

香港司法機構
司法機構政務長辦公室



LC Paper No. CB(2)2234/04-05(02)
JUDICIARY ADMINISTRATOR'S OFFICE
JUDICIARY
HONG KONG

Fax. 圖文傳真：2530 2648

Tel. 電話：28254588

Your Ref. 來函檔號：

Our Ref. 本署檔號：SC/CR/25/2/1

5 July 2005

Clerk to LegCo Panel on
Administration of Justice and Legal Services
(Attn: Mrs Percy Ma)
Legislative Council Building
8 Jackson Road, Central
Hong Kong

Dear Mrs Ma,

Panel on Administration of Justice and Legal Services
Budgetary Arrangement for the Judiciary

I refer to your letter of 25 May 2005 on the above to the Secretary for Financial Services and the Treasury and copied to us.

2. I set out below the Judiciary's position on the suggestions made by Members at the meeting on 23 May 2005 regarding the budgetary arrangement for the Judiciary. We understand that the Administration will respond separately.

Constitutional Arrangements

3. At the outset, we would like to reiterate that the budgetary arrangements for the Judiciary, and any proposed changes thereto, should be consistent with the relevant provisions of the Basic Law ("BL") governing budgetary arrangements, viz. -

- (a) BL 59 – The Government of the Hong Kong Special Administrative Region (“HKSAR”) shall be the executive authorities of the Region;
- (b) BL62(4) - The Government of the HKSAR shall ... draw up and introduce budgets and final accounts;
- (c) BL 73(2) - The Legislative Council (“LegCo”) of the HKSAR shall ... examine and approve budgets introduced by the government; and
- (d) BL 85 - The courts of the HKSAR shall exercise judicial power independently, free from any interference.

Judicial Remuneration

4. On judicial remuneration (re items (a) and (e) of Members’ suggestions), the Judiciary submitted its proposal to the then Chief Executive in April 2003. The Judiciary’s proposal is summarised below -

- (a) The recommendations and views contained in Sir Anthony Mason’s Consultancy Report (“the Consultancy Report”) should be adopted as the appropriate system for the determination of judicial remuneration in Hong Kong;
- (b) The proposal is not concerned with actual levels and amounts of remuneration, but deals with the appropriate system for the determination of judicial remuneration;
- (c) The proposal is based on the principle of judicial independence and takes into account the experience of and is consistent with the widely accepted position in many common law jurisdictions; and
- (d) The proposal includes the statutory prohibition of reduction in judicial remuneration and the provision by statute for a standing appropriation to meet the payment of judicial remuneration (See Recommendations 1 and 2 of the Consultancy Report).

5. The Judiciary has noted from the LegCo’s Report on “*Budgetary Arrangements for Overseas Judiciaries*” (“LegCo’s Report”) published in

November 2003 that each of the three jurisdictions examined (i.e. the United States, the United Kingdom and Canada) has either constitutional or statutory guarantee against reduction of judges' salaries. Moreover, the LegCo's Report also notes that Article 31 of the Beijing Statement of Principles of the Independence of the Judiciary¹ states that, "*Judges must receive adequate remuneration and be given appropriate terms and conditions of service.*"²

6. In January 2004, having considered the Judiciary's proposal and in full recognition of the independent status of the Judiciary, the then Chief Executive considered that it would be in the overall interests of Hong Kong to ask an independent body, the Standing Committee on Judicial Salaries and Conditions of Service ("the Committee"), to make recommendations to him on the appropriate institutional structure, mechanism and methodology for the determination of judicial remuneration and in particular, to make recommendations on whether the Judiciary's proposal based on the Consultancy Report should be accepted. We understand that the Committee has not yet reported. We look forward to the Committee's acceptance of the Judiciary's proposal in its recommendation to the Chief Executive.

Measures to be Adopted in the Preparation of the Judiciary's Budget

7. The Judiciary notes Members' suggestions in items (b), (c) and (d) on various measures to be adopted in the preparation of the Judiciary's budget. Having regard to the relevant constitutional provisions governing budgetary arrangements in the Basic Law as set out in para. 3(a) – (c) above, the Judiciary keeps an open mind on any suggested measures within the parameters of the Basic Law which would enhance judicial independence and ensure that the Judiciary is provided with adequate resources to administer justice without undue delay.

The Judiciary's 2006-07 Budget

8. As stated in our paper for the Panel meeting on 25 April 2005, to enable the Judiciary to administer justice without undue delay, it must be provided with adequate resources. The Basic Law and the Bill of Rights provide for constitutional rights to justice in the courts without undue delay. Government has the obligation to make adequate provision for the Judiciary

¹ The Beijing Statement has been adopted by the Chief Justices of Asia and the Pacific, including that of Hong Kong.

² Para. 2.2.5 of LegCo's Report.

to enable these rights to be safeguarded. Should the resources provided be inadequate, there may be adverse implications for the protection of those rights. It should also be noted that Article 41 of the Beijing Statement of Principles of the Independence of the Judiciary provides that it is essential for judges to be provided with the resources necessary to enable them to perform their functions. And Article 42 provides that where there are economic constraints, the maintenance of the Rule of law requires that the needs of the Judiciary and the court system be accorded a high level of priority in the allocation of resources.

9. In the financial years of 2000-01 to 2005-06, the Judiciary has delivered a total of \$148 million savings, achieving the savings targets set by the Administration. The savings target for 2006-07 has not been finally set by the Administration.

10. As regards the Judiciary's budget in 2006-07 (item (f) of Members' suggestions), as mentioned in our paper for the Panel meeting on 25 April 2005, in order to ensure that the Judiciary is provided with adequate resources to deliver judicial services of high quality and to avoid further worsening of the court waiting times, the Judiciary is exploring various options, including (i) the withdrawal of some savings measures submitted to the Government; and (ii) making a bid to the Government for a reasonable increase of resources in subsequent financial years.

11. In relation to the matter of withdrawal of some savings measures submitted to the Government –

- (a) We have decided that the Tsuen Wan Magistrates' Courts will not be closed in January 2006 as planned. The position will be reviewed after 2006-07. As a result, savings identified from the closure of the Tsuen Wan Magistrates' Court will not be able to be realised within 2006-07;
- (b) The Judiciary has reviewed the manpower position of Judges and Judicial Officers ("JJOs") and come to the view that the Judiciary cannot afford to freeze recruitment of JJOs in the years ahead. We are therefore reviewing the savings committed attributable to the planned recruitment freeze of JJOs in the coming years; and
- (c) To avoid worsening of waiting times, in particular for the High Court and the Magistrates' Court, the Judiciary is considering the

extent to which Deputy JJOs should be appointed to cope with the judicial work. We are therefore reviewing the savings targets attributable to the reduction of provisions for the payment of allowances and honoraria for Deputy JJOs in 2006-07.

12. In relation to matter of additional resources, we are now considering the additional provisions which would be required to cater for court support staff in order to provide the necessary support to any newly recruited JJOs and additional Deputy JJOs.

13. The Judiciary is now taking stock of the overall financial and manpower position for the 2006-07 financial year, having regard to the existing and anticipated caseload. We are now finalising a proposal to the Administration regarding the Judiciary's budget in 2006-07 (or subsequent financial years). We trust and expect that our proposal will be supported.

Conclusion

14. The Judiciary is grateful for Members' suggestions on the budgetary arrangements for the Judiciary, which aim for better protection of the Judiciary's budgetary arrangement to ensure that judicial independence would be upheld, and that the Judiciary would be provided with adequate resources to administer justice without undue delay.

Yours sincerely,



(Miss Emma Lau)
Judiciary Administrator

c.c. Secretary for Financial Services and the Treasury
(Attn: Ms Elizabeth Tse)

Director of Administration
(Attn: Miss Eliza Lee)