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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 May 2012**

**Judicial manpower situation and the system
for the determination of judicial remuneration**

Purpose

This paper provides background information and a brief account of the discussions of the Panel on Administration of Justice and Legal Services ("AJLS Panel") on issues relating to the judicial manpower situation and the system for the determination of judicial remuneration.

Background

Judicial manpower situation

2. According to the Judiciary Administration ("JA"), in assessing the judicial manpower situation at all levels of court, the following considerations are relevant:

- (a) the establishment, strength and vacancy positions at the various levels of court;
- (b) the requirement and availability of temporary judicial manpower; and
- (c) the short-term and long-term approaches to the provision of adequate and suitable judicial manpower at the various levels of court.

3. The establishment and strength of Judges and Judicial Officers ("JJOs") (as at 20 June 2011) provided by JA are as follows -

Table - Establishment, strength and vacancy of JJOs

Level of court	As at 20 June 2011		
	Establishment	Strength	Vacancy
Court of Final Appeal	4 ¹	4	0
Court of Appeal	11	10	1
Court of First Instance	32	27	5
High Court Masters' Office	10	3	7 ²
District Court (including Family Court & Member, Lands Tribunal)	36	35	1
District Court Masters' Office	4	0	4 ³
Magistrates' Courts/ Specialized Court/ Other Tribunals	92	72	20
Total	189	151	38

Sources : LC Paper No. CB(2)2154/10-11(03)

4. The statutory normal retirement age for JJOs is 60 or 65, depending on the level of court. Beyond that, extension of service may be approved up to the age of 70 or 71, depending on the level of court and subject to consideration on a case-by-case basis. According to the Report on Judicial Remuneration Review 2011 published by the Standing Committee on Judicial Salaries and Conditions of Service ("the Judicial Committee"), retirement is the main source of wastage among JJOs. The anticipated retirement would be 12 (or 7.7% of current strength) in 2011-12, going down to four (or 2.6% of current strength) in 2012-2013, and increasing to 14 (or 9% of current strength) in 2013-2014.

Mechanism for the determination of judicial remuneration

5. In May 2002, JA 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.

¹ Excluding one Permanent Judge post created for a Non-Permanent Judge of the Court of Final Appeal.

² Duties of the High Court Masters' Office are mostly taken up by District Judges deployed under the cross-posting policy.

³ Duties of the District Court Masters' Office are all taken up by Magistrates deployed under the cross-posting policy.

6. Following completion of the Mason Report, the Chief Justice put forward to the Chief Executive ("CE") 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. Relevant recommendations made in the Mason Report include, inter alia, judicial remuneration should be fixed by the Executive after considering recommendations by an independent body which should be established by statute; the member of the independent body should be appointed by the Executive; and the methodology, i.e. the factors to be considered, should be specified in the statute.

7. On 21 January 2004, the CE appointed 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.

8. In May 2008, CE-in-Council agreed that judicial remuneration should be determined by the Executive after considering the recommendations of the independent Judicial Committee. The new mechanism comprises (a) a benchmark study to be conducted on a regular basis; and (b) an annual review. In advising on judicial remuneration, the Judicial Committee will adopt a balanced approach, taking into account a basket of factors.⁴

9. The review on judicial service pay adjustment for 2009-2010 was the first time where pay adjustment for JJOs is determined under the new mechanism. The Judicial Committee submitted its report to the CE on 29 June 2009, recommending a pay freeze for the JJOs for 2009-10, taking into account the basket of factors as approved by the CE-in-Council, the principle of judicial independence and the position of the Judiciary.

10. The Judicial Committee has decided that a benchmark study should in principle be conducted every five years, with its frequency subject to periodic review. The most recent benchmark study was conducted in 2010.

Relevant discussions held by the AJLS Panel

⁴ The basket of factors include : (a) responsibility, working conditions and workload of judges vis-à-vis those of lawyers in private practice; (b) recruitment and retention in the Judiciary; (c) unique features of the judicial service – such as the security of tenure, the prestigious status and high esteem of the judicial offices; (d) retirement age and retirement benefits of JJOs; (e) prohibition against return to private practice in Hong Kong; (f) benefits and allowances enjoyed by JJOs; (g) cost of living adjustment; (h) general economic situation in Hong Kong; (i) budgetary situation of the Government; (j) overseas remuneration arrangements; (k) private sector pay levels and trends; and (l) public sector pay as a reference.

11. The AJLS Panel discussed issues relating to judicial manpower situation at its meetings held on 26 and 29 May, 2008; 13 January 2009, 27 June and 20 October 2011. Issues relating to the system for the determination of judicial remuneration were also raised at its meetings held on 26 May 2003, 26 May 2008 and 20 October 2011.

12. The major issues raised by members are summarised in the ensuing paragraphs below.

Manpower situation at various levels of courts

13. Some members have expressed concern about the increase in the workload of judges in recent years and the judicial manpower situation of the High Court ("HC"). They have made the following observations –

- (a) Court of Appeal - due to the insufficient number of Justices of Appeal in recent years, only about 42% of the cases from 2004 to 2007 were heard by divisions constituted solely by Justices of Appeal in the Court of Appeal. In order to maintain reasonable waiting times for cases heard in the Court of Appeal, 58% of the cases from 2004 to 2007 were heard by divisions containing one and/or two Judges of the Court of First Instance ("CFI"). As Judges of CFI were not substantive Justices of Appeal, there were evident disadvantages for them to hear appeal cases; and
- (b) CFI - the deployment of Judges of CFI as additional judges of the Court of Appeal had led to a corresponding reduction in judicial manpower in CFI. The waiting times for criminal and civil fixture cases at CFI had greatly exceeded the respective target waiting times of 120 days and 180 days in the past few years. In addition, Judges of CFI were also engaged in non-judicial work under various statutory functions at that time (namely the Electoral Affairs Commission, the Securities and Futures Appeal Tribunal and the Clearing and Settlement Systems Appeal Tribunal). As a result, against an establishment of 27 Judges of CFI, about 23.2 posts were actually deployed for judicial work.

14. These members are concerned whether the arrangement for judges of the CFI to sit as additional judges of the Court of Appeal would result in more appeals being lodged with the Court of Final Appeal ("CFA") when such appeals are dismissed by the Court of Appeal, given their lesser experience in handling appeals. They have also pointed out that the workload for JJOs has increased in recent years as judges are often required to spend more time to explain legal proceedings to

unrepresented litigants to ensure the equality of arms.

15. According to JA, administrative measures have been taken such as deployment of Deputy Judges and Temporary Deputy Registrar to meet the operational needs of the courts which, however, are not considered satisfactory in the long term. There is a need to strengthen the establishment of the various levels of courts to keep waiting times within target without having to rely too heavily on temporary judicial resources. JA has further provided the following relevant information to the AJLS Panel –

- (a) Caseload, average waiting times and average numbers of JJOs sitting at HC, District Court including Family Court and Magistrates' Court from 2005 to 2007 (**Appendix I**);
- (b) Caseload and average waiting times for cases in the District Court from 2006 to 2008 and the manpower situation (**Appendix II**);
- (c) Establishment and manpower position of JJOs including temporary judicial appointment as at 1 April 2009 (**Appendix III**); and
- (d) Percentages of judicial resources provided by non-substantive JJOs in handling judicial work at various levels of court from 2006 to 2008 (**Appendix IV**).

16. The AJLS Panel took up the issue of judicial manpower situation at CFA and other levels of court at its meeting on 27 June 2011. The waiting times for cases of CFI remains a matter of concern to members. Members have queried whether the current judicial establishment is sufficient to cope with the prevalent workload of the Judiciary. They in general consider that a comprehensive review of the judicial manpower situation should be carried out.

17. The Law Society of Hong Kong ("Law Society") has raised the issue of the increase in average waiting times for civil cases with the Panel. Members have been advised that the waiting time from application to fix date to hearings for civil cases in CFI was increased from 145 days in 2008 to 179 days in 2009 and to 215 days in 2010. According to the Law Society, the increase in waiting times for cases has reflected the heavy workload of JJOs and is unfair to litigants.

18. The Hong Kong Bar Association ("Bar Association") has pointed out to the Panel that there would be 10 existing and anticipated vacancies of judges in HC at that time and the present arrangement of having only about five permanent HC judges handling court cases, with other posts filled by deputy judges, would erode public confidence in the administration of justice. The Bar Association considers

that the understaffing situation at the Judiciary will put pressure on judges who are required to play a more active role in case management after the implementation of the Civil Justice Reform.

19. JA, however, has advised that the judicial establishment was substantially enhanced with the creation of seven additional JJO posts (including one Justice of Appeal and five judges of CFI posts at HC) in July 2008. The judicial establishment of HC is sufficient to cope with the workload and the temporary manpower shortage of the Judiciary will be alleviated with the conduct of open recruitment exercises to fill the remaining vacancy.

Recruitment of judges

20. Noting that the Judiciary might have difficulties in recruiting suitable candidates to fill the vacancies of judges, members have expressed concern that the manpower shortage problem would have adverse impact on the quality of work of the Judiciary.

21. The JA has advised that the appointment of temporary judicial manpower to meet the operational needs of the courts can only be a short term measure. In the long term, all vacancies should be filled by substantive judges. Following a review on the appointment of JJOs conducted by the Judiciary some years ago, it has been the established policy to conduct open recruitment exercises to fill the vacancies below the level of the Justice of Appeal of HC, such as CFI judges, district judges, permanent magistrates and special magistrates. Similar to the practice in other common law jurisdictions, vacancies of the Justices of Appeal of the Court of Appeal of HC will be filled by elevation of JJOs to higher levels of court. When open recruitment exercises were conducted in the past few years, the Judiciary had placed recruitment advertisements in local newspapers and informed serving JJOs, the two legal professional bodies and relevant organizations of the vacancies. In the last open recruitment exercise, a sufficient number of suitable candidates were identified to fill the vacancies.

22. Members note the Bar Association's advice that as the number of legal practitioners who are considered eligible for the posts of judges is small, there will be difficulties in recruiting judges unless the pool of candidates can be further expanded. They have asked whether overseas recruitment is impracticable having regard to the language requirement. JA has advised that the Judiciary will follow the specific requirements laid down in law in recruiting JJOs. Judges are not necessarily required to be proficient in Chinese and some of the judges recruited in the last exercise are not bilingual. In the previous recruitment exercises, candidates from various backgrounds, including serving JJOs at the lower levels of court, private practitioners and eligible persons in government departments, had applied

and some of them were appointed. The conduct of local open recruitment exercises is considered effective in recruiting suitable candidates to fill vacancies in the Judiciary.

Determination of judicial remuneration

23. When the AJLS Panel was briefed on the 2011-2012 judicial service pay adjustment, members had enquired about the operation of the judicial service pay adjustment mechanism. The Administration has advised that judicial service pay adjustment is recommended by the independent Judicial Committee which has taken into account a basket of factors and the Judiciary has been consulted in the process. The judicial service pay adjustments in overseas jurisdictions are generally reviewed by independent committees which have taken prudent actions in their latest annual pay reviews for judges based on a basket of factors similar to Hong Kong such as the workload of judicial officers and the local economy. Members stress that there should be a consensual mechanism for judicial remuneration review and have agreed to follow up on the issue.

Effectiveness of the listing system in the HC

24. Some members have expressed the view that JA should introduce measures to improve the effectiveness of the listing system so that court time and the time and expertise of judges can be utilised in an optimum manner. The listing system should be flexible to ensure that the judges' diaries is utilised as fully as possible and judges have sufficient time to write judgements, especially after the trial of a complicated case.

25. According to JA, the Judiciary is operating an effective listing system in the HC and has been making continuous improvements as appropriate. The Chief Judge of the HC, assisted by the Listing Judges and a team of listing officers in JA, is responsible for ensuring that judges will have reasonable time to prepare for cases and write judgments, particularly for long and complicated cases.

Impact of non-statutory appointments of judges on judicial work

26. Some members have expressed concern about the statutory and non-statutory appointments of judges for extra-judiciary functions. They consider that careful consideration should be given to the need to appoint serving judges to non-statutory outside offices, in particular those which are non-judicial in nature, and its impact on their judicial duties. Members in general are of the view that there is a need for the Administration to review the policy and criteria for the appointment of serving judges to extra-judiciary functions and whether it is appropriate to have one judge taking up several outside offices. They have also

enquired about the monitoring mechanism to ensure that judges' judicial work, such as timeliness in delivering written judgments, will not be compromised.

27. According to the Judiciary, its approach in recent years has been that it will request the Administration to look for a suitable person who is not a serving judge and to agree to make a serving judge available only where no other suitable person is available. This approach also applies to any non-statutory body, where the eligible persons are not legally prescribed. Where both serving and retired judges are eligible for appointment, consideration will be given to appointing retired judges if suitable candidates can be identified.

Recent development

28. During the AJLS Panel's visit to the Judiciary on 27 February 2012, members were updated on the current judicial vacancy positions. Members note with concern that there are 45 vacancies at various levels of courts against a total of 189 judicial posts on establishment and enquired about the basis on which the original establishment of JJOs was worked out. It is suggested that the establishment should be reviewed having regard to operational requirements and population size. Members have also raised concerns that due to stringent manpower situation, JJOs may not be able to avail themselves to attend courses to bring their legal knowledge up-to-date. They have also suggested wider use of information technology in conducting trials so as to strengthen logistics support to JJOs.

Relevant papers

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

**Caseloads, Average Waiting Times and Average Numbers of Judges and Judicial Officers Sitting at
High Court, District Court including Family Court, and Magistrates' Courts**

	Caseload				Average Waiting Time					Average Number of Judges and Judicial Officers		
	2005	2006	2007		Target	2005 (Note 1)	2006 (Note 2)	2007		2005 (Note 3)	2006	2007
Court of Appeal of the High Court									Court of Appeal of the High Court			
criminal appeals	541	533	488	criminal-from setting down of a case to hearing	50	37	46	50	Substantive Judges	10	10	10
civil appeals	414	443	421	civil-from application to fix date to hearing	90	93	100	87	(Note 4)			
Court of First Instance of the High Court									Court of First Instance of the High Court			
criminal jurisdiction				Criminal Fixture List-					Substantive Judges	23	21	27
criminal cases	326	264	312	from filing of indictment to hearing	120	193	119	109	Deputy Judges	<u>11</u>	<u>14</u>	<u>10</u>
confidential miscellaneous proceedings	51	59	56	Criminal Running List-	90	69	66	57	Total	34	35	37
appeals from Magistrates' Courts	1,254	1,238	1,234	Civil Fixture List-	180	233	124	114				
civil jurisdiction	19,915	20,736	20,657	from application to fix date to hearing	90	54	64	61				
				Civil Running List-	90	71	87	91				
				from setting down of a case to hearing								
				Appeals from Magistrates' Courts-	90							
				from lodging of Notice of Appeal to hearing								
District Court									District Court			
criminal cases	1,349	1,199	1,240	criminal-from first appearance of defendants					Substantive Judges	16	11	15
civil cases	32,016	30,948	28,820	in District Court to hearing	100	112	117	98	Deputy Judges	<u>11</u>	<u>15</u>	<u>11</u>
				civil-from date of listing to hearing	120	120	125	58	Total	27	26	26
Family Court									Family Court			
	16,947	18,544	18,131	dissolution of marriage-from setting down of a case to hearing					Substantive Judges	3	2	3
				Special Procedure List	35	29	45	33	Deputy Judges	<u>3</u>	<u>5</u>	<u>4</u>
				Defended List (one day hearing)	110	120	115	119	Total	6	7	7
				financial applications-from filing of summons to hearing	110-140	124	101	83				
Magistrates' Courts									Magistrates' Courts			
	298,887	298,257	314,214	from plea to date of trial					Substantive Judicial Officers	48	44	37
				summons	50	94	95	95	Deputy Judicial Officers	<u>5</u>	<u>11</u>	<u>12</u>
				charge cases—					Total	53	55	49
				for defendants in custody	30-45	44	42	47				(Note 5)
				for defendants on bail	45-60	68	66	64				

(Note 1): The average waiting times in 2004 / 2005 were lengthened, especially in the High Court. Temporary judicial resources were deployed to various levels of court starting from the latter part of 2005.

(Note 2): The effects of the deployment of temporary judicial resources starting from the latter part of 2005 were evident in the improvements in the average waiting times in 2006 / 2007.

(Note 3): These figures already reflected the additional deployment of deputy Judges and Judicial Officers starting from the latter part of 2005.

(Note 4): From 2004 to 2007, about 50% of the cases each year were heard by divisions containing one Judge of the Court of First Instance, and a further 8% heard by divisions containing two Judges of the Court of First Instance.

(Note 5): Additional deputies were deployed to the Magistrates' Courts from the latter part of 2007 and early 2008. As at May 2008, there are 56 Judicial Officers (including 43 substantive and 13 deputy Judicial Officers) sitting at the Magistrates' Courts.

Panel on Administration of Justice and Legal Services

Caseload and Manpower Situation of the District Court

PURPOSE

The purpose of this paper is to provide information on the caseload and manpower situation of the District Court.

CASELOAD AND WAITING TIMES

2. The caseload for the District Court from 2006 to 2008 is as follows:

	<u>2006</u>	<u>2007</u>	<u>2008</u>
Criminal Cases	1 199	1 240	1 250
Civil Cases	30 948	28 820	28 527

3. The average waiting times for cases in the District Court are as follows:

	<u>Target</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
Criminal cases – from first appearance of defendants in District Court to hearing	100	117	98	111
Civil cases – from date of listing to hearing	120	125	58	85

4. There are a total of 10,029 interlocutory hearings in 2008. As regards the waiting time for interlocutory applications (excluding call-over), they are as follows:

- (a) for shorter interlocutory hearings (under 2 hours), the average waiting time is 40 days in 2008; and
- (b) for slightly longer interlocutory hearings (over 2 hours), the average waiting time is 66 days in 2008.

JUDICIAL MANPOWER POSITION

5. At present, there are altogether 24 judges/deputy judges sitting in the District Court, including 14 District Judges (including the Chief District Judge) and 10 Deputy District Judges. For the District Court Masters Office, there are currently four judicial officers taking up the functions of the Registrar and Deputy Registrars of the District Court.

OBSERVATIONS

6. While the caseloads have been quite stable during the past few years, it should be noted that the number of cases alone is not the only indicator reflecting the District Court's workload. The Judiciary has been monitoring the waiting times, and has taken measures to redeploy resources to reduce the waiting times whenever required.

7. The average waiting times of civil cases were kept within targets in 2007 and 2008. Upon the implementation of the Civil Justice Reform in April 2009, one additional Temporary Deputy Registrar will be deployed initially in the District Court to enhance the judicial manpower at the Registry. The situation will be reviewed regularly to decide whether additional manpower would be required on a longer-term basis.

8. The average waiting time in respect of criminal cases is slightly longer in 2008 when compared with 2007. The complexity of cases is the main contributing cause for increase of waiting time. These complex cases often involved difficult legal arguments and examination of exhibits during the trial and would take longer time to complete. As a result, the number of cases where the listed day for trial exceeded 10 days had significantly increased from 51 cases in 2007 to 77 cases in 2008, representing a 51% increase. The average listed days per case also rose 24% from 4.38 days in 2007 to 5.44 days in 2008. Consequently, the waiting time would be longer.

9. To help shorten the waiting time for criminal cases, the following measures have been introduced:

- (a) an additional criminal list has been maintained since September 2008; and

- (b) where circumstances warrant, experienced judges, who handle mainly civil cases, would be called upon to deal with plea and sentence.

With the above measures, the waiting times of criminal cases for December 2008 and January 2009 were kept within target, which are 99 days and 91 days respectively.

10. The Judiciary will continue to monitor the situation closely and will make every effort to improve the waiting times.

Judiciary Administration
February 2009

**Establishment and Manpower Position
of Judges and Judicial Officers (“JJOs”)
(As at 1 April 2009)**

Level of Court	JJOs at substantive or equivalent level ^A	Deputy/Temporary/Acting JJOs		Total Manpower	Establishment
		Internal	External		
Court of Final Appeal	4	0	0	4	4 ^B
Registrar, CFA	0	1	0	1	1
Court of Appeal, High Court	11	0	0	11	11
Court of First Instance, High Court	24	10	2	36	32
High Court Masters’ Office	5	5	1	11	9
District Court (Including Family Court and Member, Lands Tribunal)	21	14	1	36	36
District Court Masters’ Office	5	0	0	5	4
Magistrates’ Courts/ Specialized Court/ Other Tribunals	50	3	24	77	92
Total	120	33	28	181	189

Notes

- (A) Figures in this column include JJOs deployed to carry out the functions of other judicial offices at equivalent levels, such as those deployments arranged under the cross-posting policy for Magistrates to take up positions in the tribunals and District Court Registry.
- (B) Excludes one Permanent Judge vacant post which is created for a Non-Permanent Judge (“NPJ”) of the Court of Final Appeal (“CFA”). In practice, an NPJ is invited to sit in the CFA as required in accordance with Section 5 and Section 16 of the Hong Kong CFA Ordinance, Cap. 484.

**Percentages of Judicial Resources
Provided by Non-Substantive Judges and Judicial Officers^(A)
in Handling Judicial Work at Various Levels of Court**

Level of Court	2006	2007	2008
Court of Final Appeal	0	0	0
Registrar, CFA	100%	100%	100%
Court of Appeal, High Court ^(B)	16%	36%	34%
Court of First Instance, High Court	43%	30%	35%
High Court Masters' Office	50%	53%	60%
District Court (Including Family Court and Member, Lands Tribunal)	59%	40%	42%
District Court Masters' Office	33%	33%	25%
Magistrates' Courts/ Specialized Court/ Other Tribunals	31%	29%	30%

Note : (A) Non-substantive Judges and Judicial Officers (“JJOs”) include: (i) JJOs who are appointed to take up judicial positions at a higher rank in the Judiciary; and (ii) private practitioners who are appointed as deputy JJOs.

(B) For the Court of Appeal in the High Court, Judges of the Court of First Instance have been appointed to sit as additional judges of the Court of Appeal in accordance with section 5 of the High Court Ordinance, Cap.4.

**Relevant papers on judicial manpower situation and
the system for the determination of judicial remuneration**

Committee	Date of meeting	Paper
Panel on Administration of Justice and Legal Services ("AJLS Panel")	26.5.2003 (Item V)	Agenda Minutes
	26.5.2008 (Items VI & VII)	Agenda Minutes
	29.5.2008 (Item I)	Agenda Minutes
	13.1.2009 (Item VI)	Agenda Minutes
	30.3.2009 (Item II)	Agenda Minutes
	27.4.2009 (Item II)	Agenda Minutes
Subcommittee on Proposed Senior Judicial Appointment	-	Report to the House Committee meeting on 14.5.2010
AJLS Panel	27.6.2011 (Item IV)	Agenda Minutes
	20.10.2011 (Item II)	Agenda Minutes