

DRAFT

**For discussion
on 10 February 1999**

EC(98-99)

**ITEM FOR ESTABLISHMENT SUBCOMMITTEE
OF FINANCE COMMITTEE**

**HEAD 80 - JUDICIARY
Subhead 001 Salaries**

Members are invited to recommend to Finance Committee -

- (a) the creation of the following new rank in the Judiciary -

Deputy Registrar, High Court
(\$127,900 - \$135,550);

- (b) the consequent retitling of the existing rank of Deputy Registrar, High Court (\$136,400 - \$144,750) to Senior Deputy Registrar, High Court; and

- (c) the creation of the following permanent posts in the Judiciary -

5 Deputy Registrar, High Court
(\$127,900 - \$135,550)

to be offset by the deletion of the following permanent posts -

2 Senior Deputy Registrar, High Court
(\$136,400 - \$144,750)

PROBLEM

The existing establishment of Deputy Registrars, High Court (\$136,400 - \$144,750) in the Master's Office of the High Court is inadequate to cope with the increasing workload. In addition, the present division of responsibilities among Masters is out of step with the modern trend of case management being followed by overseas jurisdictions.

PROPOSAL

2. After a review of the establishment of Deputy Registrar, High Court in the Master's Office, their portfolios and levels of responsibilities, the Judiciary Administrator proposes, with the endorsement of the Chief Justice, Court of Final Appeal, to -

- (a) create a new rank of Deputy Registrar, High Court carrying a monthly salary of \$127,900 - \$135,550;
- (b) retitle the existing rank of Deputy Registrar, High Court carrying a monthly salary of \$136,400 - \$144,750 to Senior Deputy Registrar, High Court; and
- (c) create five permanent posts of Deputy Registrar, High Court carrying a monthly salary of \$127,900 - \$135,550, to be offset by the deletion of two permanent posts of Senior Deputy Registrar, High Court (\$136,400 - \$144,750).

JUSTIFICATION

Review of establishment

3. There are five Deputy Registrars, High Court on the existing establishment of the Judiciary. Designated as Masters, they hear interlocutory and summary applications in chambers and conduct various types of proceedings in court. In addition, they assist the Registrar, High Court in the discharge of statutory, legal and quasi-judicial functions. Two recent

developments have prompted the Judiciary to review the establishment and levels of responsibilities of Deputy Registrars.

Increase in Workload

4. The number of High Court civil cases has been on the increase since 1995 when the establishment of Deputy Registrar was last reviewed. The situation has been aggravated by the recent economic downturn, resulting in a considerable surge in the number of bankruptcy and company winding up cases, actions for breach of agreements for sale and purchase of landed properties, breach of hire and purchase agreements, enforcement of mortgages etc. In particular, the last three quarters of 1998 saw a significant increase in caseload - the number of actions commenced in the High Court Registry has risen to 25 490, representing an increase of 48% when compared with the 17 237 cases recorded for the corresponding period in 1997.

5. As a result, the waiting time for hearings before Masters has been unsatisfactorily long. As illustrated at Enclosure 1, the actual waiting time has far exceeded the target waiting time by 32% to 140% depending on the types of cases. To help clear the backlog of cases, the Judiciary appointed in August 1998 a temporary Deputy Registrar from the private sector and created, under delegated authority, two supernumerary posts of Deputy Registrar on 12 October 1998. Although the recent month has seen an overall improvement of the waiting time as a result in the temporary increase in the number of Deputy Registrars, the upward trend in cases brought in the High Court has continued.

6. For the purposes of scheduling, all interlocutory issues or cases to be heard before the Masters are collectively grouped under "General Chambers" listing. After the case has been heard under "General Chambers" listing which lasts generally not more than ten minutes, the case will either be disposed of or re-fixed for a further hearing with a longer duration under the "Special Chambers" list. As the existing listing schedule only permits 730 General Chambers cases to be heard in a week, the Judiciary has reviewed the listing schedule with a view to reducing the waiting time. Having taken into account the backlog of cases, the existing and anticipated caseload and the

available hearing time with a total of nine Masters (including the Registrar, High Court and the three temporary Masters mentioned in paragraph 5 above), the Judiciary has introduced with effect from 11 January 1999 a revised listing schedule which reflects an increase of 64 General Chambers cases to be heard before the Masters in a week. We set out the existing and revised listing schedules at Enclosure 2.

7. Given that there is an increasing number of cases which cannot be disposed of at the "General Chambers" hearing and have to be listed for a further hearing under the "Special Chambers" listing, the need to reduce the actual waiting time for such hearings, and the long-term need to implement effective case management as described below, the Judiciary Administrator considers that there is a need to retain the existing complement of eight Deputy Registrars (including the three temporary Deputy Registrars mentioned in paragraph 5 above) on a permanent basis. This will require the creation of three additional permanent posts of Deputy Registrar.

Effective Case Management

8. Another recent development which has affected the work of Deputy Registrars is the growing need for case management. In the past, the judges' role was very much confined to acting as a referee under the adversarial system and the parties had a free hand over the conduct of civil litigation. The uncontrolled conduct of cases led to a denial of justice resulting from high costs, long delays and a waste of judicial time and resources.

9. To safeguard public interest, most jurisdictions now place increased emphasis on effective case management which requires the court to assert greater control to ensure that the cases progress to trial as expeditiously and inexpensively as possible. The Judiciary is committed to developing and expanding the work done in case management. At present, there are only two areas where case management work is undertaken by the Deputy Registrars, namely, appeals to the Court of Appeal and in personal injuries cases. To make more effective use of judicial time, Deputy Registrars will in future take on all

the case management work in the High Court which is at present carried out by the judges. This creates additional demands for the Deputy Registrars.

10. *Appeals.* A Deputy Registrar designated as Registrar of Appeals oversees and supervises the conduct and listing of appeal cases lodged with the Court of Appeal. He is responsible for both criminal and civil appeals which are currently grouped under one portfolio.

- (a) For criminal appeal cases, the Registrar of Appeals deals with applications for transcript and exhibits, time extensions for filing perfected grounds of appeal and other requests and enquiries particularly those made by appellants who are not legally represented. He also gives directions as to the length of the appeal hearings and other matters pertaining to preparation of the appeals, such as the filing of written submissions. He monitors not only the progress of individual appeal cases but also the whole criminal appeals list and sees to it that the cases are heard and disposed of without delay.
- (b) For civil appeals, the Registrar of Appeals hears applications and gives directions relating to listing and preparations of appeals. Where the appellant is not legally represented, he will assist him to properly prepare for the hearings, including the compilation of appeal bundles. He has to ensure that all the relevant materials are placed before the court so that judicial time and resources will not be unnecessarily wasted. As with the criminal appeals list, he has to control the civil appeals list.

11. In view of the large volume of appeal cases (over 900 in 1998), and particularly because of the growing number of appeals being conducted by appellants without legal representation, the Judiciary considers it necessary to separate the present portfolio of criminal and civil appeals into two. This will require two Deputy Registrars to handle appeal cases.

12. ***Personal Injuries Cases.*** The Master designated as the Personal Injuries Master is responsible for overseeing and supervising the listing and conduct of cases in the Personal Injuries List. Cases on this list generally involve victims of traffic or industrial accidents or the surviving family members and dependants of such victims. Justice demands that their claims should be resolved without unnecessary delay and that the costs involved are kept to a minimum.

13. Case management work done by the Personal Injuries Master under the present practice direction has been successful. The conduct of cases in the Personal Injuries List has been kept well under control, thereby minimizing delay and costs involved. The Judiciary therefore plans to expand case management to other areas of civil litigation along the lines of personal injuries list, such as the commercial, admiralty, companies and bankruptcy lists and for originating summons. This will require the attention of another Deputy Registrar.

Restructuring of Deputy Registrars

14. To ensure the successful development of case management in the Personal Injuries List, expansion of such procedure into other areas of civil litigation and to handle such other important areas of work including civil and criminal appeals, the Judiciary considers it necessary to reorganise the work of the Masters. Under the proposed reorganisation, three of the eight Deputy Registrars (paragraph 7 above refers) will be appointed as Senior Deputy Registrars, each to be responsible for the following areas-

- (a) handling of the criminal appeals portfolio referred to in paragraph 10(a);
- (b) handling of the civil appeals portfolio referred to in paragraph 10(b);
- (c) supervision and development of effective case management into other areas of civil litigation along the lines of the Personal Injuries List referred to in paragraph 13.

Apart from these portfolios, the three Senior Deputy Registrars will also be responsible for the handling of mutual legal assistance with Mainland authorities, undertaking judicial duties by sitting as Masters as well as the supervision of the discharge of quasi-judicial duties for probate administration, suitors' funds and jury administration. The remaining five Deputy Registrars will undertake slightly less onerous responsibilities including judicial duties (such as the hearing of interlocutory and summary applications), case management work and assist the Registrar, High Court in the discharge of quasi-judicial functions.

15. The work required of the three Senior Deputy Registrars in respect of supervision, development and expansion of case management involves a new and developing technique. In adopting the technique to the local context and in ensuring that the changes are introduced and implemented effectively, the Senior Deputy Registrars will have to keep pace with international developments and suggest improvements in a rapidly changing field. The duties of the three Senior Deputy Registrars in this respect and other areas, particularly those listed below, are more demanding than those of the five Deputy Registrars who are required to take on the bulk of an increasing amount of judicial work-

- (a) work in relation to bills and legislative amendments which covers many different areas and involves extensive research;
- (b) work in relation to practice directions and committees which involves the development of civil procedure and is important to the smooth running of civil litigation in the High Court; and
- (c) work concerning mutual legal assistance between Mainland authorities and Hong Kong which is new, uncharted and challenging.

16. To better reflect the two levels of responsibilities required to be undertaken by the Masters, the Judiciary Administrator proposes to create a new rank of Deputy Registrar for the five Masters undertaking less onerous responsibilities and to retitle the existing rank of Deputy Registrar (\$136,400-

\$144,750) to Senior Deputy Registrar. Considering that the level of responsibilities of the new rank of Deputy Registrar is comparable to that of the Judge of the District Court (\$127,900 - \$135,550), the Judiciary Administrator proposes to fix the pay scale of the new rank at this level.

17. We set out the job descriptions of the Senior Deputy Registrars and the Deputy Registrars at Enclosures 3 and 4 respectively.

18. The existing organisational structure of the Master's Office in the High Court and the proposed structure are at Enclosure 5.

Other considerations

19. The creation of a new rank of Deputy Registrar will provide progression within the establishment of the Masters. With the new rank pitched at the same level as Judges of the District Court, it will permit a flexible and effective deployment of judicial personnel between the High Court Registry and the District Court, particularly where there are fluctuations in caseload. The creation of five posts of Deputy Registrar at the same level as Judge of the District Court will also enable Magistrates and legal practitioners from the private sector with aptitude or preference for civil work to be appointed as Masters without necessarily going through the District Court bench first. In addition, cross postings of judges between the High Court Registry and the District Court will be beneficial to the training and development of judges in the following ways -

- (a) the mainstream work of the Judiciary is civil and criminal, and Master's work remains a rather narrow area. Moreover, as their work is confined to civil cases, Masters are usually unable to acquire any experience of criminal work. This has in the past affected their career development and hindered their advancement to the High Court;
- (b) the movement of judges between the District Court and the Master's Office will enable those with potential to acquire civil experience (at the Master's Office) and criminal experience (at

the District Court). This would enable those Deputy Registrars with potential to progress to the High Court.

20. Currently, the existing rank of Deputy Registrar (\$136,400 - \$144,750) has an establishment of five posts with three substantive post holders. The proposed creation of five posts in the new rank of Deputy Registrar (\$127,900-\$135,550) offset by the deletion of two posts of Senior Deputy Registrar (\$136,400-\$144,750) will not affect any serving officer.

Ranking of Registrar, Court of Final Appeal

21. At present, the post of Registrar, Court of Final Appeal is pegged to the existing rank of Deputy Registrar, High Court (\$136,400 - \$144,750). The Judiciary Administrator confirms that there is a continued need for the post and further proposes that it should be retained at the level of Senior Deputy Registrar, High Court (\$136,400 - \$144,750).

FINANCIAL IMPLICATIONS

22. The additional notional annual salary cost of the proposal at MID-POINT is -

	\$	No. of Posts
New permanent posts	7,902,000	5
Less Permanent posts deleted	3,373,200	2
	-----	---
Additional cost	<u>4,528,800</u>	<u>3</u>

23. The additional full annual average staff cost of the proposal, including salaries and staff on-cost, is \$7,867,464.

24. In addition, the proposal will necessitate the creation of nine non- directorate posts, comprising one Senior Judicial Clerk I, one Court Interpreter II, three Judicial Clerks, three Assistant Clerical Officers and one Workman II, to support the three additional posts of Deputy Registrar. The additional notional annual mid-point salary cost and full annual average staff cost of these non-directorate posts are \$2,537,940 and \$3,628,152 respectively.

25. We have included the necessary provision in the 1998-99 Estimates and the 1999-2000 draft Estimates to meet the cost of this proposal.

BACKGROUND INFORMATION

26. Section 37(1) of the High Court Ordinance (Cap. 4) provides that there shall be attached to the High Court a Registrar and such Deputy Registrars and Assistant Registrars as may be appointed.

27. Until 1989, there were in the High Court (formerly Supreme Court) under the Registrar-

- (a) two Deputy Registrars; and
- (b) five Assistant Registrars - four of the Assistant Registrars were designated as Masters whereas the fifth one was designated as the Chief Magistrate.

28. The establishment of Deputy Registrars and Assistant Registrars under the Registrar, High Court had undergone several changes between December 1989 and February 1995 resulting in a net increase in three posts of Deputy Registrar and a deletion of five posts of Assistant Registrar.

29. From February 1995 onwards, the number of Deputy Registrar, High Court (formerly designated as Deputy Registrar, Supreme Court) under the Registrar, High Court (formerly designated as Registrar, Supreme Court) has remained at five and there is no Assistant Registrar. The Registrar together with his deputies are designated as Masters. At present, they are responsible for performing the following duties -

- (a) Judicial duties involving the hearing of interlocutory and summary applications in chambers and the conducting of various types of proceedings in court.
- (b) Duties involving case management in the Personal Injuries List and for civil and criminal appeals.
- (c) Quasi-judicial duties involving responsibilities for probate administration, suitors' funds, the jury list and taking evidence on commission.
- (d) Various other duties such as assisting the Chief Judge, High Court and the Chief Justice, Court of Final Appeal to handle bills and legislative amendments, and dealing with practice directions, committees, and mutual legal assistance with Mainland authorities.

COMMENTS FROM CIVIL SERVICE BUREAU

30. Civil Services Bureau considers the ranking and grading of the proposed new post of Deputy Registrar, High Court to be appropriate having regard to its duties and level of responsibility, and supports the re-titling of the existing rank of Deputy Registrar, High Court to Senior Deputy Registrar, High Court and the creation of 5 permanent posts of Deputy Registrar, High Court to be offset by the deletion of 2 permanent posts of Senior Deputy Registrar, High Court.

ADVICE OF THE STANDING COMMITTEE ON JUDICIAL SALARIES AND CONDITIONS OF SERVICE

31.

Judiciary
January 1999

**Comparison between the Actual Average Waiting Time (during the period 1.5.98
-31.10.98) and the Target Waiting Time for Master Hearings**

Types of Master Hearings (Please refer to Enclosure 2(a) for explanations on types of Master hearings)	Target waiting time (in days)	Actual average waiting time (in days)	Target exceeded by (%)
1. General Chambers			
a. 3-minute Chambers List	14	20.02	43.0%
b. Checklist Hearing (Personal Injury Cases)	42	55.30	31.7%
c. Examination of Debtors (Order 48 & 49B)	28	67.54	141.2%
d. Mortgage List (Order 88)	35	53.70	53.4%
e. Summary Judgment List (Order 14)	21	50.19	139.0%
f. Company Winding Up and Bankruptcy Petitions	28	29.32	4.7%
g. Hire Purchase List (Order 84 A)	21	48.59	131.4%
h. Taxation Callover	42	66.83	59.1%
2. Special Chambers			
a. Cases lasting less than 31 minutes	14	44.14	215.3%
b. Cases lasting 31-60 minutes	21	61.88	194.7%
c. Cases lasting 61-120 minutes	21	67.20	220.0%
d. Cases lasting 121 minutes or more	28	79.37	183.5%

Time Required for Master Hearings (General Chambers) Per Week

Types of Master Hearings (Explanatory notes - please refer to Enclosure 2(a))	Time set aside for General Chambers Hearing Per Week				Revised Weekly Listing Schedule w.e.f. from 11.1.1999			
	(a) Session Per Week	(b) Total Time Available (min.)	(c) Maximum Number of Cases to be Listed	(d) Target Waiting Time (day)	(e) Revised Session Per Week	(f) Extra Number of Cases Listed	(g) Extra Time Required (min.)	(h) Total Time Required (b)+(g) (min.)
General Chambers								
3-minute Chambers List	10.00	1,500	525	14	10.00	0	0	1,500
Checklist Hearing (Personal Injury Cases)	2.00	300	40	42	0.00	-40	-300	0
Examination of Debtors (Order 48 & 49B)	0.34	40	6	28	0.30	-1	-5	35
Mortgage List (Order 88)	0.75	90	18	35	1.50	18	90	180
Summary Judgment List (Order 14)	1.00	180	30	21	2.00	30	180	360
Company Winding Up and Bankruptcy Petitions	1.00	180	40	28	1.00	0	0	180
Hire Purchase List (Order 84A)	0.67	80	13	21	1.00	6	40	120
Taxation Callover	1.00	180	30	42	2.00	30	180	360
Legal Aid Appeals (Merits)	2.00	360	24	42	2.00	0	0	360
Legal Aid Appeals (Means)	0.25	30	4	28	1.50	20	150	180
Practice Master	5.00	600	N.A.	N.A.	5.00	0	0	600
Total		3,540	730			64	335	3,875

Explanatory Notes on Types of Master Hearings

- "General Chambers"** : Every interlocutory issue or case before the Masters has to be entered into various types of lists (altogether termed as "General Chambers"). After the listed hearing under the General Chambers, the case will either be disposed of or re-fixed for a further hearing with a longer duration (under Special Chambers listing). Usually, a short span of 3 to 10 minutes is allowed for "a disposal" in the "General Chambers". General Chambers include -
- 3-minute Chamber List** : To dispose of interlocutory issues of civil litigation within a time slot of about 3 minutes. Failing such disposal, the issue will be re-fixed under the "Special Chambers" where a further hearing with a longer duration is necessary.
- Checklist Hearing (Personal Injury Case)** : To check the readiness of a personal injury case before proceeding to trial. (To be abandoned in January 1999)
- Examination of Debtors (Order 48)** : To determine the repayment ability of the judgment debtor company through oral examination of its director(s).
- Examination of Debtors (Order 49B)** : To examine the repayment ability of an individual judgment debtor.
- Mortgage List (Order 88)** : To deal with application of the mortgagor for possession of the concerned property.
- Summary Judgment List (Order 14)** : To make summary judgment on a civil claim without proceeding to trial if the defendant has no defence to the claim. Failing such disposal within the short time span allotted, the matter will be re-fixed under the "Special Chambers" where a further hearing with a longer duration is necessary.
- Company Winding Up and Bankruptcy Petitions** : To deal with such uncontested petitions.
- Hire Purchase List (Order 84A)** : To deal with application for possession of goods under hire purchase or conditional sale agreements.

Taxation Callover : To bring parties together to resolve objections from the paying party on a bill (a document with costs involved itemised tidily) of a hearing, a matter or a trial. The issue may be re-fixed under the "Special Chambers" where a further hearing with a longer duration is necessary.

Legal Aid Appeals (Merits) : To hear appeals on the decision of the Director of Legal Aid on refusal of legal aid assistance after considering the merits of the case.

Legal Aid Appeals (Means) : To hear appeals on the decision of the Director of Legal Aid on refusal of legal aid assistance after considering the financial status of the applicant.

"Special Chambers" : Include cases requiring a hearing time of 15 to 30 minutes and cases re-fixed after the listed hearing under the "General Chambers". The time required for cases re-fixed for further hearing may vary from 30 minutes to a couple of days.

Job Description of

Senior Deputy Registrar, High Court

1. Researching and preparing draft papers for Chief Judge, High Court (CJHC) and Chief Justice, Court of Final Appeal on the Judiciary's position on bills and legislative amendments in relation to matters including law reform, practice and procedure on which the Judiciary has been asked by the Administration to comment.
2. Reviewing with CJHC existing practice directions and developing new practice directions and undertaking research and related drafting work.
3. Serving as secretary or member or as the Registrar's representative of committees such as the rules committees and the court users committees and preparing related documents.
4. Handling mutual legal assistance with Mainland authorities, such as the service of judicial documents, enforcement of judgments and arbitration awards, involving:
 - (a) liaison with 31 Mainland Higher People's Court and negotiation with the Supreme People's Court on the service of judicial documents;
 - (b) establishing a system in the High Court Registry for implementing the agreed arrangement for effecting service of judicial documents between the Mainland and Hong Kong Courts;
 - (c) supervising the system and conducting periodic review of the system so set up.

5. Supervising case management work in the Personal Injuries List, including supervision of Deputy Registrars in their discharge of their case management work, liaison with the personal injuries judge, and review of the progress of the flow of cases in the list.
6. Developing and expanding effective case management to other areas of civil litigation along the lines of the personal injuries list, such as the commercial, admiralty, companies and bankruptcy lists and for originating summons.
7. Undertaking case management work for civil and criminal appeals.
8. Supervising the discharge of quasi-judicial duties by Deputy Registrars.
9. Undertaking judicial duties by sitting as Masters.

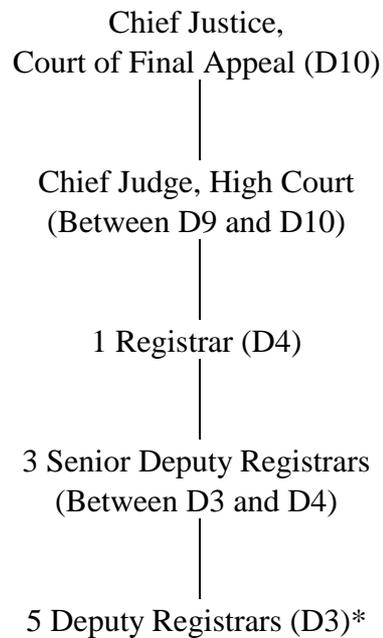
**Job Description of
Deputy Registrar, High Court**

1. Discharging judicial duties by sitting as Masters. These include:
 - (a) Hearing interlocutory and summary applications of High Court civil cases in chambers.
 - (b) Conducting examinations of debtors, assessment of damages, taking of accounts and enquiries, interpleader trials and uncontested bankruptcy and winding up applications in court.
 - (c) Conducting hearings in connection with probate applications and administration of estates.
 - (d) Hearing appeals from decisions of Director of Legal Aid.
 - (e) Taxing bills of costs.
 - (f) Acting as Practice Master.
2. Undertaking case management work in the Personal Injuries List and other areas to which effective case management will be developed and expanded.
3. Discharging quasi-judicial duties as follows:
 - (a) Acting as Probate Master and Official Administrator. This involves issuing grants of representation and supervising the operation of the Probate Registry.
 - (b) Administering suitors funds. This includes dealing with requests and applications by parents or guardians for payment out of infant's awards.

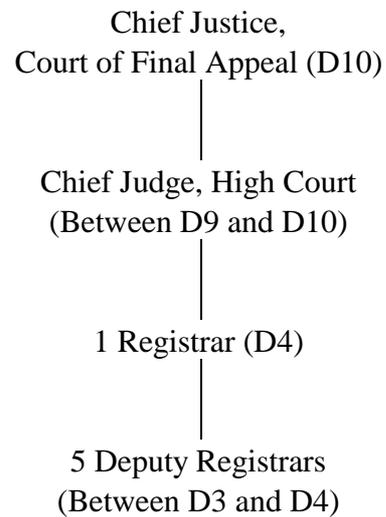
- (c) Overseeing the compilation of the Jury List and administering the jury system as prescribed by the Jury Ordinance.
- (d) Taking evidence on commission in foreign proceedings.

Organization of the Master's Office, High Court

The Proposed Structure



The Existing Structure



Legend

* Include 3 new posts of Deputy Registrar proposed for creation.