

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 the
Finance Committee -

- (a) the revision of the pay scale of the Special Magistrate grade from \$56,540 - \$59,325 to \$56,540 - \$66,800; and
- (b) the designation of specific pay points for the Judicial Service Pay Scale.

PROBLEM

The existing pay scale of the Special Magistrate grade (\$56,540 - \$59,325) does not reflect its revised entry requirement and the career reality of the grade that new appointees may serve up to three to four contracts only. In addition, the lack of designated pay points under the existing Judicial Service Pay Scale makes reference to the pay of Judges and Judicial Officers difficult.

PROPOSAL

2. After a review of the Special Magistrate grade, the Judiciary Administrator proposes, with the endorsement of the Chief Justice. Court of Final Appeal, to -

- (a) revise the pay scale of the Special Magistrate grade from \$56,540 - \$59,325 to \$56,540 - \$66,800; and
- (b) designate specific pay points for the Judicial Service Pay Scale incorporating the revision proposed in paragraph 2(a) above.

JUSTIFICATION

Review of Special Magistrate grade

3. The Judiciary recently undertook a review of the Special Magistrate grade. The main findings of the review are summarized below -

- (a) There are three clearly different categories of magisterial work: pleas, trials, and routine paper work that is dealt with in Chambers. As a substantial proportion of magisterial cases are of a minor and routine nature and the Magistrates Association has made clear that its members do not wish to handle routine work currently being undertaken by Special Magistrates, the Chief Justice has accepted the continued need for the Special Magistrate grade.
- (b) However, much has changed since the creation of the Special Magistrate grade in 1981. With expansion of legal education locally. Hong Kong now has many more lawyers than 17 years ago.
- (c) Recent Special Magistrate recruitment exercises attracted applications from many legally qualified persons, although they were not considered as experienced enough for appointment as Magistrate (\$86,980 - \$104,250). The Judiciary has begun inviting legal practitioners in the private sector to act as

Temporary Special Magistrates. So far, the response has been favourable.

- (d) The responsibilities of Special Magistrates are now more onerous. In hearing appeals, the appellate court demands the same high standard from Special Magistrates as from Magistrates. This, coupled with the growing number and relatively more complicated cases being handled, requires Special Magistrates to have a better knowledge of law and rules of evidence in order to competently discharge their duties, especially so for trial cases.
- (e) While there is still a significant proportion of magisterial work of a minor and routine nature that can be executed competently by experienced para-legals, it is increasingly common for defendants to be represented by lawyers when attending trials before Special Magistrates. To effectively handle any representations or points of law advanced by the defendants' lawyer, the Special Magistrate should preferably be a legally qualified person. Even in some cases where the accused is not legally represented, the case should preferably be dealt with by a legally qualified Special Magistrate. In fact, some of the minor cases may have significant implications for other related action. For instance, the findings by a Special Magistrate in a careless driving case may have serious implications for a personal injury civil claim.

Advice from the Judicial Officers Recommendation Commission

4. In July 1998, the Judicial Officers Recommendation Commission considered the Judiciary's review of the Special Magistrate grade and endorsed the following proposals for change -

- (a) Legally qualified persons should in future be appointed as Special Magistrates.

- (b) The Special Magistrate will cease to be a career grade. Although serving non-legally qualified Special Magistrates will be allowed to continue, new Special Magistrates will be appointed on three- year renewable contracts only for up to three to four contracts. New entrants will be expected to upgrade themselves professionally and to compete for appointment as Magistrate. Those who fail to qualify as Magistrates over a period of time can expect to be replaced by new recruits to the grade.
- (c) The pay scale of the Special Magistrate grade should recognise the legal qualification required of new entrants and reflect the career reality of the grade that appointees may serve up to three to four contracts only.

Pay Scale of Special Magistrate

5. In reviewing the pay scale of the Special Magistrate grade, the Judiciary has taken into consideration the following -

- (a) Pay relativity with other grades in the civil service (namely Government Counsel and Solicitor, both of which require appointees to be legally qualified) which require similar entry qualification. We set out the pay scales of both grades, and a comparison of their pay scales with that of the Special Magistrate at Enclosure 1.
- (b) The pay scale should reflect the responsibilities of the job and is adequate to attract and retain good quality candidates.
- (c) New entrants to the Special Magistrate grade can expect to serve no more than four contracts; and
- (d) Entry requirement for the Magistrate grade calls for five years professional experience since Call or Admission. Even if the experience of a Special Magistrate were counted for the purpose of appointment to Magistrate, it would take a newly qualified

person to serve five years as a Special Magistrate before he could qualify for consideration for appointment as a Magistrate.

6. Having taking into account the above and the fact that Special Magistrates' work has become more onerous since the last pay scale review in 1990, the Judiciary proposes that the pay scale of Special Magistrate should be revised to \$56,540, \$57,925, \$59,325, \$60,750, \$63,700, \$66,800 (*proposed changes in italics*) by extending the existing pay scale by three salary points. The proposed pay point of \$66,800 represents a differential of 30.21% between the proposed maximum pay of Special Magistrate and the minimum pay of Magistrate. This is not unreasonable when compared with the pay differentials for judges and judicial officers for other levels of courts as shown in Enclosure 2.

7. To recognise the new requirement of a full legal qualification, the Judiciary further proposes that a legally qualified person should enter at the second point of the pay scale and be granted annual increments in his first contract. The fifth pay point will be awarded when the Special Magistrate has his contract renewed and after his completion of three years' service. He will remain on this pay point throughout the second contract. The Judiciary envisages that the majority of Special Magistrates would have gained advancement to Magistrate before the completion of the second contract.

8. A Special Magistrate who fails to gain advancement to Magistrate but has had his contract renewed will be paid the sixth pay point when his third contract commences. Those who still fail to gain advancement to Magistrate after having served as Special Magistrate for nine years will have their contracts not renewed on completion of their third contract or if renewed, their salary will remain the same during further contracts.

Serving Special Magistrates

9. Serving non-legally qualified Special Magistrates will continue to serve under the existing framework. However they will not be allowed to benefit automatically from the revision in pay scale. Instead, they will be

encouraged to enhance their professionalism by pursuing academic legal qualifications on a part-time basis. To this end, we propose to apply the following to serving non-legally qualified Special Magistrates -

- (a) Upon obtaining such academic legal qualifications as can be pursued on a part-time basis (i.e. a recognized Bachelor of Laws degree), serving non-legally qualified Special Magistrates will be allowed to advance to the fourth point of the revised pay scale after they have served on the third point for a year and progress along the new pay scale.
- (b) In applying for appointment as Magistrate, the requirement of obtaining professional qualifications will be waived in respect of serving non-legally qualified Special Magistrates. Once a serving Special Magistrate has obtained his academic qualification and the necessary five years' experience on the magisterial bench, he will be eligible to apply and compete with outside applicants for appointment as a Magistrate.
- (c) While legally qualified Special Magistrates will be assigned comparatively more trials especially the more complicated cases, serving Special Magistrates will take on more plea cases and other routine paper work.

Review of Judicial Service Pay Scale

10. As illustrated in Enclosure 3, the existing Judicial Service Pay Scale has no designated pay points. This makes reference to the pay of Judges and Judicial Officers difficult.

11. To facilitate reference to the pay of Judges and Judicial Officers, the Judiciary proposes to designate specific pay points to the Judicial Service Pay Scale. In designing the scale, we have made reference to the other pay scales used in the civil service, such as the Police Pay Scale. All pay points on the Police Pay Scale which fall within the range of the Master Pay Scale have designated pay points. For those pay points which fall within the range of the

Directorate Pay Scale, the minimum and the increments (shown in brackets) for a particular pay point are taken together and regarded as one single pay point. The Judiciary proposes to follow the same numbering system in designating the pay points on the Judicial Service Pay Scale. We set out at Enclosure 4 the proposed Judicial Service Pay Scale which takes into account the proposed revision in the pay scale of the Special Magistrate grade.

FINANCIAL IMPLICATIONS

12. The additional notional annual salary cost of the proposed revision of the pay scale of the Special Magistrate grade, at MID-POINT is -

		\$
	11 Special Magistrate posts under the proposed pay scale	8,019,000
<i>Less</i>	11 Special Magistrate posts under the existing pay scale	7,646,100
	Additional cost	372,900

13. The additional full annual average staff costs of the proposed revision of the pay scale of the Special Magistrate grade, including salaries and staff on-cost, is \$422,972. We have included the necessary provision in the 1998-99 Estimates and the 1999-2000 draft Estimates to meet the cost of this proposal.

14. There is no additional cost arising from the proposal to designate specific pay points for the Judicial Service Pay Scale.

BACKGROUND INFORMATION

The Special Magistrate grade

15. In 1981 a Lay Magistrate grade was created to relieve Magistrates of the large volume of relatively minor and routine magisterial work, such as hawking, littering, fixed penalty cases, minor traffic offences and obstruction offences. Since the majority of these cases could be conveniently conducted in Cantonese, the intention was to fill the posts by matured and experienced local people of about 50 years of age with 20 years' relevant experience. The Lay Magistrate grade was remunerated at MPS Point 38 (subsequently renumbered as Point 34) which was substantively less than that of Magistrates but was considered at the time to be reasonably attractive to a pensioner or a retired person in the private sector.

16. The jurisdiction and powers of Lay Magistrates had since expanded. In 1986, Lay Magistrates were granted the same jurisdiction and powers as Magistrates, subject to their being not allowed to impose any sentence of imprisonment and a fine exceeding \$20,000 for any single offence.

17. In 1989, it became clear that Lay Magistrates had become a career grade and not a post-retirement job. With experience gained through years of service and given the increase in jurisdiction, Lay Magistrates had been successful in relieving the workload of Magistrates who could now concentrate on the more difficult and complex cases. To better reflect its level of responsibilities, the pay scale of the grade was revised upwards and replaced by the existing three-point scale in 1990. In the same year, the grade was retitled as Special Magistrate.

Qualification

18. There are no formal educational or professional qualifications attached to the Special Magistrate post. The original intention was to appoint matured and experienced local persons of about 50 years of age with 20 years' relevant experience. Because of recruitment difficulties, the entry requirements for the grade were lowered in 1984 to 35 years of age and ten years' relevant experience, including five years in the field relevant to legal or judicial work.

In 1995, the age requirement was dropped altogether. Following the acceptance of the proposal to revise the pay scale for Special Magistrate, the entry qualification for Special Magistrate will be changed to professional legal qualifications as a Barrister or qualified solicitor and five years' working experience in a field relevant to legal or judicial work.

Duties

19. A Special Magistrate is mainly deployed on trial and determination of minor cases in the Magistrates' Courts. The work is two- folded. He/she shall hear pleas from defendants who are being summoned or charged with minor offences and also try the cases. There is also a large volume of paper work to be dealt with in Chambers such as plead guilty by summons or letter cases. As stated in paragraph 16, a Special Magistrate has the same jurisdiction and powers as a Magistrate subject to two exceptions. The maximum fine which a Special Magistrate could now impose is set at level 6 as specified in Schedule 8 of the Criminal Procedure Ordinance (Cap.221). The amount is currently \$100,000.

COMMENTS FROM CIVIL SERVICE BUREAU

20. Having regard to the need for Special Magistrates to be legally qualified, Civil Service Bureau supports JA's proposals to revise the pay scale of the Special Magistrate grade. The Bureau also supports the establishment of a new Judicial Service Pay Scale with designated pay points.

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

21.

Judiciary
January 1999

Enclosure 1

**Pay Comparison Table of Government Counsel/Solicitor,
Special Magistrate and Magistrate**

Year of	Government Counsel/Solicitor		Special Magistrate	Magistrate
Service	Pay Point	Salary in \$	Salary in \$	Salary in \$
10	44	73,815	(66,800)	-
9	43	71,240	-	-
8	42	68,310	-	-
7	41	65,490	(63,700)	-
6	40	62,780	-	104,250
5	39	60,190	-	101,100
	(38)	57,525		
	(37)	55,000		
4	36	52,520	(60,750)	98,250
3	35	50,190	59,325	91,240
	(34)	47,970		
2	33	46,485	57,925	89,110
1	32	44,395	56,540	86,980

Enclosure 1

Note:

<p>(a) (34)(37)(38) are omitted points on the pay scale of Government Counsel/Solicitor. In other words, a Government Counsel/Solicitor would proceed to MPS Pt.35 on confirmation, and to MPS Pt. 39 after four years of service.</p>	<p>(a) In recognition of the legal qualification required, we propose to allow a legally qualified entrant to Special Magistrate grade entry at \$57,925.</p> <p>The three salary points in brackets represent the proposed additional increments on the revised pay scale for Special Magistrates. Based on the incremental creep for the Special Magistrate rank, a double increment is proposed for each of the second, third and fourth contract.</p>
<p>(b) The proposed starting pay of \$57,925 for legally qualified Special Magistrates compares favourably with the starting pay for a Government Counsel/Solicitor. Unless the pay scale of Special Magistrate is extended, currently the pay of a Government Counsel/Solicitor will overtake that of a Special Magistrate after four years' of service.</p>	<p>(b) In the 1990 salary review of the grade, the minimum pay of Special Magistrate was determined by reference to nearly two-thirds salary differential between the then Lay Magistrates and Magistrates. Unlike the entry, the maximum of Special Magistrates was not pegged to any particular pay point of Magistrates.</p> <p>(c) The pay differential between the existing maximum of Special Magistrates and the minimum of Magistrates is 46.62%. This differential would be reduced to 30.21% if the maximum of Special Magistrates were extended to \$66,800.</p>

Pay Differentials

Court	Judge/Judicial Officer	Pay lead
Court of Final Appeal	Judge, Court of Final Appeal (\$210,750)	10.98%
Court of Appeal	Justice of Appeal of the Court of Appeal of the High Court (\$189,900)	
High Court	Judge of the Court of First Instance of the High Court (\$181,050)	4.89%
District Court	Judge of the District Court (\$127,900 - \$135,550)	33.57%
Magistracies	Magistrate (\$86,950 - \$104,250)	22.69%

Existing Judicial Service Pay Scale

<u>Rank</u>	<u>Judicial Pay Scale</u>
	<u>Salary (\$)</u>
Chief Justice of the Court of Final Appeal	216,650
Judge of the Court of Final Appeal	210,750
Chief Judge of the High Court	210,750
Justice of Appeal of the Court of Appeal of the High Court	189,900
Judge of the Court of First Instance of the High Court	181,050
Registrar, High Court	149,600
Chief Judge of the District Court	149,600
	(144,750)
	(140,550)
Deputy Registrar, High Court	136,400
Judge of the District Court	(135,550)
	(131,700)
Chief Magistrate	127,900
Assistant Registrar, High Court	(123,850)
	(120,250)
Member, Lands Tribunal	116,650
Principal Presiding Officer, Labour Tribunal	(113,950)
Principal Adjudicator, Small claims Tribunal	(110,750)
Principal Magistrate	107,500

Rank	Judicial Pay Scale
	Salary (\$)
Coroner	(104,250)
Presiding Officer, Labour Tribunal	(101,100)
Adjudicator, Small Claims Tribunal	98,250
	91,240
	89,110
Magistrate ⁽¹⁾	86,980
	59,325
	57,925
Special Magistrate	56,540

Notes:

 denotes starting pay for the particular rank

⁽¹⁾ Pay scale of Magistrate is from \$86,980 to \$104,250.

Proposed Judicial Service Pay Scale

<u>Rank</u>	<u>Judicial Service Pay Scale</u>		<u>Directorate Pay Scale/Master Pay Scale</u>	
	<u>Point</u>	<u>Salary (\$)</u>	<u>Point</u>	<u>Salary (\$)</u>
Chief Justice of the Court of Final Appeal	19	216,650	D10	216,650
Judge of the Court of Final Appeal		210,750	-	-
Chief Judge of the High Court	18	210,750	-	-
			D9	204,800
Justice of Appeal of the Court of Appeal of the High Court	17	189,900	-	-
Judge of the Court of First Instance of the High Court	16	181,050	D8	181,050
Registrar, High Court		149,600	D4	(149,600)
Chief Judge of the District Court	15	149,600	D4	(149,600)
			D4	145,150
		(144,750)		
		(140,550)		
Deputy Registrar, High Court	14	136,400		
Judge of the District Court		(135,550)	D3	(135,550)
		(131,700)	D3	(131,700)
Chief Magistrate	13	127,900	D3	127,900
Assistant Registrar, High Court		(123,850)	D2	(123,850)
		(120,250)	D2	(120,250)
Member, Lands Tribunal	12	116,650	D2	116,650
Principal Presiding Officer, Labour Tribunal		(113,950)	-	-
Principal Adjudicator, Small Claims Tribunal		(110,750)	-	-
Principal Magistrate	11	107,500	-	-

<u>Rank</u>	<u>Judicial Service Pay Scale</u>		<u>Directorate Pay Scale/Master Pay Scale</u>	
	<u>Point</u>	<u>Salary (\$)</u>	<u>Point</u>	<u>Salary (\$)</u>
Coroner		(104,250)	D1	(104,250)
Presiding Officer, Labour Tribunal		(101,100)	D1	(101,100)
Adjudicator, Small Claims Tribunal	10	98,250	D1	98,250
	9	91,240		
	8	89,110		
Magistrate	7	86,980	MPS 49	88,115
			MPS 48	85,055
			MPS 42	68,310
	6	66,800	-	-
			MPS 41	65,490
	5	63,700	-	-
			MPS 40	62,780
	4	60,750	-	-
			MPS 39	60,190
	3	59,325	-	-
	2	57,925	-	-
Special Magistrate	1	56,540	MPS 38	57,525
			MPS 37	55,000

Notes:

denotes starting pay for the particular rank

(1) Pay scale of Magistrate is from JPS Pt.7-Pt.10(maximum)