

**For discussion on
11 December 2012**

LEGISLATIVE COUNCIL PANEL ON ECONOMIC DEVELOPMENT

**PROPOSED CREATION OF JUDICIAL POSTS FOR
THE ESTABLISHMENT OF A COMPETITION TRIBUNAL
IN THE JUDICIARY**

Purpose

This paper seeks Members' views on the proposal to create the following judicial posts with effect from 1 April 2013 to support the establishment of a Competition Tribunal (the Tribunal) in the Judiciary under the Competition Ordinance, Cap 619 (the Ordinance) –

1 Judge of the Court of First Instance of the High Court
(JSPS 16) (\$210,500)¹

1 Deputy Registrar, High Court
(JSPS 13) (\$148,700 - \$157,600)¹

Background

Legal framework under the Ordinance

2. The Ordinance was passed by the Legislative Council (LegCo) on 14 June 2012. The Ordinance provides for a legal framework to prohibit anti-competitive conduct in all sectors. Under the law, undertakings may not adopt abusive or other anti-competitive conduct which has the object or effect of preventing, restricting or distorting competition in Hong Kong.

3. The Ordinance also provides for a judicial enforcement model which separates powers of investigation, prosecution and adjudication of alleged breaches of competition rules among different authorities. A Competition Commission (the Commission) will be established as an independent statutory body to investigate competition-related complaints and bring public enforcement action before the Tribunal.

¹ The Chief Executive-in-Council decided on 18 September 2012 that the pay for Judges and Judicial Officers for 2012-13 should be increased by 5.66% with effect from 1 April 2012. The pay increase is subject to approval by the Finance Committee of the Legislative Council.

4. The Tribunal will be set up within the Judiciary as a superior court of record that has primary jurisdiction to hear and adjudicate on competition cases brought by the Commission, follow-on private actions, alleged contravention of a conduct rule as a defence raised in proceedings before the Court of First Instance (CFI), as well as reviews of certain determinations of the Commission². Every CFI judge will, by virtue of his or her appointment as CFI Judge, be a member of the Tribunal. The Chief Executive shall, on the recommendations of the Judicial Officers Recommendation Commission, appoint two of the members of the Tribunal to be the President and Deputy President of the Tribunal respectively for a term of at least three years, but not more than five years. The Ordinance also provides that, among others, every Registrar, Senior Deputy Registrar and Deputy Registrar of the High Court, by virtue of that appointment, holds the corresponding office or position in the Tribunal.

Role of the President of the Tribunal

5 The President of the Tribunal will play an important role and be heavily involved in the day-to-day operation of the Tribunal. He/she will advise the Chief Justice and Chief Judge of the High Court on the development and implementation of policies and practices in relation to the Tribunal.

6. According to the Ordinance, when a competition case is brought before the Tribunal, it may be heard and determined by a Tribunal constituted by the President alone, the President and one or more members appointed by the President, or one or more members appointed by the President. If the President sits in a hearing of the Tribunal (with or without other members of the Tribunal), he/she is to preside over the hearing.

Role of the Deputy Registrar of the Tribunal

7. The Deputy Registrar of the Tribunal will, amongst others, support the making of rules regulating and prescribing the practice and procedure to be

² Determinations of the Commission which are reviewable by the Tribunal are decisions made by the Commission in respect of :

- (i) exemptions or exclusions for agreement(s), conduct(s) or merger(s);
- (ii) rescission of a decision regarding exemptions or exclusions for agreement(s), conduct(s) or merger(s);
- (iii) issue, variation or revocation of block exemption order;
- (iv) variation of a commitment made by undertaking(s) to take or refrain from taking certain action to address the Commission's concerns about a possible contravention of a competition rule;
- (v) release of undertaking(s) from a commitment to take or refrain from taking certain action to address the Commission's concerns about a possible contravention of a competition rule; and
- (vi) termination of a leniency agreement.

followed in the Tribunal; assist the Registrar in listing and case management, administering the suitors' funds of the Tribunal, and supervising the day to day operation of the Registry of the Tribunal; as well as perform any other duties to support the operation of the Tribunal. It is very likely that the other Senior Deputy Registrars and/or Deputy Registrars of the High Court will also assist in the Tribunal matters.

Justification

Additional workload brought by the Ordinance

8. The implementation of the Ordinance requires the establishment of the Tribunal which will likely result in a very considerable additional workload on the Judiciary. Apart from the President and the Deputy President, the other CFI Judges may also be involved in the hearing of Tribunal cases from time to time. Similarly, the Registrar, other Senior Deputy Registrar and/or Deputy Registrars of the High Court will work together with the dedicated Deputy Registrar for the Tribunal work.

9. In assessing the additional workload, the Judiciary has taken into account the following factors –

- (a) the Tribunal has a primary jurisdiction to hear and adjudicate on all competition-related cases covering a wide range of matters as set out in paragraph 4 above;
- (b) the relevant judges and judicial officers of the Tribunal will play a significant role and discharge a number of duties in relation to the operation of the Tribunal as explained in paragraphs 4 to 7 above;
- (c) competition-related cases to be heard before the Tribunal could be lengthy and complicated; and
- (d) given that competition law is a new area of law in Hong Kong, it is likely that the cases before the Tribunal will involve a considerable number of important points of law for deliberation and it is necessary for the Tribunal to develop expertise.

Need for additional judicial posts

10. The Judiciary's assessment at present (which is a conservative one) is that implementation of the Ordinance would require two additional judicial posts, namely, one CFI Judge and one Deputy Registrar. The proposed CFI Judge post seeks to re-compensate the projected total judicial time to be spent by the President, Deputy President and other CFI Judges/members of the Tribunal on the work of the Tribunal. Similarly, the proposed Deputy Registrar post will cover the

estimated aggregate amount of time to be spent by the Registrar, Senior Deputy Registrars and/or Deputy Registrars of the High Court on the work of the Tribunal. If the President and/or the dedicated Deputy Registrar of the Tribunal has any spare time, they will also carry out duties related to the CFI/High Court.

11. We propose creating the two posts on 1 April 2013 to facilitate the preparatory work for establishing the Tribunal. This will help enable the Tribunal to be set up in time for the planned full implementation of the Ordinance.

12. In particular, the Ordinance provides that the Tribunal may decide its own procedures and may, so far as it thinks fit, follow the practice and procedure of the CFI in the exercise of its civil jurisdiction. It is intended that a set of Tribunal rules, which are subsidiary legislation, will be made. According to the Ordinance, such rules will be made by the Chief Judge of the High Court and he is required to consult the President before making such rules. Moreover, the President is empowered to give general directions on the arrangements of the business of the Tribunal. These will supplement the rules. The rules and President's directions have to be in place before the Tribunal commences operation. The President and the other relevant CFI Judges will also need to study the Ordinance in detail and examine the relevant cases/law in other jurisdictions.

13. During this preparatory stage, the proposed new Deputy Registrar will support the President, Deputy President and Registrar etc. on the various tasks outlined above, including the preparation of Tribunal rules and President's directions. He/she will also give guidance to the supporting staff to undertake other preparatory work as required.

14. The proposed timing for the creation of the two proposed posts will also tie in with the Administration's plan of commencing the relevant provisions. The Administration will implement the Ordinance in phases so that the public and the business sector can familiarise themselves with the new legal requirements during the transitional period and make necessary adjustments. The immediate work now is to establish the Commission and the Tribunal. In this regard, the Administration has tabled a commencement notice at the Legislative Council on 28 November 2012 in order to commence the provisions relating to the Tribunal on 1 August 2013. This allows time for the creation of the captioned posts and the appointment process for the President and Deputy President of the Tribunal.

Annexes
A and B

15. The main duties for the two proposed judicial posts are as set out at **Annexes A and B** respectively.

Additional non-directorate posts

16. A total of nine non-directorate posts will be created according to the established mechanism to provide the necessary support to the Tribunal. They

include one Personal Secretary II, one Senior Court Interpreter, one Senior Judicial Clerk I, two Judicial Clerks, three Assistant Clerical Officers and one Clerical Assistant. They will provide support to the judges and judicial officers of the Tribunal. While most of these posts will only be created shortly before the full operation of the Tribunal, the posts of Personal Secretary II, Senior Judicial Clerk I and one of the Judicial Clerks will need to be created earlier to provide support to the President/Deputy President and Registrar/Deputy Registrar for various preparatory tasks relating to the setting up of the Tribunal. The proposed organization charts of the Tribunal are at **Annexes C and D**.

Annexes
C and D

Alternative considered

17. The Judiciary Administrator has critically examined whether the additional workload arising from the establishment and operation of the Tribunal can be absorbed by the existing judicial resources but has advised in the negative. The existing CFI Judges and judicial officers are already fully engaged in the judicial work of the CFI. Under its existing establishment, it is simply not possible for the CFI to spare one Judge and one Deputy Registrar to take up the additional duties. Creation of the two proposed judicial posts is therefore essential, or else the functioning of both the Tribunal and the High Court will be adversely affected.

Financial implication

18. The proposed creation of two permanent judicial posts will bring about an additional notional annual salary cost at mid-point of \$4,363,800³ as follows:

	Notional annual salary cost at mid-point³ (\$)	No. of posts
Judge of the CFI of the High Court (JSPS 16)	2,526,000	1
Deputy Registrar, High Court (JSPS 13)	1,837,800	1
Total	<u>4,363,800</u>	<u>2</u>

The additional full annual average staff cost, including salaries and staff on-costs, is \$8,181,000.

19. The additional notional annual salary cost at mid-point for the nine non-directorate posts is \$3,084,420 and the full annual average staff cost,

³ Please see footnote 1 above. These figures represent the existing values and have not yet reflected changes consequent on the 5.66% salary increase for Judges and Judicial Officers.

including salaries and staff on-costs, is 4,825,000.

20. The Judiciary will include sufficient provision in the Draft Estimates of 2013-14 and subsequent years to meet the cost of this proposal.

Advice sought

21. Members are invited to consider the proposal. Subject to Members' support, we will seek the recommendation of the Establishment Subcommittee in January 2013 and approval from the Finance Committee afterwards.

**Commerce and Economic Development Bureau
Judiciary Administration
December 2012**

**Proposed Main Duties for the
Judge of the Court of First Instance of the High Court**

Post title : President of the Competition Tribunal/ 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 discharge judicial duties, which include –
 - (a) hearing cases which are within the jurisdiction of the Competition Tribunal (“the Tribunal”); and
 - (b) if time permits, hearing criminal and civil cases which are within the jurisdiction of the Court of First Instance of the High Court.
2. To discharge other duties, which include –
 - (a) advising the Chief Justice and/or the Chief Judge of the High Court on the development and implementation of policies and practices in relation to the Tribunal, including the making of rules; and
 - (b) giving general directions as to the arrangement of the business of the Tribunal.

**Proposed Main Duties for the
Deputy Registrar, High Court**

Post title : Deputy Registrar, Competition Tribunal/ Deputy Registrar, High Court

Rank : Deputy Registrar, High Court (JSPS 13)

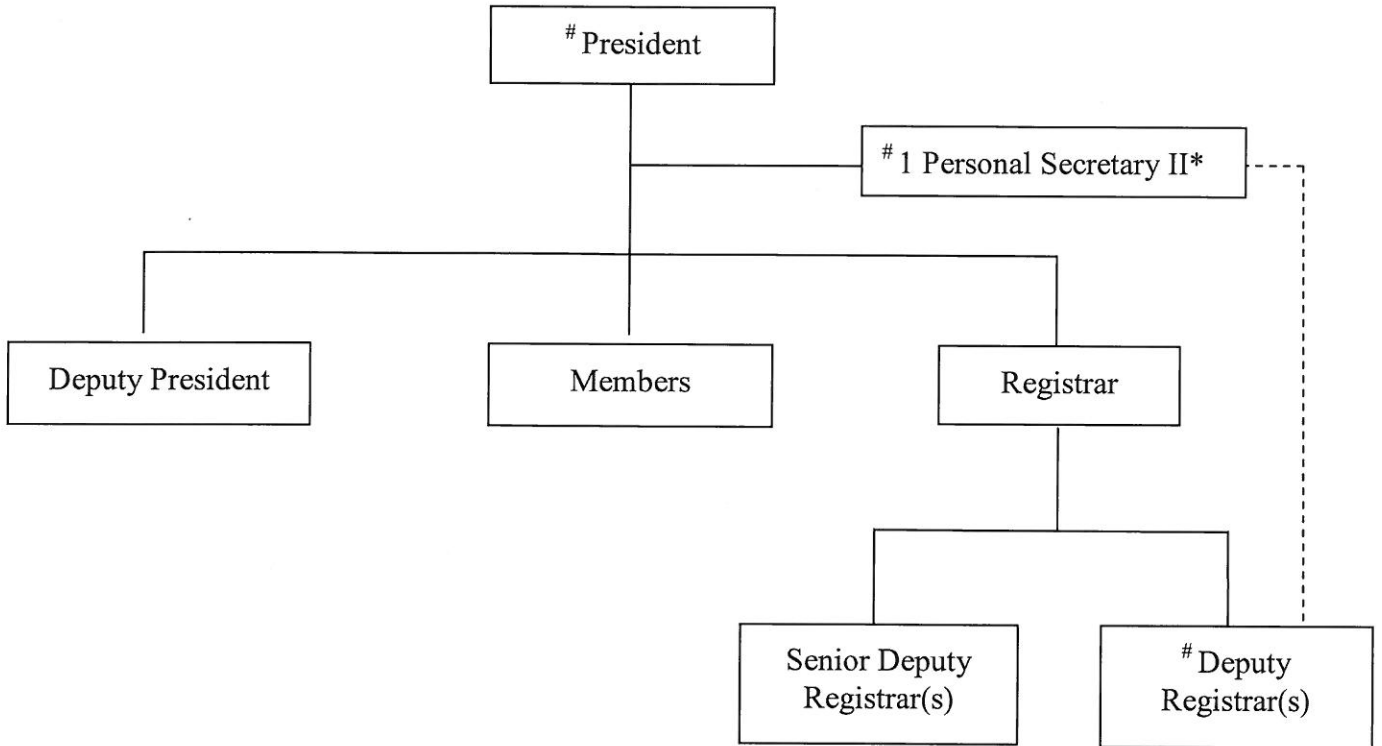
Responsible to : Registrar, High Court (JSPS 15) / Registrar, Competition Tribunal

Main Duties and Responsibilities –

1. To discharge duties, which include –
 - (a) supporting the making of rules regulating and prescribing the practice and procedure to be followed in the Competition Tribunal (“the Tribunal”);
 - (b) supporting the preparation of directions as to the arrangement of the business of the Tribunal;
 - (c) assisting the Registrar of the Tribunal in listing and case management;
 - (d) assisting the Registrar of the Tribunal in supervising the day to day operation of the Registry of the Tribunal;
 - (e) assisting the Registrar of the Tribunal in administering the suitors’ funds of the Tribunal;
 - (f) handling administrative matters relating to the appointment of assessors; and
 - (g) any other duties to support the operation of the Tribunal.
2. If time permits, the Deputy Registrar may also perform the duties of a Deputy Registrar, High Court

Proposed Organization Chart of Competition Tribunal

Judges and Judicial Officers

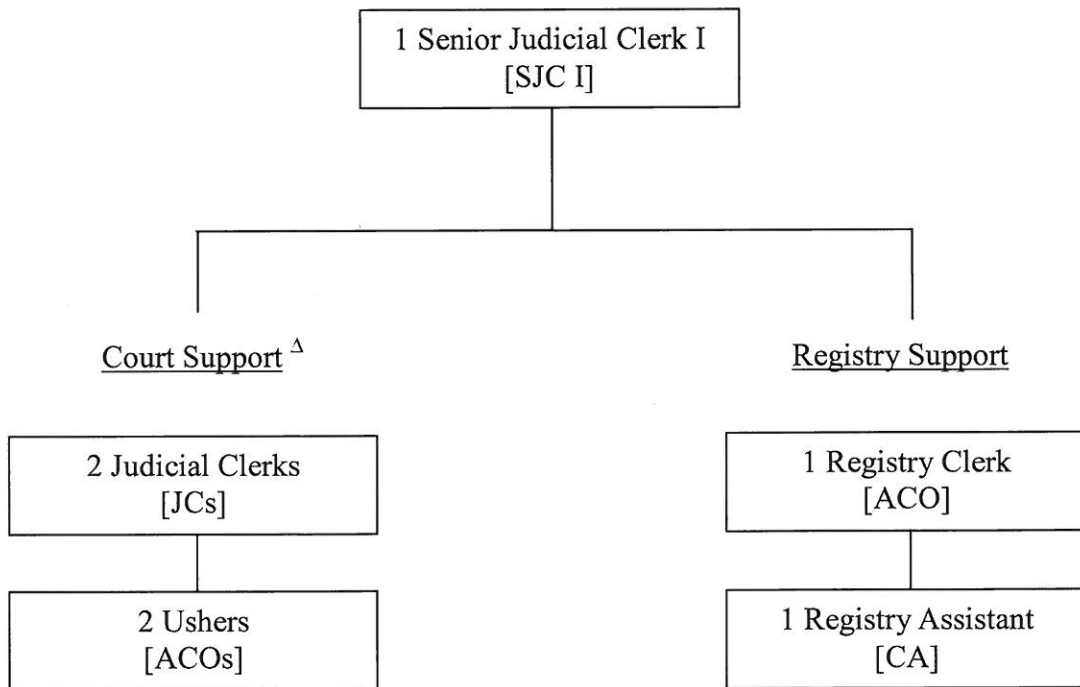


* The Personal Secretary II will also support the proposed new post of Deputy Registrar.

Proposed new posts for creation include the President of the Tribunal, one Personal Secretary II post and one of the Deputy Registrar posts.

Proposed Organization Chart of Competition Tribunal

Supporting Staff



All are proposed new posts

^Δ To be supported by 1 Senior Court Interpreter which is also a proposed new post.

Legend

SJC: Senior Judicial Clerk

JC: Judicial Clerk

ACO: Assistant Clerical Officer

CA: Clerical Assistant
