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Panel on Administration of Justice and Legal Services

Background brief prepared by the Legislative Council Secretariat for the meeting on 18 May 2015

Manpower and other support for the Judiciary

Purpose

This paper provides background information on manpower and other support for the judiciary and a brief account of the relevant discussions at the Panel on Administration of Justice and Legal Services ("the Panel").

Background

Establishment and vacancies

2. Since July 2008, the Judiciary has conducted a number of comprehensive reviews on its judicial establishment and manpower situation at all levels of court having regard to operational needs, including the need to keep court waiting times within targets.

3. According to the Judiciary, despite great efforts that had been made to enhance the judicial establishment in 2013-2014 (including the filling of all the Justice of Appeal ("JA") posts of the Court of Appeal substantively, the conduct of recruitment exercises for the Court of First Instance ("CFI") Judges on a much frequent basis and the engagement of temporary judicial resources as far as practicable), the High Court ("HC") continued to remain an acute pressure area as far as judicial workload and waiting times were concerned. Having regard to the above, the Chief Justice ("CJ") instructed that a comprehensive establishment review of the judicial manpower be conducted in early 2013. The review concluded that the creation of additional judicial (and associated support staff) posts at various levels of court would be needed to cope with the increasing workload at HC and to cover the absence of Judges

and Judicial Officers ("JJOs") at all levels of court for attending training and dealing with judicial education matters.

4. On 20 March 2015, the Finance Committee ("FC") of the Legislative Council ("LegCo") approved the creation of seven judicial posts, i.e. three JA posts, one Judge of CFI post, one District Judge ("DJ") post and two Magistrate posts.

5. As advised by the Judiciary at the special FC meeting on 27 March 2015, the overall judicial manpower situation and succession plan for different levels of court is as follows:

- (a) for the CFI level, the Judiciary conducted open recruitment exercise on a yearly basis since 2012. Since 2012, 12 CFI Judge appointments were made. The last recruitment exercise was conducted in October 2014, which is still in progress;
- (b) for the DJ, the last open recruitment was completed in 2012 and 22 judicial appointments were made as a result. Having regard to the low vacancy position (three vacancies at present), the Judiciary considers that there is no imminent need to conduct recruitment exercise for DJ in the near future;
- (c) for Members of the Lands Tribunal, the last open recruitment exercise was completed in 2013. Two appointments were made and all vacancies have been filled at present; and
- (d) for Permanent Magistrates and Special Magistrates, the last open recruitment exercises launched in February 2014 have been completed. 17 Permanent Magistrates and five Special Magistrates have been appointed and all fillable vacancies have been filled at present.

6. As at 31 March 2015, the establishment of JJOs at all levels of courts was 200 (**Appendix I**).

Engagement of temporary judicial manpower

7. According to the Judiciary, the engagement and deployment of temporary judicial manpower has been a long standing practice adopted by the Judiciary to help maintain court waiting times at reasonable levels. 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 (excluding Deputy JJOs appointed from

within the Judiciary) as at 1 March in the past five years of 2011 to 2015 is in **Appendix II**.

Past discussions

8. The Panel recently discussed issues relating to judicial manpower situation at its meetings held on 16 December 2013 and 24 November 2014. Major views/concerns raised by members and responses by the Judiciary and the Administration are summarized in the ensuing paragraphs.

Manpower situation of JJOs

9. Although the vacancy rate of judicial posts had dropped from 20.2% as at 31 March 2014 (i.e. 40 of the 193 established judicial posts were not filled) to 11.9% as of November 2014 (i.e. 23 of the 193 established judicial posts were not filled), question was raised as to whether a vacancy rate of over 10% for judicial posts was a longstanding manpower situation in the Judiciary and whether a staff vacancy rate of over 10% was also not uncommon in other Bureaux/Departments ("B/Ds").

10. The Administration pointed out that of the 23 vacant judicial posts, around nine could not be filled for the time being pending the completion of the West Kowloon Law Courts Building. Accordingly, the vacancy rate could not be said to be serious and was not uncommon in other B/Ds. The Administration further pointed out that the Judiciary had kept under constant review its judicial establishment and manpower situation having regard to operational needs. For examples, eight judicial posts were created upon the completion of a comprehensive establishment review of the manpower situation of JJOs in 2008; two judicial posts were created in 2012 to cope with the increasing workload in the Lands Tribunal, two judicial posts were created in 2013 to cope with the new responsibilities arising from the establishment and operation of the Competition Tribunal under the Competition Ordinance (Cap. 619); and resources had been secured by the Judiciary in 2014-2015 to create seven judicial posts at various levels of court.

11. Members noted from paragraph 8 of the LegCo Brief on "2014-2015 Judicial Service Pay Adjustment" that the Judiciary had indicated for the first time in its submission to the Joint Secretariat for the Advisory Bodies on Civil Service and Judicial Salaries and Conditions of Service that some initial signs of difficulties could be observed at the recruitment of CFI Judge and engagement of deputy Special Magistrates. Further, not all vacancies could be filled at the CFI Judge level for the past two recruitment exercises conducted in 2012 and 2013. In particular, for the exercise in 2013, the number of eligible

candidates found suitable for appointment was much smaller than the available vacancies. At the Magisterial level, the Judiciary said it had been encountering difficulties in inviting suitable persons from the private practice to deputize as Special Magistrates. In this regard, concern was raised about whether the Judiciary could fill the judicial vacancies in a timely manner, so as to reduce the long court waiting times.

12. The Administration advised that with the gradual filling of judicial vacancies by substantive appointments, the number of external deputy/temporary JJOs had decreased from a total of 41 as at 31 March 2014 to 27 as at November 2014. Upon the completion of the last round of recruitment exercises for Permanent Magistrates and Special Magistrates conducted in the first half of 2014, 16 Permanent Magistrate and five Special Magistrate appointments had been made. More Permanent Magistrate and Special Magistrate appointments would shortly be announced. The Administration further advised that the Judiciary had just launched another open recruitment for CFI Judges in October 2014. The Judiciary, the Administration and the Judicial Committee would closely monitor whether there was recruitment difficulty of CFI Judge; and if so, whether this was due to judicial remuneration and/or other factor(s).

13. To enable the Judiciary to better cope with the increased workload of JJOs and to help reduce court waiting times, members hoped that the Administration would provide new financial resources as required by the Judiciary.

14. The Administration pointed out that since 2011-2012, 100% of the new resources requested by the Judiciary were met by the Administration. Specifically, in 2014-2015, the Judiciary would be provided with the financial resources required for the creation of seven additional judicial posts at various levels of courts, the engagement of a team of 10 legally qualified staff to provide professional support to judicial education, and the 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. Such increased provisions would also enable the Judiciary to meet the requirements for the filling of all the existing substantive JJO posts at all levels of court, the engagement of temporary judicial manpower to help improve waiting times in some pressure areas in the interim and the employment of support staff to fill all the existing posts in the Judiciary Administration. The Administration pointed out that there were not too many instances whereby a B/D's request for new financial resources was fully met by the Administration.

Recruitment of judges

15. Some members opined that apart from the difficulty of recruiting suitable persons from the private practice as CFI Judges, judicial remuneration, particularly at the Magisterial level, was one of the main reasons why the Judiciary had encountered difficulties in engaging outside lawyers to sit as external deputy JJOs as pointed out by the Law Society at the meeting. Another reason why suitable persons from the private practice would not consider applying for Deputy Special Magistrate was because there was no guarantee that they would be appointed as Permanent Magistrate after a tenure of, say, two years, despite good performance.

16. A member suggested that apart from conducting open recruitment, the Judiciary could consider approaching eligible legal practitioners direct and/or engaging an executive search firm to see whether these legal practitioners were willing to join the bench.

17. The Judiciary advised in its letter dated 11 May 2015 to the Panel that it is the Judiciary's established policy to fill vacancies at the levels of CFI, District Court and Magistrates' Court through open recruitment exercises for the purpose of greater transparency in the recruitment process. This policy has worked well. The engagement of an executive search firm is considered not an effective means to identify suitable candidates in a small jurisdiction such as Hong Kong, as the judiciary does not believe that any firm would have as much knowledge as its JJOs on the advocacy experience and professional competence of the eligible candidates who are mostly legal practitioners in court. In each open recruitment exercise, advertisements for the positions are published in the Judiciary website and newspapers. Eligible candidates from within the Judiciary, private practice and Government departments can apply for those positions on an equal basis.

Court waiting times

18. Members expressed concern about the long court waiting times at various levels of court. It was noted that there were cases in which the appellants could only have their cases heard after they had served their imprisonment sentence.

19. The Judiciary explained that as revealed in the establishment reviews conducted by the Judiciary, HC remained a pressure area. It was necessary to provide additional judicial resources to the CFI in the light of its increased caseload and the growing complexity of the cases heard. At present, the Chief Judge of the High Court ("CJHC") had the discretion to assign cases to the JJOs having regard to the complexity of the cases and the amount of preparatory

work required. Where necessary, the JJOs concerned could discuss with the Court Leader for the provision of time to cope with increased workload and other special circumstances.

20. As regards members' concern about the long court waiting times for civil appeal cases, the Judiciary advised that at present, CJHC had instructed that where practicable, priority would normally be given to judicial review cases and cases which involved applications for injunctions. It was hoped that when the substantive vacancies were filled in due course, the pressure on lengthened waiting times could be relieved.

21. Noting that the Lands Tribunal had consistently achieved a good performance in meeting the average waiting time target, suggestion was made on redeploying some of the judicial resources of the Lands Tribunal to other levels of court.

22. The Judiciary advised that the relatively short average waiting time of the Lands Tribunal was mainly due to the fact that the total caseload of the Lands Tribunal had been lower than expected over the past few years. The Judiciary had kept under constant review its judicial establishment and manpower situation having regard to operational needs, including the need to keep court waiting times within targets.

Retirement age of judges

23. Members noted that the statutory normal retirement age for JJOs was 60 or 65, depending on the level of court. Beyond that, extension of service might 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. As retirement was the main source of wastage amongst JJOs, question was raised as to whether consideration would be given to extending the retirement age of JJOs as in the case of civil servants.

24. The Administration advised that according to the Judiciary, a number of internal reviews were being conducted relating to, amongst others, the retirement ages for JJOs.

Support for JJOs

25. Members noted that under the Scheme on Judicial Assistants ("the Scheme"), Judicial Assistants were only assigned to provide assistance to appellate judges. To better help JJOs to cope with the increased workload and to keep court waiting times within targets, the Judiciary should expand the

scope of the Scheme to all levels of court and engage more young solicitors and barristers as Judicial Assistants.

26. The Judiciary advised in its letter dated 11 May 2015 to the Panel that the Judiciary has recently conducted a review on the Scheme. With a view to enhance professional support for appellate judges, the Judiciary has decided that starting from 2015, the Court of Final Appeal and the Court of Appeal of the HC will have separate schemes for providing professional assistance to their Judges.

27. A member suggested that the Judiciary should consider providing "protected time" to judges for writing judgments on a routine basis. The Judiciary advised that CJHC had given general instructions that when listing cases for individual judges, consideration should be given to allowing appropriate buffer time required by individual judges in writing the judgments.

Council questions

28. Questions raised by Members relating to judicial manpower at Council meetings of the current legislative term are as follows:

- (a) Hon CHUNG Kwok-pan raised a written question on the "Waiting Times for Hearing of and Time Taken for Delivery of Judgments on Court Cases" at the Council meeting of 18 June 2014; and
- (b) Hon Dennis KWOK raised a written question on "Appointment of Judicial Assistants by the Judiciary" at the Council meeting of 9 January 2013.

Recent development

29. At the special FC meeting on 27 March 2015, the Judiciary advised Members that in 2015-2016, the Judiciary will aim to complete the current recruitment exercise for CFI Judges, to press on with the various reviews, such as one on the conditions of service of Judges and another on retirement age, and in the meantime, to engage deputy judges and judicial officers as far as practicable to assist in meeting the pressing operational needs. As regards non-judicial manpower, in 2015-2016, on top of meeting the on-going operational needs in charging its responsibilities on all fronts, the Judiciary will continue to enhance administrative support in supporting a number of major initiatives, such as setting up a new secretariat to provide administrative support to CJ and the Court Leaders in handling complaints against judicial conduct; enhancing

professional and administrative in-house support to facilitate the implementation of the Information Technology Strategy Plan; enhancing administrative support in taking forward many initiatives requiring legislative amendments; and the setting up of building management teams for the relocated Court of Final Appeal and the West Kowloon Law Court Building.

Relevant papers

30. A list of the relevant papers is in **Appendix III**.

Council Business Division 4
Legislative Council Secretariat
15 May 2015

Appendix I

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

Position as at 31.3.2015				
Level of Court	Rank	Establishment	Judicial Service Pay Scale Point	Monthly Salary \$
Court of Final Appeal	Chief Justice	1	19	293,200
	Permanent Judge	3 ^	18	285,100
Court of Appeal	Chief Judge of the High Court	1	18	285,100
	Justice of Appeal	13	17	257,000
Court of First Instance	Judge of the Court of First Instance	34	16	244,950
	Registrar	1	15	202,450
High Court Masters’ Office	Senior Deputy Registrar	4	14	184,600 – 195,850
	Deputy Registrar	6	13	173,000 – 183,400
District Court (including Family Court and Lands Tribunal)	Chief District Judge	1	15	202,450
	Principal Family Court Judge	1	14	184,600 – 195,850
	District Judge	35	13	173,000 – 183,400
	Member, Lands Tribunal	2	12	148,850 – 158,000
District Court Masters’ Office	Registrar	1	11	137,100 – 145,350
	Deputy Registrar	3	10	125,400 – 133,050

Position as at 31.3.2015				
Level of Court	Rank	Establishment	Judicial Service Pay Scale Point	Monthly Salary \$
Magistrates' Courts/ Specialized Court/ Other Tribunals	Chief Magistrate	1	13	173,000 – 183,400
	Principal Magistrate/ Principal Presiding Officer, Labour Tribunal/ Principal Adjudicator, Small Claims Tribunal	11	11	137,100 – 145,350
	Coroner/ Presiding Officer, Labour Tribunal/ Adjudicator, Small Claims Tribunal/ Magistrate	71	10 7-10	125,400 – 133,050 111,010 – 133,050
	Special Magistrate	11	1-6	72,155 – 85,250

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

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(Source: Controlling officer's reply to a Member's initial written question in examining the Estimates of Expenditure 2015-2016 (Reply Serial No.: JA012))

Appendix II

X X X X X

The number of Deputy JJOs appointed from outside the Judiciary (excluding Deputy JJOs appointed from within the Judiciary) as at 1 March in the past five years of 2011 to 2015 is as follows:

Position	1.3.2011	1.3.2012	1.3.2013	1.3.2014	1.3.2015
Deputy Judge of the Court of First Instance of the High Court	2	4	7	5	2
Temporary Deputy Registrar, High Court	0	0	0	1	1
Deputy District Judge	1	1	1	0	0
Temporary Member of the Lands Tribunal	0	1	1	0	0
Deputy Magistrate	16	25	10	24	12
Deputy Special Magistrate	8	8	5	9	5
Total	27	39	24	39	20

X X X X X

(Source: Controlling officer's reply to a Member's initial written question in examining the Estimates of Expenditure 2015-2016 (Reply Serial No.: JA012))

Background brief on manpower and other support for the Judiciary

List of relevant papers

Date	Meeting/Event	References
Panel on Administration of Justice and Legal Services	16.12.2013 (Item V)	Agenda Minutes
	24.11.2014 (Item V)	Agenda Minutes
Council Meeting	9.1.2013	Official Record of Proceedings Pages 4435 – 4437 (Written question raised by Hon Dennis KWOK)
	18.6.2014	Official Record of Proceedings Pages 15268 – 15274 (Written question raised by the Hon CHUNG Kwok-pan)

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