

## ITEM FOR ESTABLISHMENT SUBCOMMITTEE OF FINANCE COMMITTEE

### HEAD 80 – JUDICIARY Subhead 000 Operational expenses

Members are invited to recommend to Finance Committee the following changes to the establishment of Judge and Judicial Officer posts in the Judiciary with immediate effect –

- (a) the creation of the following new rank –

Principal Family Court Judge, District Court  
(JSPS 14) (\$143,200 - \$151,950); and

- (b) the creation of the following permanent posts –

1 Justice of Appeal of the Court of Appeal of the  
High Court  
(JSPS 17) (\$199,400)

5 Judges of the Court of First Instance of the  
High Court  
(JSPS 16) (\$190,100)

1 Principal Family Court Judge, District Court  
(JSPS 14) (\$143,200 - \$151,950)

1 Judge of the District Court  
(JSPS 13) (\$134,300 - \$142,300)

1 Deputy Registrar, District Court  
(JSPS 10) (\$103,150 - \$109,450)

/to .....

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

1 Judge of the District Court  
(JSPS 13) (\$134,300 - \$142,300)

1 Principal Magistrate  
(JSPS 11) (\$112,850 - \$119,650)

## **PROBLEM**

In recent years, the establishment of Judge and Judicial Officer (JJO) posts has experienced difficulties in coping with the workload in the High Court and the District Court. This has resulted in target waiting times set for these courts not being fully met, and heavy reliance on deputy judges/temporary Deputy Registrar<sup>1</sup> to meet the operational needs of these courts, which is considered unsatisfactory in the long term.

## **PROPOSAL**

2. On the instruction of the Chief Justice, Court of Final Appeal (Chief Justice), the Judiciary Administrator (JA) proposes to –

- (a) create a new rank of Principal Family Court Judge, District Court (JSPS 14); and
- (b) create additional permanent posts comprising one Justice of Appeal of the Court of Appeal of the High Court (Justice of Appeal) (JSPS 17), five Judges of the Court of First Instance of the High Court (CFI Judge) (JSPS 16), one Principal Family Court Judge, District Court (JSPS 14), one Judge of the District Court (District Judge) (JSPS 13) for the Family Court, and one Deputy Registrar, District Court (JSPS 10).

The objective is to strengthen the establishment of the respective courts and Masters Office to meet operational needs and to keep waiting times within target without having to rely heavily on temporary judicial resources. JA also proposes to delete one District Judge post (JSPS 13) and one Principal Magistrate post (JSPS 11) to partly offset the additional resources required.

**/JUSTIFICATION .....**

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<sup>1</sup> Deputy/temporary JJOs may include external deputies (appointments from the legal profession) and internal deputies (appointments from the lower levels of court). They are appointed by the Chief Justice pursuant to the relevant provisions under various ordinances.

## JUSTIFICATION

### Court of Appeal of the High Court

3. The High Court is made up of the Court of Appeal and the Court of First Instance. The Court of Appeal has an establishment of ten judges, comprising the Chief Judge of the High Court (who has considerable administrative responsibilities in addition to his/her judicial duties) and nine Justices of Appeal. Two or three Justices of Appeal are required for each case heard in the Court of Appeal. However, due to the insufficient number of Justices of Appeal in recent years, CFI Judges have been appointed to sit as additional judges of the Court of Appeal in accordance with section 5 of the High Court Ordinance (Cap. 4). From 2004 to 2007, in order to maintain reasonable waiting times, about 50% of the cases each year were heard by divisions containing one CFI Judge, with a further 8% heard by divisions containing two CFI Judges. This meant that only about 42% of the cases between 2004 and 2007 were heard by divisions constituted solely by substantive Justices of Appeal.

4. The arrangement of having many CFI Judges sitting as additional judges of the Court of Appeal, though permissible under the law, is considered unsatisfactory. The reasons are as follows –

- (a) the Court of Appeal is a higher level of court and is intended to be filled by substantive Justices of Appeal. CFI Judges are not substantive Justices of Appeal;
- (b) the arrangement of appointing CFI Judges as additional judges of the Court of Appeal is meant to provide temporary relief to the judicial manpower of the Court of Appeal. It has not been intended that such a temporary measure should be used over a prolonged period; and
- (c) there are limitations in deploying CFI Judges to sit as additional judges of the Court of Appeal, namely –
  - (i) a CFI Judge cannot hear an appeal of a judgment made by him/her;
  - (ii) appeal cases involving difficult or complicated points should be heard by a full bench of substantive Justices of Appeal as far as practicable;
  - (iii) the judicial manpower of the Court of First Instance is already fully stretched and it is not always practicable or easy to release the CFI Judges to sit in the Court of Appeal; and

/(iv) .....

- (iv) the different streams of expertise of the judges, i.e. criminal, civil or mixed, further create difficulties and limitations in listing.

5. In addition, the deployment of CFI Judges as additional judges of the Court of Appeal has led to a corresponding reduction in judicial manpower at the Court of First Instance level. The Judiciary thus considers that the Court of Appeal should be reinforced by the addition of one post of Justice of Appeal. We estimate that with this addition, a greater proportion of the cases heard at the Court of Appeal would be conducted by divisions constituted solely by substantive Justices of Appeal than at present. The job description of Justice of Appeal is at Enclosure 1.

Encl. 1

### **Court of First Instance of the High Court**

6. There are currently 27 approved CFI Judge posts. However, not all the 27 posts were created for judicial duties. One was created in 1995 to hear cases in the Insider Dealing Tribunal, and another two in August 2006 to cope with work arising from the implementation of a new regime for the regulation of interception of communications and covert surveillance provided for under the Interception of Communications and Surveillance Ordinance (Cap. 589). Moreover, CFI Judges are also engaged in non-judicial work under various statutory functions (namely in relation to the Electoral Affairs Commission, the Securities and Futures Appeal Tribunal and the Clearing and Settlement Systems Appeal Tribunal), for which financial resources are provided to the Judiciary by the relevant bureaux of the Administration (but in respect of which no judicial posts were correspondingly created). This has in fact meant that less judicial resources were available for court work at the Court of First Instance. We estimate that about 80% of the time of a CFI Judge has been deployed for these three functions in the past years. Hence, against an establishment of 27 posts, about 23.2 CFI Judge posts are actually deployed for judicial work.

7. The existing CFI Judges engaged in judicial work have been extremely stretched to meet the increasing workload. There are years in the past where the waiting times for criminal and civil fixture cases at the Court of First Instance have greatly exceeded the respective target waiting times of 120 days and 180 days. Furthermore, cases have in general become more complex and have taken longer to conclude. Additional temporary judicial resources have therefore been deployed to the Court of First Instance since the latter part of 2005 with a view to shortening court waiting times. As a result, the situation has been considerably improved in 2006 and 2007, bringing waiting times back to within

/targets .....

targets. Experience over the past few years shows that to meet the full range of operational requirements and maintain waiting times at reasonable levels, the Judiciary needs on average to deploy a total of about 35 substantive and deputy CFI Judges. This means that in addition to the 27 approved CFI Judges, the Court of First Instance has to appoint about ten to 12 deputy CFI Judges on a regular basis to meet the manpower requirement.

8. The high ratio of deputy CFI Judges operating on a long-term basis has given rise to a number of concerns including the following –

- (a) the appointment of deputy CFI Judges is meant to provide temporary manpower relief for the Court of First Instance. It has not been intended that such a temporary measure should be used over a prolonged period; and
- (b) there are areas of work which must be done by substantive CFI Judges and not by deputy judges. These include murder and manslaughter trials, heavy criminal trials (including complex commercial crime), heavy civil cases and all judicial review cases. A high ratio of deputy CFI Judges over a long period of time is operationally undesirable and creates constraints in listing for the Court of First Instance.

9. The Judiciary considers that while the existing judicial manpower of 35 should be maintained for the Court of First Instance in the foreseeable future, the ratio of deputy judges to substantive CFI Judges should be reduced to a more acceptable level. To allow for fluctuations in workload and to continue to provide an opportunity for the appointment of deputy CFI Judges, the Judiciary considers that about 70% of the additional judicial resources required on top of the approved establishment of 27 should be made up of substantive judges. Hence, the Judiciary proposes to create five additional posts of CFI Judges (i.e.  $(35 - 27) \times 70\% = 5.6$ , say 5). The job description of CFI Judge is at Enclosure 2.

Encl. 2

### **Family Court, District Court**

#### *Additional District Judge for Family Court*

10. The approved establishment of the Family Court, which is part of the District Court, was increased from three to four District Judges, designated as Family Court Judges, in July 1995. Since 2003, there has been difficulty in

/meeting .....

meeting some of the target waiting times for the Family Court due to increase in the caseload (from about 15 700 cases in 2001 by about 15% to over 18 100 in 2007). Additional temporary judicial resources have since been provided to the Family Court.

11. The caseload alone, however, does not fully reflect the demand for judicial resources in the Family Court, having regard to the listing constraints referred to below in dealing with divorce cases involving financial disputes. Under the “Pilot Scheme on Ancillary Relief Proceedings” (the Pilot Scheme) introduced in end December 2003, divorce cases involving financial disputes have to go through the Financial Dispute Resolution (FDR) procedures, in which the Family Court Judge sits essentially in the role of a “conciliator” or “facilitator” to assist the parties to settle their financial disputes. If no settlement is reached, the Court will then fix a date for trial by another judge.

12. As at end 2007, there were over 4 060 cases which had gone through the new procedures under the Pilot Scheme, of which about 680 cases had eventually been brought before another judge. In other words, these cases where no settlement is reached would require the judicial input from two Family Court Judges. We are at present maintaining seven judges (including deputy Family Court Judges) to handle family cases. Given the limited number of Family Court Judges, the requirement of two judges to hear FDR cases where no settlement is reached poses considerable listing constraints, and adversely affects the waiting time for these cases. As the Pilot Scheme has proved to be a success, it is the Judiciary’s intention to make it a permanent feature in the Family Court.

13. In view of the increasing caseload in the Family Court, as well as the need for two Family Court Judges in dealing with trials of FDR cases where no settlement is reached, the Judiciary proposes to create one additional permanent District Judge post in the Family Court with a view to alleviating the tight manpower situation and keeping waiting times within targets. The job description of District Judge in the Family Court is at Enclosure 3.

Encl. 3

*Creation of a new rank of Principal Family Court Judge and Upgrading of a District Judge post to a Principal Family Court Judge post*

14. In order to improve the administration of the Family Court, the Chief Justice has appointed a District Judge as the Judge-in-charge to lead the Family Court since July 2006 on a trial basis. The Judge-in-charge is tasked with the responsibilities to ensure that the Family Court operates effectively and

/judicial .....

judicial resources are utilised efficiently; to enhance communication with court users; and to make suggestions concerning the development and matters related to the Family Court. Experience has shown that this appointment has been effective in enhancing the better utilisation of judicial resources at the Family Court and communication with the court users. We consider that there are strong operational needs to formally establish a new rank of Principal Family Court Judge, District Court to head the Family Court.

15. Apart from performing the duties of a District Judge and hearing cases at the Family Court, the Principal Family Court Judge will be responsible for supervising the District Judges sitting in the Family Court and discharging the leadership role by assuming overall responsibility for the administration of the Family Court, ensuring the efficient listing of cases and utilisation of judicial resources and court time. In consultation with other Family Court Judges, the Principal Family Court Judge will review court practices and procedures to keep pace with the changing needs and new developments. Externally, the Principal Family Court Judge is tasked with the responsibility to strengthen liaisons with family law practitioners and court users. In this connection, the Principal Family Court Judge will chair the Family Court Users' Committee on an ex officio basis. The Committee was set up by the Chief Justice in December 2006 with members comprising the Chief Judge of the District Court (Chief District Judge), judges of the Family Court and District Court, senior counsel, legal practitioners and representatives from relevant government departments. The major objective of the Committee is to liaise closely with users of the Family Court to discuss matters of concern relating to the Court's practice and procedure, administration and facilities.

16. To recognise the higher level of responsibility of the Principal Family Court Judge than a normal Family Court Judge (JSPS 13) and having regard to the fact that he/she is responsible to the Chief District Judge (JSPS 15), the Judiciary proposes to create a new rank of Principal Family Court Judge at JSPS 14. The Judiciary further proposes that on creation of the new rank, one post of Principal Family Court Judge be created, to be offset by the deletion of one post of District Judge in the Family Court. A revised Judicial Service Pay Scale incorporating the new rank is at Enclosure 4. A job description of the proposed post of Principal Family Court Judge is at Enclosure 5.

Encl. 4

Encl. 5

### **Masters Office, District Court**

17. The Masters Office of the District Court was established in September 2000 with the following judicial functions –

/(a) .....

- (a) hearing and determining interlocutory applications in civil actions;
- (b) transacting all the business and exercising all the authority and jurisdiction that may be transacted and exercised by a District Judge in chambers; and
- (c) taxing solicitors' bills of costs after trial by District Judges.

18. The establishment of the Masters Office, which comprises one Registrar and two Deputy Registrars, has remained unchanged over the years, notwithstanding the significant increase in workload as shown below –

- (a) quota list applications<sup>2</sup> of various kinds, which could be dealt with within a time slot and for which a quota could be set, have increased by 13% from 2001 to 2007;
- (b) non-quota list applications<sup>3</sup>, for which a longer time is needed for dealing with them and for which no quota could be set, have increased by 67% from 2001 to 2007;
- (c) the number of personal injury cases heard in the District Court has increased significantly, from 33 new cases per month in 2001 to more than 225 cases per month in 2007;
- (d) other than personal injury cases, the total number of civil actions and miscellaneous proceedings filed has increased by about 11% from 2000 to 2007; and
- (e) there are more cases involving unrepresented litigants, which generally require more hearings before the Masters prior to trials eventually before judges. From 2005 to 2007, on average 50% of the civil cases listed for trial at District Court involved at least one party who was unrepresented.

19. As an interim measure, a temporary Deputy Registrar has been deployed to the District Court Masters Office since December 2006 to enable the Office to cope with the increased workload. The Judiciary considers that there is

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<sup>2</sup> Including, for example, call-over hearings for interlocutory applications and applications relating to execution of judgments, direction hearings, moneylender's action, checklist hearings for personal injury actions, etc.

<sup>3</sup> Including, for example, pre-trial reviews, taxation hearings, substantive hearings for interlocutory applications and applications relating to execution of judgments, etc.



Encl. 6

an operational need to create an additional permanent post of Deputy Registrar to cope with the increase in workload. With the additional Deputy Registrar, the Masters would be able to conduct Check-list Review hearings, direction hearings and pre-trial reviews more efficiently, with a view to meeting the target waiting times of the District Court. The job description of Deputy Registrar, District Court is at Enclosure 6.

**Deletion of one Principal Magistrate post**

20. The above staffing proposals will result in a net creation of eight JJO posts, providing a major and much needed relief to the judicial manpower of the respective courts and Masters Office. We have reviewed the existing JJO establishment to see if any JJO posts can be identified for deletion for the purpose of offsetting. We propose to delete one Principal Magistrate post to offset the creation of the additional JJO posts. This Principal Magistrate post is no longer required operationally due to the closure of Magistrates’ Courts in the past few years.

Encl. 7

21. The caseloads, waiting times and the manpower situation of JJOs of the High Court, District Court (including the Family Court) and the Magistrates’ Courts in the past three years from 2005 to 2007 are shown at Enclosure 7.

**FINANCIAL IMPLICATIONS**

22. The proposed changes to the establishment of JJO posts in the Judiciary as set out in the preceding paragraphs will bring about an additional notional annual mid-point salary value of \$15,447,600, broken down as follows –

<b>Post</b>	<b>\$</b>	<b>No. of Post</b>
<i>Creation</i>		
Justice of Appeal (JSPS 17)	2,392,800	1
CFI Judges (JSPS 16)	11,406,000	5
Principal Family Court Judge, District Court (JSPS 14)	1,770,600	1
District Judge (JSPS 13)	1,659,000	1
Deputy Registrar, District Court (JSPS 10)	1,273,800	1
<b>Total (a)</b>	<b>18,502,200</b>	<b>9</b>

*/Deletion .....*

<b>Post</b>	<b>\$</b>	<b>No. of Post</b>
<i>Deletion</i>		
District Judge (JSPS 13)	1,659,000	1
Principal Magistrate (JSPS 11)	1,395,600	1
<b>Total (b)</b>	<b>3,054,600</b>	<b>2</b>
<b>Net additional cost ((a) – (b))</b>	<b>15,447,600</b>	<b>7</b>

The additional full annual average staff cost, including salaries and staff on-cost, is \$28,125,000.

23. The additional costs shown above would be offset by an estimated saving of \$13,800,000 arising from, barring unforeseen circumstances, the reduced demand for deputy/temporary JJOs if the proposed posts are approved and filled.

24. We have included sufficient provision in the 2008-09 Estimates to meet the additional costs of the staffing proposals.

## **PUBLIC CONSULTATION**

25. We consulted the Legislative Council Panel on Administration of Justice and Legal Services (the Panel) on the proposal at its meeting held on 26 May 2008. In response to Members' request, we provided in writing supplementary information on a number of issues, including the workload of judges, the listing system of the High Court, utilisation of courtrooms and savings arising from reduced demand for deputy/temporary JJOs. We attended another meeting of the Panel on 29 May 2008 to answer Members' enquiries. Members were satisfied and generally supported the proposal. The relevant supplementary information provided to the Panel is at Enclosure 8.

Encl. 8

## **ESTABLISHMENT CHANGES**

26. The establishment changes in the Judiciary for the last two years are as follows –

/Establishment .....

Establishment (Note)	Number of posts		
	Existing (as at 1 April 2008)	As at 1 April 2007	As at 1 April 2006
A	177@^	177@	175*
B	147#	147#	147#
C	1 248	1 230	1 267
<b>Total</b>	<b>1 572</b>	<b>1 554</b>	<b>1 589</b>

Note:

- A - ranks in the directorate pay scale or equivalent
- B - non-directorate ranks the maximum pay point of which is above MPS Point 33 or equivalent
- C - non-directorate ranks the maximum pay point of which is at or below MPS Point 33 or equivalent
- @ - including 172 JJO posts
- \* - including 170 JJO posts
- # - including 11 JJO posts
- ^ - there were 21 unfilled directorate posts as at 1 April 2008

## **CIVIL SERVICE BUREAU COMMENTS**

27. The Civil Service Bureau supports the proposed creation of the new rank of Principal Family Court Judge, District Court, the creation of the nine JJO posts as listed out in paragraph 2(b) and the deletion of one District Judge post and one Principal Magistrate post, to meet the operational needs of the respective courts. The proposed ranking of the posts is considered appropriate having regard to the level and scope of the responsibilities concerned.

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

28. The Standing Committee on Judicial Salaries and Conditions of Service has advised that the proposal for the creation of a new rank of Principal Family Court Judge, District Court and the creation of nine permanent directorate JJO posts in the Judiciary is appropriate.

**Job Description of  
Justice of Appeal of the Court of Appeal of the High Court**

**Post title** : Justice of Appeal of the Court of Appeal of the High Court

**Rank** : Justice of Appeal of the Court of Appeal of the High Court  
(JSPS 17)

**Responsible to** : Chief Judge of the High Court (JSPS 18)

**Main Duties and Responsibilities –**

1. To hear appeals on civil and criminal matters from the Court of First Instance of the High Court, the District Court, the Lands Tribunal and various tribunals and statutory bodies.
2. To give rulings on questions of law referred by lower levels of courts.

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**Job Description of  
Judge of the Court of First Instance of the High Court**

**Post title** : Judge of the Court of First Instance of the High Court

**Rank** : Judge of the Court of First Instance of the High Court  
(JSPS 16)

**Responsible to** : Chief Judge of the High Court (JSPS 18)

**Main Duties and Responsibilities –**

1. To hear criminal and civil cases which are within the jurisdiction of the Court of First Instance of the High Court.
2. To hear appeals from the Magistrates' Courts, the Labour Tribunal, the Small Claims Tribunal and the Obscene Articles Tribunal as well as appeals from Masters' decisions in civil cases.

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**Job Description of  
Judge of the District Court  
( in the Family Court )**

**Post title** : Family Court Judge

**Rank** : Judge of the District Court (JSPS 13)

**Responsible to** : Principal Family Court Judge (JSPS 14)\*

**Main Duties and Responsibilities –**

To hear and adjudicate cases which are within the jurisdiction of the Family Court.

\* post also proposed to be created

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**Judicial Service Pay Scale**

<b>Rank</b>	<b>Point</b>	<b>Pay scale</b> <b>\$</b>
Chief Justice, Court of Final Appeal	19	227,450
Judge, Court of Final Appeal )	18	221,250
Chief Judge of the High Court )		
Justice of Appeal of the Court of Appeal of the High Court	17	199,400
Judge of the Court of First Instance of the High Court	16	190,100
Registrar, High Court )	15	157,050
Chief Judge of the District Court )		
Senior Deputy Registrar, High Court )	14	(151,950)
Principal Family Court Judge, District Court* )		(147,550)
		143,200
Judge of the District Court )	13	(142,300)
Deputy Registrar, High Court )		(138,250)
Chief Magistrate )		134,300
Assistant Registrar, High Court )	12	(130,050)
Member, Lands Tribunal )		(126,250)
		122,450
Registrar, District Court )	11	(119,650)
Principal Presiding Officer, Labour Tribunal )		(116,300)
Principal Adjudicator, Small Claims Tribunal )		112,850
Principal Magistrate )		
Deputy Registrar, District Court )	10	(109,450)
Coroner )		(106,150)
Presiding Officer, Labour Tribunal )		103,150
Adjudicator, Small Claims Tribunal )		
Magistrate	10	(109,450)
		(106,150)
		(103,150)
	9	(95,795)
	8	(93,555)
	7	91,320

/Special .....

<b>Rank</b>	<b>Point</b>	<b>Pay scale \$</b>
Special Magistrate	6	(70,135)
	5	(66,880)
	4	(63,780)
	3	(62,285)
	2	(60,815)
	1	59,360

Note : Figures in brackets represent increments

\* denotes proposed new rank

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**Job Description of  
Principal Family Court Judge, District Court**

**Post title** : Principal Family Court Judge

**Rank** : Principal Family Court Judge (JSPS 14)

**Responsible to** : Chief Judge of the District Court (JSPS 15)

**Main Duties and Responsibilities –**

1. To advise the Chief Justice of the Court of Final Appeal and the Chief Judge of the District Court (Chief District Judge) on the development and implementation of policies and practices in relation to the Family Court, District Court.
2. To advise the Chief District Judge on how best to utilise court time and judicial resources and on how to improve listing arrangements, in consultation with District Judges sitting in the Family Court.
3. To give advice to the Chief District Judge on problems concerning the operation of the Family Court.
4. To advise on legislation affecting the Family Court.
5. To provide leadership and to co-ordinate the work of District Judges sitting in the Family Court.
6. To sit as a judge in the Family Court.
7. To chair the Family Court Users' Committee.

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

**Post title** : Deputy Registrar, District Court

**Rank** : Deputy Registrar, District Court (JSPS 10)

**Responsible to** : Registrar, District Court (JSPS 11)

**Main Duties and Responsibilities –**

1. To discharge judicial duties by sitting as Masters, which include –
  - (i) discharging the judicial functions which may be exercised by the Registrar, District Court;
  - (ii) hearing interlocutory and summary applications of District Court civil cases in chambers;
  - (iii) conducting examination of debtors, assessment of damages, taking of accounts and enquiries, and inter-pleader trials;
  - (iv) acting as Practice Master; and
  - (v) taxing bills of costs.
2. To undertake case management work in the Personal Injuries List and in other cases of the civil jurisdiction in which effective case management will be developed.
3. To discharge quasi-judicial duties as follows –
  - (i) assisting the Registrar, District Court in supervising the day to day operation of the District Court Registry;
  - (ii) administering suitors' funds, which includes dealing with requests and applications by parents or guardians for payment out of infant's awards; and
  - (iii) discharging the function of a commissioner for oaths.

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**Caseloads, Average Waiting Times and Average Numbers of Judges and Judicial Officers ("JJOs") Sitting at  
High Court, District Court including Family Court, and Magistrates' Courts**

	Caseload				Average Waiting Time				Average Number of Judges and Judicial Officers			Projected number of JJOs if proposal approved	
	2005	2006	2007		Target	2005	2006	2007	2005	2006	2007		
						(Note 1)	(Note 2)		(Note 3)				
<b>Court of Appeal of the High Court</b>													
criminal appeals	541	533	488	criminal-from setting down of a case to hearing	50	37	46	50	<b>Court of Appeal of the High Court</b>				
civil appeals	414	443	421	civil-from application to fix date to hearing	90	93	100	87	Substantive Judges (Note 4)	10	10	10	11
									(Note 5)				
<b>Court of First Instance of the High Court</b>									<b>Court of First Instance of the High Court</b>				
criminal jurisdiction				Criminal Fixture List-					Substantive Judges (Note 4)	23	21	27	32
criminal cases	326	264	312	from filing of indictment to hearing	120	193	119	109	Deputy Judges	11	14	10	5
confidential miscellaneous proceedings	51	59	56	Criminal Running List-	90	69	66	57	<b>Total</b>	34	35	37	37
appeals from Magistrates' Courts	1,254	1,238	1,234	from setting down of a case to hearing	180	233	124	114					
civil jurisdiction	19,915	20,736	20,657	Civil Fixture List-	90	54	64	61					
				from application to fix date to hearing	90	71	87	91					
				Civil Running List-									
				from setting down of a case to hearing									
				Appeals from Magistrates' Courts-									
				from lodging of Notice of Appeal to hearing									
<b>District Court</b>									<b>District Court</b>				
criminal cases	1,349	1,199	1,240	criminal-from first appearance of defendants	100	112	117	98	Substantive Judges	16	11	15	20
civil cases	32,016	30,948	28,820	in District Court to hearing	120	120	125	58	Deputy Judges	11	15	11	6
				civil-from date of listing to hearing					<b>Total</b>	27	26	26	26
<b>Family Court</b>									<b>Family Court</b>				
	16,947	18,544	18,131	dissolution of marriage-from setting down of a case to hearing	35	29	45	33	Substantive Judges	3	2	3	5
				Special Procedure List	110	120	115	119	Deputy Judges	3	5	4	2
				Defended List (one day hearing)	110-140	124	101	83	<b>Total</b>	6	7	7	7
				financial applications-from filing of summons to hearing									
<b>Magistrates' Courts</b>									<b>Magistrates' Courts</b>				
	298,887	298,257	314,214	from plea to date of trial	50	94	95	95	Substantive Judicial Officers	48	44	37	49
				summons					Deputy Judicial Officers	5	11	12	7
				charge cases —					<b>Total</b>	53	55	49	
				for defendants in custody	30-45	44	42	47				(Note 6)	
				for defendants on bail	45-60	68	66	64					

Note 1: The average waiting times in 2004 / 2005 were lengthened, especially in the High Court. Temporary judicial resources were deployed to various levels of court starting from the latter part of 2005.

Note 2: The effects of the deployment of temporary judicial resources starting from the latter part of 2005 were evident in the improvements in the average waiting times in 2006 / 2007.

Note 3: These figures already reflected the additional deployment of deputy Judges and Judicial Officers starting from the latter part of 2005.

Note 4: The number of substantive judges in the Court of Appeal and the Court of First Instance include judges who are deployed (on a full-time or part-time basis) to discharge various statutory functions.

Note 5: From 2004 to 2007, about 50% of the cases each year were heard by divisions containing one Judge of the Court of First Instance, and a further 8% heard by divisions containing two Judges of the Court of First Instance.

Note 6: Additional deputies were deployed to the Magistrates' Courts from the latter part of 2007 and early 2008. As at May 2008, there are 56 Judicial Officers (including 43 substantive and 13 deputy Judicial Officers) sitting at the Magistrates' Courts.

**Legislative Council  
Panel on Administration of Justice and Legal Services  
("AJLS Panel")**

**Proposed Creation of New Rank and Posts in the Judiciary  
and Strengthening of the Directorate Structure of  
the Judiciary Administration**

**Response to Issues Raised by  
Members at the Meeting on 26 May 2008**

**Purpose**

This paper provides supplementary information and responses to the various issues raised by Members at the meeting on 26 May 2008.

**Issue (1): The Judiciary Administration to reconsider the wording of paragraphs 3 and 27 of its paper when preparing a paper for the Establishment Subcommittee ("ESC").**

2. Referring to paragraph 3 of the paper to the AJLS Panel, the Judiciary Administration would like to confirm that the proposed creation of new rank and Judges and Judicial officers ("JJO") posts in the Judiciary are made by the Judiciary Administrator ("JA") as the Controlling Officer for the Judiciary on the instruction of the Chief Justice. This point would be made clear in the paper to be submitted to the ESC.

3. Regarding paragraph 27 of the paper to the AJLS Panel, we would like to clarify that the Judiciary Administration provides essential administrative support to the Chief Justice, Court Leaders and all JJOs to ensure the smooth operation of the courts and tribunals in Hong Kong. The wordings would be refined in the paper to be submitted to the ESC.

**Issue (2): A member expressed concern that many court rooms were left idle after 3:30 pm. Judiciary Administration was requested to –**

- (a) consider introducing administrative measures to improve efficiency of listing so that court facilities and judges' time could be utilised in an optimum manner before proposing the creation of judicial posts;**
- (b) explain the listing arrangement and workload of a judge (such as time spent on preparing a hearing, conducting a hearing, preparing judgment, etc.)**

(i) Work Nature and Workload of Judges

4. In properly discharging their judicial duties, Judges must have time to prepare for the cases and to write judgments after the hearing. In other words, apart from sitting in court, Judges need to do a substantial amount of work outside the courtroom in order to discharge their judicial duties fairly, properly and efficiently.

5. Before a case proceeds to the stage of hearing, it is necessary for the Judge to deal with applications and correspondence on paper, and this is especially so in long and/or complicated cases. In preparing for the hearing, the Judge needs considerable time to read voluminous bundles of documents including written submissions by counsel. Indeed, in order to ensure that hearings do not overrun, that is that they are concluded within the time allotted, sufficient pre-hearing preparation by the Judge is essential for the fair, proper and efficient adjudication by the Judge. Further, the Judge needs to have time to prepare for the judgment after the hearing, so that it could be delivered or handed down within a reasonable period of time. At present, many judges are already working overtime on weekdays and have to work over weekends.

6. In addition, Judges are required to be on duty outside court hours and on rest days to deal with various judicial duties. It is not uncommon for the duty Judge to sit in the evening or over holidays to hear urgent cases, such as injunction applications. Judges are also required to serve as Admission Judge on Saturday mornings from time to time to admit barristers and solicitors.

7. In sum, the workload of the Judges in the High Court is very substantial and heavy both in and outside the courtroom.

(ii) Improvement to the Listing System to Ensure Optimal Utilization of Judicial Resources

8. At present, the Judiciary is operating an effective listing system in the High Court, and has been making continuous improvements as appropriate. The Chief Judge of the High Court, assisted by the Listing Judges and a team of listing officers in the Judiciary Administration, is responsible for ensuring that the available court time would be optimally utilized in listing cases before the Judges.

9. Two fundamental points are relevant to the operation of an effective listing system:

- (a) The fair administration of justice is of course a paramount concern in the listing of cases. This involves giving due consideration to the parties' need to prepare for their cases adequately and to be properly represented. These matters have to be balanced against the effective use of judicial time. In short, the listing of cases is not a simple or mechanical task. A lot of work and time, including judicial time, is spent on the listing of cases and issues arising from it; and

- (b) Listing of cases does not only involve the Judiciary. The legal practitioners have an important part to play, especially counsel from the Bar. The Department of Justice and the Legal Aid Department are also involved, especially in criminal cases. The efforts of all concerned are required in order to have an effective listing system.

10. The Chief Judge of the High Court and the Listing Judges set down general policies and guidelines for the listing officers in handling listing matters. These guidelines and policies include the following:

- (a) Cases should be listed for hearing when they are ready to proceed on trial. Directions from the Judge responsible for the case concerned should be sought on whether the case is ready to proceed to trial;
- (b) The Judges' diaries should be utilized as fully as practicable, but due regard should be made to allow Judges to have reasonable time to prepare for the cases and write judgments, particularly for long and/or complicated cases;
- (c) Listing should have due regard to the areas of expertise and experience of the Judges; and
- (d) If a case is vacated due to adjournment or settlement, a short case from the running list should be listed before the Judge as far as practicable so as to ensure the optimal use of the judicial resources.

11. In practice, the listing officers would prepare all the groundwork for listing matters, and seek directions from the Listing Judges and the Chief Judge of the High Court accordingly. For criminal trials in the Court of the First Instance of the High Court, weekly listing hearings are normally held by the criminal listing judge to deal with criminal listing matters. For civil cases, listing judges, in conjunction with the listing officers, usually deal with matters of listing on paper and by correspondence instead of holding hearings. The Chief Judge of the High Court also holds regular meetings with the listing officers to receive reports on the listing position and resolve problems which have arisen.

(iii) Utilization of Courtrooms

12. Having regard to the matters set out above, the fact that not all court rooms are in operation at all court times on all court days is not an abnormal phenomenon. Given the nature of judicial work, it is not possible to list cases for Judges from 9:30 am to 4:30 pm on all court days.

13. In practice, while many courts are in operation for the whole day, some courts may not be in operation for the whole day, or for part of the morning and/or afternoon, on a particular day. When visitors notice that some courts are not in operation at about 3:30 pm on a particular court day, there may be many

possible reasons for this. They include the following: the case which was listed for the whole day finished early or was settled; the case was adjourned before then for good reason; the Judge heard a half-day case in the morning and was writing the judgment and also preparing for the hearing on the following day; no case was listed for that court on that day because the Judge was given time to prepare or write judgment; the Judge was dealing with paper applications in his chambers; the Judge was on leave, etc.

**Issue (3): The Judiciary Administration was requested to provide information on the following –**

- (a) increase of caseload at various levels of courts in the past few years;**
- (b) number of cases heard by substantive judges and deputy judges respectively;**
- (c) the impact of deployment of deputy judges on court times;**
- (d) the net increase in staff cost (taking into account the proposed creation/upgrading/deletion of posts and the appointment of temporary judges and staff)**

14. The caseloads for the High Court, District Court (including the Family Court) and the Magistrates' Courts in the past three years from 2005 to 2007, together with waiting times and the manpower situation of judges, are set out at Annex 1. (*This is now attached as **Enclosure 7***)

15. While it is noted that the caseloads have been quite stable during the past few years, experience shows that cases are getting more complicated. It should also be noted that prior to the injection of temporary judicial resources into the High Court, District Court and the Magistrates' Courts starting from the latter part of 2005, the waiting times had once deteriorated to an unacceptable level. It was only due to the corresponding increase of judicial manpower through the deployment of deputy JJOs to cope with the workload that waiting times could be brought within the targets.

16. It is not possible to provide figures on the number of cases heard by substantive and deputy judges respectively. But judging from the high percentage of deputy JJOs at all levels of court, it is estimated that a substantial amount of cases are heard by deputy JJOs. As stated in the paper to the AJLS Panel, this is considered unsatisfactory by the Judiciary.

17. The existing proposals of creating 8 JJO posts do not seek to increase the number of judicial manpower deployed to the High Court and District Court. What the proposals seek to do is to create the necessary permanent posts

so that there would be less reliance on temporary judicial resources, the extent of which is regarded as unsatisfactory for the past few years.

18. The net increases in staff cost for the judicial posts (taking into account the proposed creation / upgrading / deletion of posts and the reduced level of appointment of temporary judges) are as follows:

	<u>Million</u>
Annual salaries cost of the staffing proposal for Judges and Judicial Officers (effects of deletion of post included)	\$15.4
Barring unforeseen circumstances, reduction in expenses in the appointment of deputy judges and judicial officers upon creation and filling of the proposed posts	\$13.8
Net increase in annual salaries cost	<u>\$1.6</u>
Net increase in full annual average staff cost, including salaries and staff-on-cost (which is not applicable in appointing deputy judges)	<u>\$13.7</u>

*(Further parts of this paper are not related to the proposal of creation of Judges and Judicial Officers posts, but are in connection with the staffing proposal under a separate ESC paper and attached thereto as an Enclosure.)*

Judiciary Administration  
May 2008