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Panel on Administration of Justice and Legal Services

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 16 December 2013**

**Judicial manpower situation at various levels of court and
long court waiting times**

Purpose

This paper provides background information on the judicial manpower situation at various levels of court and court waiting times 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

Judicial manpower situation

Establishment and vacancies

2. At the special FC meeting on 12 April 2013, the Judiciary Administrator ("JA") informed Members that there were 193 judicial posts at all levels of courts on the establishment of the Judiciary as at 1 April 2013. Compared with the position a year ago, four additional Judges and Judicial Officer ("JJO") posts were created to enable the Judiciary to cope with its increasing workload and new responsibilities, as follows-

- (a) in July 2012, one District Judge post and one Member, Lands Tribunal post were created to help cope with the upsurge in workload arising from the compulsory sale land cases in the Lands Tribunal; and

- (b) on 1 April 2013, one Judge of the Court of First Instance ("CFI") of the High Court ("HC") post and one Deputy Registrar of the HC post were created to cope with the new responsibilities arising from the setting up of the Competition Tribunal.

3. JA also informed FC that the Judiciary completed the latest round of recruitment exercises at all levels of court by the latter half of 2012. Up to April 2013, a total of 55 judicial appointments to all levels of courts had been announced. These comprised 28 JJOs who had been elevated to a higher position within the Judiciary and 27 JJOs who had joined from outside the Judiciary.

4. In her reply to a Member's written question on the 2013-14 Draft Estimates of Expenditure, JA provided information on the establishment and vacancies of JJOs as at 1 April 2013. The relevant figures are in **Appendix I**.

Engagement of temporary judicial manpower

5. According to JA, the engagement and deployment of temporary judicial manpower has been a long standing practice adopted by the Judiciary for the following purposes:

- (a) to help maintain the level of necessary judicial resources pending the intake of substantive judicial manpower from the recruitment exercises;
- (b) to help reduce waiting times arising from additional demands due to fluctuations in workload which are beyond the control of the Judiciary; and
- (c) to provide opportunities for the deputy JJOs to gain judicial experiences at the relevant levels of courts.

6. In her reply to a Member's written question on the 2013-14 Draft Estimates of Expenditure, JA provided information on the number of deputy JJOs appointed from outside the Judiciary in the past five years of 2009 to 2013. The relevant figures are 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

2012 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 2013-14, decreasing to seven (or 4.3% of current strength) in 2014-15 and going up to 11 (or 6.7% of current strength) in 2015-16.

Court waiting times

8. The Judiciary has set performance targets, in terms of average waiting times, for all courts and tribunals except the Juvenile Court. The court waiting times for the various levels of court in 2011 and 2012, as stated in the 2013-14 Controlling Officer's Report of the Judiciary, are in **Appendix III**.

Major concerns and views of members

9. The Panel discussed issues relating to judicial manpower situation and long court waiting times at its meetings on 26 and 29 May 2008, 13 January 2009, 27 June 2011, 20 October 2011, 28 May 2012 and 30 October 2012. Furthermore, at the special FC meeting on 12 April 2013 to examine the Draft Estimates of Expenditure 2013-14, Members raised concerns over the related issues. The major concerns raised by Members and the responses of the Administration/JA are summarized in the ensuing paragraphs.

Recruitment of judges

10. According to JA, it had been the established policy to conduct open recruitment exercises to fill the vacancies below the level of the Justice of Appeal of the High Court, 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 the High Court would be filled by elevation of JJOs to higher levels of court.

11. Responding to a Member's concern about the persistent shortage of judicial manpower over the past years at the special FC meeting on 12 April 2013, JA advised that the Judiciary spared no efforts in conducting recruitment exercises 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, the Court of Appeal of the High Court remained a pressure area. A total of 55 judicial appointments to all levels of court had been announced since April 2012 and announcements on further judicial appointments would be made later in 2013. The judiciary remained optimistic that the number of judicial

vacancies would be further reduced.

12. 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.

Court waiting times

13. At the Panel meeting on 28 May 2012, members noted the Hong Kong Bar Association's view that insufficient manpower would give rise to longer court waiting times at various levels of court, and that JA should engage more temporary judicial resources to help maintain the court waiting times at reasonable levels. JA responded that the Chief Justice also took the view that the Judiciary should continue to engage temporary judicial resources as far as practicable to relieve the pressure on listing. As at 15 May 2012, there were 22 substantive CFI Judges and 12 Deputy CFI Judges. The Chief Judge of the High Court was giving top priority to the deployment of judicial resources for hearing criminal appeals.

14. At the Panel meeting on 30 October 2012, members enquired why court waiting times had become increasingly longer and whether there were any measures to tackle the problem. The Administration advised that in 2011, the waiting time targets for the Court of Final Appeal and the Family Court etc. were generally met. For the High Court, it was mainly due to more complex and lengthy cases as well as the re-fixing of cases that the waiting times for most of the cases in the High Court had exceeded the relevant target waiting times. The Judiciary had kept under constant review of its judicial establishment and manpower situation having regard to operational needs. In 2011, the Judiciary conducted a comprehensive review of the judicial establishment and considered that the current level of establishment could be regarded as generally sufficient to cater for its operational needs, having regard to its prevailing workload. The next round of comprehensive review of the judicial manpower situation would be conducted by the Judiciary, upon the completion of the recruitment exercises in

2012-2013.

15. In her replies to Members' written questions on the 2013-14 Draft Estimates of Expenditure, JA provided further information and figures on the court waiting times; lists of the Judges who had been elevated, had left the judicial service on retirement, and had been newly appointed; and the figures on unrepresented litigants in civil and criminal proceedings. The hyperlinks to these questions and the Administration's replies are in **Appendix IV**.

Effectiveness of the listing system in the HC

16. 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.

17. According to JA, the Judiciary was operating an effective listing system in the HC and had 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, 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

18. 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.

19. 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.

Future manpower requirements

20. At the Special FC meeting on 12 April 2013, members were informed by JA that a number of judicial vacancies would be coming up in the next few years as a result of retirements. The Judiciary had decided that consideration should be given to launching another round of recruitment exercise. The Judiciary was confident that there were suitable talents from both within and outside the Judiciary to be appointed to various judicial positions. The Judiciary took the view that only those who were found suitable for the judicial appointment should be appointed, even if this would mean that some of the judicial vacancies would remain unfilled for a short period of time.

21. As regards the support staff manpower, JA advised that 46 net additional civil service posts would be created in 2013-14 to provide adequate support to JJOs and operate effective and efficient registry and other support services. It was expected that the recruitment of civil service staff would enhance the support staff manpower position of the Judiciary.

Questions raised at Council meetings

22. At the Council meeting of 9 January 2013, Hon Dennis KWOK raised a question on the pilot scheme on Judicial Assistants. In reply, the Administration provided information on the details of the programme including the total number of Judicial Assistants recruited and their job duties. At the Council meeting of 13 June 2012, Hon Abraham SHEK raised a question on the retirement age of JJOs. In reply, the Administration provided information on the criteria for extending the term of office for JJOs who approach the retirement age. The hyperlinks to the questions and the Administration's replies are provided in **Appendix IV**.

Recent development

23. When discussing the 2013 judicial service pay adjustment at the Panel meeting on 26 November 2013, members expressed concerns on the judiciary manpower situation and requested the Judiciary to provide the following information:

- (a) statistics on the court waiting times at various levels of court in the past three years;
- (b) the number of Judicial Assistants appointed since the launch of the

relevant pilot scheme in 2010, and the number of Judicial Assistant posts in the current establishment of the Judiciary; and

- (c) the number of external deputy/temporary JJOs in the past three years; and how many of the relevant posts have been substantively filled.

24. The Panel will discuss the judicial manpower situation at various levels of court and long court waiting times at its meeting on 16 December 2013.

Relevant papers

25. A list of relevant papers and hyperlinks is shown in **Appendix IV**.

Council Business Division 4
Legislative Council Secretariat
11 December 2013

Establishment and vacancies of JJOs as at 1 April 2013

Level of Court	Rank	Judicial Service Pay Scale Point	Position as at 1.4.2013	
			Establishment	Vacancy
Court of Final Appeal	Chief Justice	19	1	0
	Permanent Judge	18	3*	0
Court of Appeal	Chief Judge of the High Court	18	1	0
	Justice of Appeal	17	10	0
Court of First Instance	Judge of the Court of First Instance	16	33	6
High Court Masters' Office	Registrar	15	1	1
	Senior Deputy Registrar	14	4	4 [#]
	Deputy Registrar	13	6	4 [#]
District Court (including Family Court and Lands Tribunal)	Chief District Judge	15	1	0
	Principal Family Court Judge	14	1	0
	District Judge	13	34	-8
	Member, Lands Tribunal	12	2	1
District Court Masters' Office	Registrar	11	1	1 [@]
	Deputy Registrar	10	3	3 [@]
Magistrates' Courts/ Specialized Court/ Other Tribunals	Chief Magistrate	13	1	0
	Principal Magistrate/ Principal Presiding Officer, Labour Tribunal/ Principal Adjudicator, Small Claims Tribunal/	11	11	7 [@]
	Coroner/ Presiding Officer, Labour Tribunal/ Adjudicator, Small Claims Tribunal Magistrate	10 7 - 10	69	9 [@]
	Special Magistrate	1 - 6	11	1
	Total			193

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

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

@ Duties of the District Court Masters' Office, Coroner's Court, Labour Tribunal and Small Claims Tribunal are all taken up by Magistrates deployed under the cross-posting policy.

(Source: Controlling officer's reply to a Member's initial written question in examining the Estimates of Expenditure 2013-14 (Reply Serial No.: JA018))

Appendix II

X

X

X

X

X

The number of Deputy JJOs appointed from outside the Judiciary as at 1 March in the past five years of 2009 to 2013 is as follows:

Position	1.3.2009	1.3.2010	1.3.2011	1.3.2012	1.3.2013
Deputy Judge of the Court of First Instance of the High Court	2	1	2	4	7
Deputy District Judge	1	1	1	1	1
Temporary Member of the Lands Tribunal	0	0	0	1	1
Deputy Magistrate	15	11	16	25	10
Deputy Special Magistrate	7	7	8	8	5
Total	25	20	27	39	24

(Source: Controlling officer's reply to a Member's initial written question in examining the Estimates of Expenditure 2013-14 (Reply Serial No.: JA020))

Court waiting times for various levels of courts in 2011 and 2012

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Targets

The waiting time targets have been set in accordance with the recommendations of the Court Users' Committees or are laid down in the respective ordinances or court rules. 2011

	Target	2011 (Actual)	2012 (Actual)	2013 (Plan)
<i>Average Waiting Time (days)</i>				
Court of Final Appeal				
application for leave to appeal				
criminal—from notice of hearing to hearing	45	38	40	45
civil—from notice of hearing to hearing	35	30	29	35
substantive appeal				
criminal—from notice of hearing to hearing	100	95	93	100
civil—from notice of hearing to hearing	120	102	105	120
Court of Appeal of the High Court β				
criminal—from setting down of a case to hearing	50	53	52	50
civil—from application to fix date to hearing	90	117	131	90
Court of First Instance of the High Court \S				
Criminal Fixture List—from filing of indictment to hearing	120	169	180	120
Criminal Running List—from setting down of a case to hearing	90	79	72	90
Civil Fixture List—from application to fix date to hearing	180	231	244	180
Civil Running List—from setting down of a case to hearing	90	83	50	90
appeals from Magistrates' Courts— from lodging of Notice of Appeal to hearing	90	86	92	90
District Court				
criminal—from first appearance of defendants in District Court to hearing	100	86	62	100
civil—from date of listing to hearing	120	72	96	120
Family Court				
dissolution of marriage—from setting down of a case to hearing Special Procedure List	35	33	33	35
Defended List (one day hearing)	110	107	98	110
financial applications—from filing of summons to hearing	110-140	90	83	110-140
Lands Tribunal—from setting down of a case to hearing				
appeal cases	100	32	20	54
compensation cases	100	46	41	72
building management cases	100	35	25	41
tenancy cases	60	26	21	32
Magistrates' Courts—from plea to date of trial Φ				
summons	50	54	54	50
charge cases—				
for defendants in custody	30-45	38	41	30-45
for defendants on bail	45-60	51	51	45-60
Coroner's Court—from date of listing to hearing				
hearing	42	40	42	42
Labour Tribunal—				
from appointment to filing of a case ...	30	21	25	30

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	Target	2011 (Actual)	2012 (Actual)	2013 (Plan)
from filing of a case to first hearing	30	25	25	30
Small Claims Tribunal—from filing of a case to first hearing	60	38	39	60
Obscene Articles Tribunal—				
from receipt of application to classification	5	3	2	5
from referral by a magistrate to determination	21	21	21	21

- β The average waiting times for criminal appeals exceeded the target very marginally. Great efforts and priority were given to timely disposal of criminal appeals. The average waiting times for civil appeals were lengthened. This was partly due to retirement of Judges and partly due to more complex, lengthy and re-fixed cases. By November 2012, all Justice of Appeal posts were filled substantively. Additional judicial resources will be deployed if needed with a view to improving the waiting times. The Judiciary will continue to closely monitor the situation and will make every effort to improve the waiting times.
- § The average waiting times for the Criminal Fixture List, Civil Fixture List and appeals from Magistrates' Courts exceeded the targets due to more complex, lengthy and re-fixed cases as well as increase of caseload in civil cases. It is also due to the temporary constraints in the deployment of judicial manpower in the High Court as a result of elevation of Judges to higher positions and retirement of Judges. The open recruitment exercise for the Court of First Instance Judges of the High Court was completed in mid-2012 and new appointments were made in the latter part of 2012 and will be made in 2013. In the interim, additional deputy judges have been and will be appointed to sit in 2012 and 2013 with a view to improving the waiting times. The Judiciary will continue to closely monitor the situation and will make every effort to improve the waiting times.
- Ⓣ The average waiting times for summonses exceeded the target marginally due to increase of caseload. The Judiciary will continue to monitor closely the situation and will make every effort to improve the waiting times.

(Source: Estimates of Expenditure 2013-14)

**Judicial manpower situation at various levels of court and
long court waiting times**

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
Council Meeting	13.6.2012	Written reply from the Administration to a question raised by the Hon Abraham Shek Lai-him
	9.1.2013	Written reply from the Administration to a question raised by the Hon Dennis Kwok
Finance Committee	12.4.2013	Administration's replies to members' initial written questions in examining the Estimates of Expenditure 2013-14 (Reply serial numbers: JA011 – JA015, JA017 and JA025)