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Panel on Administration of Justice and Legal Services

Meeting on 24 June 2014

Updated background brief prepared on judicial manpower situation at various levels of court

Purpose

This paper provides background information on the judicial manpower situation at various levels of court and a brief account of the relevant discussions at the Panel on Administration of Justice and Legal Service ("the Panel") and the Finance Committee ("FC").

Background

Establishment and vacancies

2. As at 1 March 2014, the establishment of Judges and Judicial Officers ("JJOs") at all levels of courts was 193 (**Appendix I**).
3. The Judiciary completed the last round of open recruitment exercises for various levels of court in the latter half of 2012 and up to March 2014, a total of 52 judicial appointments have been made.
4. In July 2013, the Judiciary launched another recruitment exercise for the rank of Judge of the Court of First Instance of the High Court ("CFI Judge"). Open recruitment exercises for CFI Judges used to be conducted every three years in the past. To tie in the timing of joining the Bench by interested senior legal professionals in private practice with the recruitment trawl at times, the Chief Justice is of the view that CFI Judge recruitment exercises should henceforth be launched more frequently on a yearly basis. Accordingly, the next CFI Judge recruitment exercise is planned to be launched in the latter half of 2014.

5. As at March 2014, there were two fillable vacancies at the District Judge rank and there was no imminent need to conduct any open recruitment for these posts in the near future. For the magisterial level, the Judiciary has launched another open recruitment for Permanent Magistrates and Special Magistrates in February 2014 and the recruitment exercises are still in progress.

Engagement of temporary judicial manpower

6. According to the Judiciary Administrator ("JA"), the engagement and deployment of temporary judicial manpower has been a long standing practice adopted by the Judiciary to help maintain the level of judicial manpower required, and thereby to help maintain court waiting times at reasonable levels and help reduce such waiting times in some cases. The arrangement also provides opportunities for the deputy JJOs to gain judicial experience at the relevant levels of court. The number of deputy JJOs appointed from outside the Judiciary as at 1 March in the past five years of 2010 to 2014 is in **Appendix II**.

Retirement age for JJOs

7. 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 2013 published by the Standing Committee on Judicial Salaries and Conditions of Service, retirement is the main source of wastage among JJOs. The anticipated retirement will be 14 (or 8.5% of current strength) in 2013-2014, decreasing to seven (or 4.3% of current strength) in 2014-2015 and going up to 11 (or 6.7% of current strength) in 2015-2016.

Establishment Review in 2013

8. Since July 2008, the Judiciary has conducted a number of comprehensive establishment reviews and substantially enhanced the judicial establishment. Following the completion of a recruitment exercise in the latter half of 2012, the ground work for an establishment review started in early 2013.

9. The review concludes that additional resources are much needed for the creation of additional judicial (and associated support staff) posts –

(a) for the Court of Appeal of the High Court to enable it to cope with the increased workload; and

(b) at various levels of court to cover the absence of JJOs for dealing

with judicial educational matters and attending judicial training activities.

10. On paragraph 9(b), starting from 2013, the former Judicial Studies Board has been replaced by the setting up of the Hong Kong Judicial Institute which aims at enhancing judicial skills and knowledge for all JJOs who will be provided with "protected time" in the planning, preparation, delivery of and attendance at judicial educational activities. Moreover, the Judicial Institute needs to be supported by a dedicated and professional Executive Body which should be staffed by legally qualified professionals and civil service post.

The Scheme of Judicial Assistants ("the Scheme")

11. In 2010, the Judiciary started the Scheme which sought to provide enhanced support to appellate judges in the discharge of their duties. Under the Scheme, the Judicial Assistants who are fresh and bright law graduates will be recruited normally for a single one-year term and assigned to provide assistance in researching on law points, analyzing and writing memoranda on appeals and applications, drafting memoranda on legal points, assisting with other work of the court and providing direct support to the appellate judges.

12. While it is planned that up to six Judicial Assistants may be recruited each year, the number of such appointees in each year since 2010 was five in 2010, three in 2011, three in 2012 and five in 2013. Having examined its effectiveness in consultation with the appellate judges, the Chief Justice concluded that the Scheme met its objectives and should continue to operate in existing terms in the foreseeable future.

Enhanced support to the various major initiatives

13. In 2014-2015, the Judiciary will continue to carry out the implementation of many initiatives, including the Information Technology Strategy Plan which aims to provide more effective and efficient services to all its stakeholders through the greater application of information technology in its operation, and enhancement of administrative support to Court Leaders and the High Court Masters' Clerks Office.

Major concerns and views of members

14. The Panel discussed issues relating to judicial manpower situation at its meetings on 26 and 29 May 2008, 13 January 2009, 27 June 2011, 20 October 2011, 28 May 2012, 30 October 2012 and 16 December 2013. Furthermore, at

the special FC meetings held on 12 April 2013 and 31 March 2014 to examine the Draft Estimates of Expenditure 2013-2014 and 2014-2015 respectively, Members raised concerns over the related issues. The major concerns raised by Members and the responses of JA are summarized in the ensuing paragraphs.

Judicial manpower situation

15. At the meetings of 16 December 2013 and 31 March 2014, Members were concerned about the persistent shortage of judicial manpower over the past years, particularly in face of increasingly complex cases. Noting that some CFI Judges would be redeployed as additional judges to hear cases in the Court of Appeal, a Member worried that this arrangement would further affect the resources of CFI, and urged the Judiciary to put in more efforts to solve the overall problem on judicial manpower.

16. JA explained that the Judiciary spared no efforts in conducting recruitment exercise in the past years, but there were fillable vacancies arising from the creation of new judicial posts, elevation of JJOs to higher positions within the Judiciary and retirement of JJOs. Given the increased caseload and the increased number of complex cases, HC remained a pressure area. In this connection, the Judiciary has conducted an establishment review of JJO posts in 2013. This review concluded that additional judicial posts would be needed for HC (in particular for the Court of Appeal) to cope with the increased workload. With the proposed increase in the establishment of the Court of Appeal Judges from 10 to 13, it was expected that much of the judicial resources temporarily redeployed from CFI could be released back to that level of court to hear cases.

17. At the Panel meeting on 27 June 2011, members noted the Hong Kong Bar Association's advice that as the number of legal practitioners who were considered eligible for the posts of judges was small, there would be difficulties in recruiting judges unless the pool of candidates could be further expanded. Members asked whether overseas recruitment was impracticable having regard to the language requirement. JA advised that the Judiciary followed the specific requirements laid down in law in recruiting JJOs. Judges were not necessarily required to be proficient in Chinese and some of the judges recruited in the past were 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. The conduct of local open recruitment exercises was considered effective in recruiting suitable candidates to fill vacancies in the Judiciary.

18. At the Panel meeting on 16 December 2013, Members enquired whether the Judiciary had encountered any special difficulties in its latest recruitment and in attracting outside talents to join the Judiciary. JA advised that during the last round of recruitment exercises started during the period from June 2011 to July 2012, 20 of the 49 appointees selected by open recruitment were recruited from outside the Judiciary. JA also informed members that for judges at the District Court level and above, they were required to give an undertaking that they would not return to private practice in Hong Kong without the permission of the Chief Executive. No such permission had been granted by the Chief Executive over the years.

The Scheme of Judicial Assistants

19. Members expressed divergent views when discussing the Scheme of Judicial Assistants ("the Scheme") at the Panel meeting on 16 December 2013. A member doubted whether Judicial Assistants with limited experience would help to relieve the workload of appellate judges. Another member also enquired about the effectiveness of the Scheme as a measure to encourage new entrants to the Judiciary. In contrast, a member considered that the Scheme was beneficial to fresh graduates holding law degrees to gain an insight into the work of the Judiciary and also providing assistance to appellate judges in the discharge of their duties.

20. JA explained that the objective of the Scheme was to provide enhanced support to appellate judges through conducting research on law points and providing assistance in other work of the court. Notwithstanding its plan to recruit up to six Judicial Assistants each year, the Judiciary also considered that for the Scheme to operate effectively, only fresh and bright law graduates who were found suitable for the job would be appointed. During the period from 2010 to 2013, the number of Judicial Assistants recruited each year ranged from three to five.

Effectiveness of the listing system in HC

21. At the Panel meetings on 26 and 29 May 2008, some members 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 could be utilized in an optimum manner. The listing system should be flexible to ensure that the judges' diaries were utilized as fully as possible and judges had sufficient time to write judgments, especially after the trial of a complicated case.

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

Impact of statutory and non-statutory appointments of judges on judicial work

23. At the Panel meeting on 13 January 2009, some members expressed concern about the statutory and non-statutory appointments of judges for extra-judiciary functions. They considered 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 reiterated this concern at the Panel meeting on 28 May 2012.

24. JA explained that it was the Judiciary's policy to request the Administration to look for a suitable person who was not a serving judge to take up extra-judicial duties in the first place, where the eligible persons for such appointments were not confined to judges by law; and consideration would be given to appointing retired or serving judges only where no other suitable person was available.

Council question

25. At the Council meeting of 9 January 2013, Hon Dennis KWOK raised a question on the pilot scheme on Judicial Assistants. At the Council meeting of 13 June 2012, Hon Abraham SHEK raised a question on the retirement age of JJOs. At the Council meeting on 30 May 2012, Hon Sophie LEUNG raised a question on judicial manpower intake. The hyperlinks to the questions and the Administration's replies are provided in **Appendix III**.

Recent development

26. At the special FC meeting on 31 March 2014, JA advised Members that financial resources were sought for the creation of seven additional judicial post at various levels of courts, engagement of a team of 10 legally qualified staff to provide professional support to judicial education, and creation of 59 net additional civil service posts in the Judiciary Administration to meet the needs arising from the increased levels of judicial and registry services. The Judiciary will consult the Panel on its manpower proposals at its meeting on 24 June 2014,

before submitting them to the Establishment Subcommittee for endorsement and FC for approval.

Relevant papers

27. A list of relevant papers and hyperlinks is shown in **Appendix III**.

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Appendix I

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The establishment and remuneration of Judges and Judicial Officers ("JJOs") at all levels of court is as follows:

Level of Court	Rank	Establishment (as at 1.3.2014)	Judicial Service Pay Scale Point	Current Monthly Salary \$
Court of Final Appeal	Chief Justice	1	19	274,600
	Permanent Judge	3*	18	267,000
Court of Appeal	Chief Judge of the High Court	1	18	267,000
	Justice of Appeal	10	17	240,700
Court of First Instance	Judge of the Court of First Instance	33	16	229,400
High Court Masters' Office	Registrar	1	15	189,600
	Senior Deputy Registrar	4	14	172,900- 183,450
	Deputy Registrar	6	13	162,050- 171,750
District Court (including Family Court and Lands Tribunal)	Chief District Judge	1	15	189,600
	Principal Family Court Judge	1	14	172,900- 183,450
	District Judge	34	13	162,050- 171,750
	Member, Lands Tribunal	2	12	139,400- 148,000
District Court Masters' Office	Registrar	1	11	128,400- 136,150
	Deputy Registrar	3	10	117,450- 124,600

Level of Court	Rank	Establishment (as at 1.3.2014)	Judicial Service Pay Scale Point	Current Monthly Salary \$
Magistrates' Courts/ Specialized Court/ Other Tribunals	Chief Magistrate	1	13	162,050- 171,750
	Principal Magistrate/ Principal Presiding Officer, Labour Tribunal/ Principal Adjudicator, Small Claims Tribunal	11	11	128,400- 136,150
	Coroner/ Presiding Officer/ Labour Tribunal/ Adjudicator, Small Claims Tribunal/ Magistrate	69	10	117,450- 124,600
	Special Magistrate	11	7-10 1-6	103,970- 124,600 67,580-79,845

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

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X

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X

(Source : Controlling officer's reply to a Member's initial written question in examining the Estimates of Expenditure 2014-2015 (Reply Serial No.: JA019))

Appendix II

X

X

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X

X

The number of Deputy JJOs appointed from outside the Judiciary as at 1 March in the past five years of 2010 to 2014 is as follows:

Position	1.3.2010	1.3.2011	1.3.2012	1.3.2013	1.3.2014
Deputy Judge of the Court of First Instance of the High Court	1	2	4	7	5
Temporary Deputy Registrar, High Court	0	0	0	0	1
Deputy District Judge	1	1	1	1	0
Temporary Member of the Lands Tribunal	0	0	1	1	0
Deputy Magistrate	11	16	25	10	24
Deputy Special Magistrate	7	8	8	5	9
Total	20	27	39	24	39

X

X

X

X

X

(Source: Controlling officer's reply to a Member's initial written question in examining the Estimates of Expenditure 2014-2015 (Reply Serial No.: JA019))

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List of relevant papers

Date	Meeting/Event	References
Panel on Administration of Justice and Legal Services	26.5.2008 (Item VI)	Agenda Minutes
	29.5.2008 (Item I)	Agenda Minutes
	13.1.2009 (Item VI)	Agenda Minutes
	27.6.2011 (Item IV)	Agenda Minutes
	20.10.2011 (Item II)	Agenda Minutes
	28.5.2012 (Item III)	Agenda Minutes
	30.10.2012 (Item I)	Agenda Minutes
	16.12.2013 (Item V)	Agenda Minutes
Council Meeting	30.5.2012	Written reply from the Administration to a question raised by the Hon Sophie Leung
	13.6.2012	Written reply from the Administration to a question raised by the Hon Abraham Shek Lai-him

Date	Meeting/Event	References
	9.1.2013	<u>Written reply from the Administration to a question raised by the Hon Dennis Kwok</u>
Finance Committee	12.4.2013	<u>Administration's replies to members' initial written questions in examining the Estimates of Expenditure 2013-2014</u> <u>(Reply serial numbers: JA011 – JA015, JA017 and JA025)</u>
	31.3.2014	<u>Administration's replies to members' initial written questions in examining the Estimates of Expenditure 2014-2015</u> <u>(Reply serial numbers: JA011 – JA013, JA016, JA019 and JA027)</u>

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