a judge alone is the prerogative of SJ. The learned judge found the reasons furnished by SJ for his decision to transfer the proceedings to the District Court sufficient on the factual situation of each case. Consequently both applications were dismissed. The issue was considered by the Court of Appeal in September 2009, which had upheld the decision of Hon Justice Wright in the Court of First Instance (CACV 55 and 151 of 2009). The applications for leave to appeal to the Court of Final Appeal from the decision of the Court of Appeal were dismissed by the Appeal Committee in March 2010 (FAMC Nos 64 and 65 of 2009).

Whether the jury system should be extended to the District Court

7. Issues relating to the principles of the jury system were raised at the Panel meetings on 25 January and 10 March 1997. Hon Martin LEE opined that there was a historical reason for an elitist system of jurors to operate in Hong Kong because only English was used in courts, and lack of eligible jurors might be the reason for limiting the trial by jury to the High Court. He was of the view that with the use of Chinese as an official language in court, jury trial should be extended to the District Court. At the request of the Panel, the Administration had provided an information paper in June 1997, setting out, inter alia, its views on the extension of jury trial to the District Court. The then Attorney General's Chambers had explained that there were two main reasons for not introducing jury trial into the District Court when it was established in 1952. Firstly, there were adequate safeguards against miscarriage of

justice. There were provisions for appeals in criminal cases and the trial judge was required to provide a statement of the reasons for his verdict. Secondly, there were not sufficient eligible persons to serve as jurors in the District Court. The Administration had also advised then that the question of extending jury trial into the District Court would require a detailed and in-depth study which called for consideration of such issues as whether there would be adequate persons to serve as jurors, costs, and the implication for the length of trial and workload of the District Court.

8. There are recent calls from the legal profession for a review of the jury system in Hong Kong. It has been suggested that, as Chinese is now commonly used in courts and the size of the jury pool has grown significantly, jury trials should be extended to the District Court. Members may wish to note that Dr Hon Margaret NG has raised a written question on implementation of the jury system in the District Court at the Council meeting on 11 November 2009. In its reply, the Administration advised that it is not convinced that a re-examination of the issue is warranted and has no current plan to introduce juries for criminal trials in the District Court. The written question and the Administration's reply are in **Appendix I**.

Conviction rates

9. According to the data provided in the yearly review of the Prosecutions Division of DoJ, the conviction rates for 2008 were 94.8% in the Court of First Instance and 92.6% in the District Court. Since the conviction rates as reported have aroused comments and concerns relating to the present criminal legal aid fees system, DoJ and the Legal Aid Department ("LAD") have been requested to provide information relating to conviction rates at different levels of courts and applications for criminal legal aid for the last five years [LC Paper Nos. CB(2)2613/08-09(01) and (02)]. Members may also wish to refer to **Appendix II** for the amount and percentage of contributions required to be paid by legally aided persons under the Ordinary Legal Aid Scheme in 2006 to 2008 as provided by LAD.

10. To facilitate the Panel's consideration of the matter, the Research and Library Services Division of the Secretariat has prepared an information note on "Conviction rates in selected places" (IN19/09-10), providing information relating to conviction rates and criminal legal aid in England and Wales of the United Kingdom, Canada and Australia.

Relevant papers

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

~~traditional counters, but it takes 12 seconds on average for a Hong Kong resident in general to obtain immigration clearance at a traditional counter. This is roughly the same time for the same process at an e-Channel. The waiting time differs depending on the exact control point and time of the day in question;~~

- (c) ~~The Immigration Department will examine the feasibility of the introduction of facial recognition technology in the review of the Department's Information System Strategy.~~

Implementation of Jury System in District Court

8. **DR MARGARET NG** (in Chinese): *President, recently, there have been views that the jury system is a good tradition of common law, and as the maximum imprisonment term that may be imposed by the District Court in criminal cases is seven years, which is by no means light, the ideal arrangement is for juries to be formed to try cases in the District Court. Such views have also pointed out that as English was the official language used in court in the past, the number of members of the public eligible for serving as jurors was just sufficient for trying cases in the High Court and the Court of Final Appeal. However, since the use of Chinese as an official language in court, the number of members of public eligible for serving as jurors has grown significantly and hence the jury system should be extended to the District Court. In this connection, will the Government inform this Council:*

- (a) *whether it will consider implementing the jury system in the District Court; if so, of the work plan; if not, the reasons for that;*
- (b) *of the number of cases tried in the High Court in the past three years for which a jury was required to be formed, and the number of jurors and relevant resources involved; and*
- (c) *whether it has assessed how many cases tried in the District Court in 2008-2009 could have been tried before a judge with a jury, and the estimated additional number of members of the public needed to serve as jurors as well as the resources involved for the jury system to be implemented in the District Court?*

SECRETARY FOR JUSTICE (in Chinese): President,

- (a) The Government has no current plan to introduce juries for criminal trials in the District Court.

Article 81 of the Basic Law stipulates, among other things, that the judicial system previously practised in Hong Kong shall be maintained. Article 86 provides that the principle of trial by jury previously practised in Hong Kong shall be maintained. The Basic Law and the Bill of Rights Ordinance do not confer on the defendant in criminal proceedings a right to choose trial by jury. Under the existing system, a defendant is equally assured of a fair trial by a judge alone in the District Court, in which the judge is required to give a fully reasoned judgment, which may then be scrutinized on appeal.

This issue was last raised in the Legislative Council in March 1997 and in the information paper presented to the Administration of Justice and Legal Services Panel, by the then Attorney General's Chambers, it was said that any change to the present arrangements would require a lengthy, detailed and in-depth study. Having reviewed the matters set out in that paper and having consulted the Judiciary, the Administration is not convinced that a re-examination of this issue is warranted. The number of criminal cases tried in Chinese in the District Court has shown a steady increase in recent years, while the number of those in the Court of First Instance has shown no comparable increase. Since 2007, the availability of an increased pool of Chinese speaking jurors has not led to an increase in jury trials in Chinese in the Court of First Instance. It appears unlikely therefore that the introduction of jury trials in the District Court would lead to an increased use of Chinese in that Court.

<i>Types of Court</i>	<i>Number of trials heard in Chinese</i>		
	<i>2007</i>	<i>2008</i>	<i>2009 (from January to September)</i>
Court of First Instance (Trials)	29	31	27
District Court	219	314	316

The resource implications and the demand on jurors would also be very considerable if the same number of cases were to be tried each year.

- (b) The following table shows the statistics of the number of jury trials in the Court of First Instance in each of the past three years, the total number of empanelled jurors and the number of potential jurors on the list who had been summoned for selection.

<i>Year</i>	<i>No. of cases tried by Jury</i>	<i>No. of jurors empanelled</i>	<i>No. of summonses issued for potential jurors to attend for selection</i>
2007	77	541	18 172
2008	69	487	17 078
2009 (Up to October)	73	515	14 260

The resources necessary for jury trials include the provision of suitable accommodation and the costs of administrative staff and of allowances paid to those who serve as jurors. There is also an indirect cost on self-employed jurors and on the employers of those who are employed, consequential on their absence from work.

- (c) It is not possible to assess how many cases tried in the District Court in 2008-2009 could have been tried before a judge and jury. Although an indication may be derived from the figures for criminal trials in the District Court in the past three years, which are as follows:

<i>Year</i>	<i>No. of trials</i>
2007	647
2008	588
2009 (Up to October)	612

If all those trials had been before a judge and jury, the additional number of members of the public needed to serve as jurors as well as

other resources in managing a jury system in the District Court would have been considerable.

It would be necessary to redesign the District Court rooms to provide for jurors and to add a Jury Assembly Room, separate access and facilities for jurors, including waiting rooms and some overnight accommodation. There would be manpower implications for support staff and there might also be manpower implications for judges.

**Amount and Percentage of Contributions
required to be paid by Legally Aided Persons
under the Ordinary Legal Aid Scheme in 2006**

Financial Resources		No. of Aided Persons			% of Aided Persons	Amount and Percentage of Contributions required to be paid
Not exceeding \$20,000		6770	2162	8932	77.1%	0
\$20,000	\$40,000	970	77	1047	9.0%	\$1,000
\$40,000	\$60,000	617	39	656	5.7%	\$2,000
\$60,000	\$80,000	361	28	389	3.4%	5%
\$80,000	\$100,000	190	10	200	1.7%	10%
\$100,000	\$120,000	135	11	146	1.3%	15%
\$120,000	\$144,000	120	14	134	1.2%	20%
\$144,000	\$155,800 (1.1.2006 – 15.6.2006)	28	0	28	0.2%	25%
	\$158,300 (16.6.2006 – 31.12.2006)	38	2	40	0.3%	25%
\$155,800	\$269,700	0	3	3	0.0%	30%
\$158,300		0	1	1	0.0%	30%
\$269,700	\$369,700	0	1	1	0.0%	35%
\$369,700	\$469,700	0	1	1	0.0%	40%
\$469,700	\$569,700	0	3	3	0.0%	45%
\$569,700	\$669,700	0	1	1	0.0%	50%
\$669,700	\$769,700	0	1	1	0.0%	55%
\$769,700	\$869,700	0	1	1	0.0%	60%
\$869,700	\$1,200,000	0	0	0	0.0%	65%
Exceeding \$1,200,000		0	2	2	0.0%	67%
Total		9,229	2,357	11,586	100%	---

**Amount and Percentage of Contributions
required to be paid by Legally Aided Persons
under the Ordinary Legal Aid Scheme in 2007**

Financial Resources		No. of Aided Persons			% of Aided Persons	Amount and Percentage of Contributions required to be paid
		Civil	Criminal	Total		
Exceed	Do not Exceed					
Not exceeding \$20,000		5,530	2,305	7,835	75.6%	0
\$20,000	\$40,000	940	73	1,013	9.8%	\$1,000
\$40,000	\$60,000	531	35	566	5.5%	\$2,000
\$60,000	\$80,000	323	39	362	3.5%	5%
\$80,000	\$100,000	226	10	236	2.3%	10%
\$100,000	\$120,000	120	18	138	1.3%	15%
\$120,000	\$144,000	124	6	130	1.3%	20%
\$144,000	\$158,300 (1.1.2007 – 14.6.2007)	30	1	31	0.3%	25%
	\$162,300 (15.6.2007 – 13.12.2007)	33	2	35	0.3%	25%
	\$165,700 (14.12.2007 – 31.12.2007)	0	0	0	0.0%	25%
\$158,300	\$269,700	0	2	2	0.0%	30%
\$162,300		0	7	7	0.1%	30%
\$165,700		0	0	0	0.0%	30%
\$269,700	\$369,700	0	2	2	0.0%	35%
\$369,700	\$469,700	0	1	1	0.0%	40%
\$469,700	\$569,700	0	4	4	0.0%	45%
\$569,700	\$669,700	1	1	2	0.0%	50%
\$669,700	\$769,700	0	0	0	0.0%	55%
\$769,700	\$869,700	0	0	0	0.0%	60%
\$869,700	\$1,200,000	0	1	1	0.0%	65%
Exceeding \$1,200,000		0	0	0	0.0%	67%
Total		7,858	2,507	10,365	100%	---

**Amount and Percentage of Contributions
required to be paid by Legally Aided Persons
under the Ordinary Legal Aid Scheme in 2008**

Financial Resources		No. of Aided Persons			% of Aided Persons	Amount and Percentage of Contributions required to be paid
Not exceeding \$20,000		5,108	2,046	7,154	74.1%	0
\$20,000	\$40,000	868	75	943	9.8%	\$1,000
\$40,000	\$60,000	535	44	579	6.0%	\$2,000
\$60,000	\$80,000	355	20	375	3.9%	5%
\$80,000	\$100,000	205	12	217	2.2%	10%
\$100,000	\$120,000	152	11	163	1.7%	15%
\$120,000	\$144,000	126	3	129	1.3%	20%
\$144,000	\$165,700	68	5	73	0.8%	25%
\$165,700	\$269,700	1	7	8	0.1%	30%
\$269,700	\$369,700	0	4	4	0.0%	35%
\$369,700	\$469,700	0	1	1	0.0%	40%
\$469,700	\$569,700	0	2	2	0.0%	45%
\$569,700	\$669,700	0	1	1	0.0%	50%
\$669,700	\$769,700	0	0	0	0.0%	55%
\$769,700	\$869,700	0	0	0	0.0%	60%
\$869,700	\$1,200,000	0	2	2	0.0%	65%
Exceeding \$1,200,000		0	2	2	0.0%	67%
Total		7,418	2,235	9,653	100%	---

Trial in the District Court

Relevant documents

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper</u>
Panel on Administration of Justice and Legal Services	25 January 1997	Minutes of meeting [LC Paper No. CB(2)1448/96-97]
	10 March 1997	Minutes of meeting [LC Paper No. CB(2)1806/96-97] Information paper provided by the Administration on "Jury System in Hong Kong" [LC Paper No. CB(2)2712/96-97]
	13 January 2009	Minutes of meeting [LC Paper No. CB(2)1063/08-09] <u>Follow-up paper</u> Administration's letter dated 2 February 2009 on mode of trial [LC Paper No. CB(2)756/08-09(01)]
	--	Information paper provided by the Department of Justice on conviction rates [LC Paper No. CB(2)2613/08-09(01)] Paper provided by the Legal Aid Department on criminal legal aid applications [LC Paper No. CB(2)2613/08-09(02)]
	15 October 2009	Minutes of meeting [LC Paper No. CB(2)190/09-10]
Legislative Council	11 November 2009	Written question raised by Dr Hon Margaret NG on "Implementation of jury system in the District Court"