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Panel on Administration of Justice and Legal Services

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 24 April 2017**

Judicial manpower position at various levels of court

Purpose

This paper provides background information on the judicial manpower position at various levels of court and a brief account of the relevant discussions at the Panel on Administration of Justice and Legal Services ("the Panel") and the Finance Committee ("FC").

Background

Establishment and vacancies

2. Since July 2008, the Judiciary has conducted a number of comprehensive reviews on the judicial establishment and manpower situation at all levels of court having regard to operational needs, including the need to keep court waiting time within targets. As at 31 March 2017, the establishment of Judges and Judicial Officers ("JJOs") at all levels of courts stood at 200 (**Appendix I**).
3. As advised by the Judiciary at the special FC meeting on 3 April 2017¹, open recruitment exercises for filling judicial vacancies were launched at appropriate timing, having regard to the overall judicial manpower situation and operational needs for different level of courts. Details of these exercises are as follows:

¹ Source: the Judiciary Administration's speaking notes at the Special FC meeting on 3 April 2017

- (a) at the Judge of the Court of First Instance of the High Court ("CFI") level, the Judiciary conducted four open recruitment exercises since 2012; a total of 20 CFI Judge appointments were made. As at 15 March 2017, there are still six vacancies remained unfilled²;
- (b) for the District Judges, two rounds of open recruitments were completed in 2012 and 2016; a total of 28 judicial appointments were made so far as a result; and
- (c) the last open recruitment exercises for Permanent Magistrates and Special Magistrates launched in February 2014 were completed. A total of 17 Permanent Magistrates and five Special Magistrates were appointed as a result. A new round of recruitment exercise for Permanent Magistrates has been launched in end 2016 and is in progress.

4. Notwithstanding the fact that the Judiciary has been conducting recruitment exercises for the CFI level on a more regular basis since 2012, the Judiciary advised that the number of eligible candidates found suitable for appointment was much smaller than the available vacancies³.

Reviews on the conditions of service for and retirement ages of JJOs

5. The Judiciary noted that a few performance targets regarding the waiting time of criminal cases in the CFI and the District Court ("DC") were not met. Insofar as the High Court ("HC") was concerned, a number of HC Judges have retired over the past few years and the Judiciary encountered persistent recruitment difficulties at the CFI level in filling the judicial vacancies as mentioned above. In this connection, the Judiciary embarked on a number of reviews with a view to attracting qualified candidates and retaining talents, including the review of the conditions of service for JJOs and the review of the retirement ages of JJOs⁴.

6. According to the Administration⁵, the proposals to enhance the conditions of service for JJOs covered enhancements to housing benefits, medical and dental benefits, local education allowance, judicial dress allowance

² Source: Controlling officer's reply to a Member's initial written question in examining the Estimates of Expenditure 2017-18 (Reply Serial No. JA024))

³ Legislative Council ("LegCo") Brief on Judicial Service Pay Adjustments (File Ref: CSO/ADM CR6/3221/02) issued by the Administration on 7 December 2016

⁴ Source: The 2017-18 Budget (<http://www.budget.gov.hk/2017/eng/pdf/head080.pdf>)

⁵ LegCo Brief on Review of Conditions of Service for JJOs (File Ref: CSO/ADM CR 2/3222/88) issued by the Administration on 7 December 2016

and transport services for leave travel. The review of the conditions of service for JJOs was completed and approved by the Chief Executive-in-Council for commencement with effect from 1 April 2017.

7. For the review of the retirement ages⁶, the Judiciary has engaged a consultant to carry out a consultancy study on the subject and will keep the Government posted of developments at an appropriate juncture of the study. The consultant is expected to submit its final report to the Judiciary around mid-2017.

Engagement of temporary judicial manpower

8. According to the Judiciary⁷, the engagement and deployment of temporary judicial manpower has been a long standing practice adopted by the Judiciary to help maintain court waiting time at reasonable levels. The arrangement also provides opportunities for the deputy JJOs to gain judicial experience at the relevant levels of court. The number of Deputy JJOs appointed from outside the Judiciary (excluding Deputy JJOs appointed from within the Judiciary) as at 1 March in the past five years of 2013 to 2017 is in **Appendix II**.

Past discussions

9. The Panel recently discussed issues relating to judicial manpower position at its meetings held on 16 December 2013, 24 June 2014, 24 November 2014, 18 May 2015 and 23 November 2015. Major views and concerns raised by members and responses by the Judiciary and the Administration are summarized in the ensuing paragraphs.

Manpower situation of JJOs

10. At the meeting on 18 May 2015, some members expressed concern about the shortage of judicial manpower on the efficient operation of courts, and queried whether insufficient remuneration was the major reason for the shortage of judicial manpower.

⁶ According to the LegCo Brief on Judicial Service Pay Adjustments (File Ref: CSO/ADM CR6/3221/02) issued by the Administration on 7 December 2016, the statutory normal retirement ages for JJOs are 60 or 65, depending on the level of the court. Beyond that, extension of service may be approved up to the age of 70 or 71, depending on the level of the court and subject to consideration on a case-by-case basis.

⁷ Source: Controlling officer's reply to a Member's initial written question in examining the Estimates of Expenditure 2017-2018 (Reply Serial No. JA030))

11. The Judiciary advised that as a result of nine open recruitment exercises for filling judicial vacancies at various levels of court conducted from 2011 to 2014, all judicial posts at various levels of court, except at the CFI level, were largely substantively filled. To facilitate more eligible candidates to apply for the CFI Judge post, the Judiciary had been conducting recruitment exercises for CFI Judges on a yearly basis instead of every three years since 2013, having regard to the fact that the timing for joining the bench was a crucial factor for senior legal practitioners. The Judiciary added that as mentioned by the Chief Justice on numerous occasions, it was of crucial importance that the high standards expected of judges were maintained. The Judiciary therefore considered that it was better to leave positions vacant than to have appointments of persons not of the requisite standard.

12. Although the vacancy rate of judicial posts had dropped from 20.2% as at 31 March 2014 (i.e. 40 of the 193 established judicial posts were not filled) to 11.9% as of November 2014 (i.e. 23 of the 193 established judicial posts were not filled), question was raised as to whether a vacancy rate of over 10% for judicial posts was a longstanding manpower situation in the Judiciary and whether a staff vacancy rate of over 10% was also not uncommon in other Bureaux/Departments ("B/Ds").

13. To enable the Judiciary to better cope with the increased workload of JJOs and to help reduce court waiting time, a member hoped that the Administration would provide new financial resources as required by the Judiciary.

14. The Administration pointed out that of the 23 vacant judicial posts as of November 2014, around nine could not be filled for the time being pending the completion of the West Kowloon Law Courts Building. Accordingly, the vacancy rate could not be said to be serious and was not uncommon in other B/Ds. The Administration further pointed out that the Judiciary had kept under constant review its judicial establishment and manpower situation having regard to operational needs. For examples, eight judicial posts were created upon the completion of a comprehensive establishment review of the manpower situation of JJOs in 2008; two judicial posts were created in 2012 to cope with the increasing workload in the Lands Tribunal, two judicial posts were created in 2013 to cope with the new responsibilities arising from the establishment and operation of the Competition Tribunal under the Competition Ordinance (Cap. 619); and resources had been secured by the Judiciary in 2014-2015 to create seven judicial posts at various levels of court.

Deployment of temporary judicial manpower

15. A member expressed concern about engaging deputy JJOs from within the Judiciary to fill a higher positions to maintain court waiting time at reasonable levels, as this would inevitably affect the work of the courts to which the deputy JJOs were from. The Judiciary advised that engaging deputy JJOs was meant to be a short-term measure to provide the needed judicial manpower in the interim before substantive JJOs were appointed. As there was a limit to which the workload could be helped out by the appointment of deputy JJOs and that the judicial manpower situation must ultimately be addressed by filling the vacancies substantively. The Judiciary added that the impact of the deployment of temporary judicial manpower on the overall operation of the courts at all levels was thus far satisfactory.

16. The representative of the Law Society of Hong Kong expressed at the meeting on 23 November 2015 that sufficient and reasonable advance notice should be given to candidates who were to be appointed deputy/temporary JJOs so that these candidates could better manage their diaries and arrange their work obligations before joining the bench. In addition, the daily honorarium of, for example, a Deputy Special Magistrate, was lower than that of a duty lawyer or counsel on fiat; and should be raised.

Recruitment of judges

17. A member suggested that apart from conducting open recruitment, the Judiciary could consider approaching eligible legal practitioners direct and/or engaging an executive search firm to see whether these legal practitioners were willing to join the bench.

18. The Judiciary advised in its letter dated 11 May 2015 to the Panel⁸ that it was the Judiciary's established policy to fill vacancies at the levels of CFI, DC and Magistrates' Court through open recruitment exercises for the purpose of greater transparency in the recruitment process. This policy had worked well. The engagement of an executive search firm was considered not an effective means to identify suitable candidates in a small jurisdiction such as Hong Kong, as the Judiciary did not believe that any firm would have as much knowledge as its JJOs on the advocacy experience and professional competence of the eligible candidates who were mostly legal practitioners in court. In each open recruitment exercise, advertisements for the positions were published in the Judiciary website and newspapers. Eligible candidates from within the Judiciary, private practice and Government departments could apply for those positions on an equal basis.

⁸ LC Paper No. CB(4)992/14-15(01)

19. A member queried whether, apart from the higher costs of appointing eligible overseas applicants for judicial posts, another reason for the Judiciary not to recruit judges from outside Hong Kong in order to address the recruitment difficulties was due to the need for judges to be bilingual since the handover. The Administration advised that appointments of JJOs were all made through open recruitment exercises. Candidates from local and overseas might apply. According to the Judiciary, of the 81 judicial posts filled between 2011 and 2015, 51 and 30 were filled by candidates outside and within the Judiciary respectively.

Court waiting time

20. At the meeting on 16 December 2013, members expressed concern about the long court waiting time at various levels of court. It was noted that there were cases in which the appellants could only have their cases heard after they had served their imprisonment sentence.

21. The Judiciary explained that as revealed in the establishment reviews conducted by the Judiciary, HC remained a pressure area. It was necessary to provide additional judicial resources to the CFI in the light of its increased caseload and the growing complexity of the cases heard. At present, the Chief Judge of the High Court ("CJHC") had the discretion to assign cases to the JJOs having regard to the complexity of the cases and the amount of preparatory work required. Where necessary, the JJOs concerned could discuss with the Court Leader for the provision of time to cope with increased workload and other special circumstances.

22. As regards members' concern about the long court waiting time for civil appeal cases, the Judiciary advised that at present, CJHC had instructed that where practicable, priority would normally be given to judicial review cases and cases which involved applications for injunctions. It was hoped that when the substantive vacancies were filled in due course, the pressure on lengthened waiting time could be relieved.

23. Noting that the Lands Tribunal had consistently achieved a good performance in meeting the average waiting time target, suggestion was made on redeploying some of the judicial resources of the Lands Tribunal to other levels of court.

24. The Judiciary advised that the relatively short average waiting time of the Lands Tribunal was mainly due to the fact that the total caseload of the Lands Tribunal had been lower than expected over the past few years. The Judiciary had kept under constant review its judicial establishment and manpower

situation having regard to operational needs, including the need to keep court waiting time within targets.

Retirement age of judges

25. Noting that retirement was the main source of wastage amongst JJOs, question was raised as to whether consideration would be given to extending the retirement age of JJOs as in the case of civil servants. The Administration advised that according to the Judiciary, an outside consultant was engaged to review the retirement ages for JJOs at different levels of courts. The Judiciary planned to apprise the Government of the results of the review once the results became available.

26. At the meeting on 23 November 2015, a member queried the need for the Judiciary to hire an outside consultant to review the retirement ages of JJOs, as the Judiciary was well versed with the legal sector. Another member urged the Judiciary to expedite its review on the retirement ages of JJOs so as to better attract quality candidates and experienced private practitioners to join the bench.

Support for JJOs

27. Members noted that under the Scheme on Judicial Assistants ("the Scheme"), Judicial Assistants were only assigned to provide assistance to appellate judges. To better help JJOs to cope with the increased workload and to keep court waiting time within targets, a member suggested that the Judiciary should expand the scope of the Scheme to provide assistance to judges other than appellate judges in the Court of Final Appeal ("CFA") and Court of Appeal of the HC.

28. The Judiciary advised that starting from 2015, the CFA and the HC would have separate schemes for providing legal and professional support to their judges and separate recruitment exercises would be conducted for such purposes. The Scheme would continue to operate for the CFA but there would no longer be rotation for individual Judicial Assistants who would stay in the CFA throughout their engagement. It was expected that dedicated and structured legal and professional support would be enhanced for the CFA Judges as a result. Whilst the new scheme for providing legal and professional support to the HC was mainly targeted at the Justices of Appeal, the scheme would also cover the provision of the same support to CFI Judges where appropriate.

29. In response to a member's suggestion of providing "protected time" to judges for writing judgments on a routine basis, the Judiciary advised that the

CJHC had given general instructions that when listing cases for individual judges, consideration should be given to allowing appropriate buffer time required by individual judges in writing the judgments.

30. Following the completion of a comprehensive review on judicial education in early 2013, the Judiciary considered that JJOs at different court levels should be given "protected time" to take part in judicial education. The study also revealed that to maintain a well-structured and sustainable development of judicial education, additional judicial resources should be sought for providing "protected time" for JJOs for dealing with judicial education and attending such activities.

Council questions

31. Members raised questions relating to the judicial manpower at the LegCo meetings of 9 January 2013, 18 June 2014 and 9 July 2014. Issues covered in the questions include the waiting time for hearing of and time taken for delivery of judgments on court cases and appointment of Judicial Assistants by the Judiciary. The questions and the Government's responses are hyperlinked in **Appendix III**.

Recent development

32. At the special FC meeting on 3 April 2017, the Judiciary advised Members that in 2017-2018, there would be an increase of 15 directorate posts, of which 14 are judicial posts. These included four posts of District Judge, five posts of Deputy Registrar, DC, four posts of Adjudicator, Small Claims Tribunal and one post of Magistrate. The remaining one post is a supernumerary non-judicial post of Principal Executive Officer at D1 level for a period of three years from 2017-2018 to 2019-2020 to provide directorate and strategic support to the formulation of an accommodation strategy for the Judiciary in the long term.

33. The Judiciary plans to brief the Panel on the judicial manpower position and its manpower proposals set out in paragraph 32 above at its meeting on 24 April 2017, before submitting the proposals to the Establishment Subcommittee for endorsement and the FC for approval.

Relevant papers

34. A list of the relevant papers is in **Appendix III**.

Council Business Division 4
Legislative Council Secretariat
19 April 2017

Appendix I

The establishment and remuneration of Judges and Judicial Officers (“JJOs”) at all levels of court is as follows:

Position as at 31.3.2017				
Level of Court	Rank	Establishment	Judicial Service Pay Scale Point	Monthly Salary \$
Court of Final Appeal	Chief Justice	1	19	340,250
	Permanent Judge	3 [^]	18	330,850
Court of Appeal of the High Court	Chief Judge of the High Court	1	18	330,850
	Justice of Appeal	13	17	298,250
Court of First Instance of the High Court	Judge of the Court of First Instance	34	16	284,250
High Court Masters’ Office	Registrar	1	15	230,500
	Senior Deputy Registrar	4	14	210,200 – 223,000
	Deputy Registrar	6	13	197,000 – 208,850
District Court (including Family Court and Lands Tribunal)	Chief District Judge	1	15	230,500
	Principal Family Court Judge	1	14	210,200 – 223,000
	District Judge	35	13	197,000 – 208,850
	Member, Lands Tribunal	2	12	169,450 – 179,850
District Court Masters’ Office	Registrar	1	11	156,100 – 165,450
	Deputy Registrar	3	10	142,800 – 151,500
Magistrates’ Courts/ Specialized	Chief Magistrate	1	13	197,000 – 208,850

	Principal Magistrate/ Principal Presiding Officer, Labour Tribunal/ Principal Adjudicator, Small Claims Tribunal	11	11	156,100 – 165,450
	Coroner/ Presiding Officer, Labour Tribunal/ Adjudicator, Small Claims Tribunal/ Magistrate	71	10 7-10	142,800 – 151,500 126,385 – 151,500
	Special Magistrate	11	1 - 6	82,150 – 97,060

[^] *Excluding one Permanent Judge post created for a Non-Permanent Judge of the Court of Final Appeal.*

(Source: Controlling officer's reply to a Member's initial written question in examining the Estimates of Expenditure 2017-2018 (Reply Serial No.: JA037))

Appendix II

The number of Deputy JJOs appointed from outside the Judiciary (excluding Deputy JJOs appointed from within the Judiciary) as at 1 March in the past five years of 2013 to 2017 is as follows:

Position	1.3.2013	1.3.2014	1.3.2015	1.3.2016	1.3.2017
Deputy Judge of the Court of First Instance of the High Court	7	5	2	9	5
Temporary Deputy Registrar, High Court	0	1	1	1	1
Deputy District Judge	1	0	0	2	3
Temporary Member of the Lands Tribunal	1	0	0	0	0
Deputy Magistrate	10	24	12	17	27
Deputy Special Magistrate	5	9	5	4	1
Total	24	39	20	33	37

(Source: Controlling officer's reply to a Member's initial written question in examining the Estimates of Expenditure 2017-2018 (Reply Serial No.: JA037))

Appendix III

Updated background brief on judicial manpower position at various levels of court

List of relevant papers

Date of meeting	Meeting	Minutes/Paper	LC Paper No.
9.1.2013	Council Meeting	Hon Dennis KWOK raised a question on the appointment of Judicial Assistants by the Judiciary	http://www.info.gov.hk/gia/general/201301/09/P201301090300.htm
16.12.2013	Panel on Administration of Justice and Legal Services	Judiciary Administration's paper on "Judicial manpower situation at various levels of court and court waiting time"	CB(4)225/13-14(05) http://www.legco.gov.hk/yr13-14/english/panels/ajls/papers/aj1216cb4-225-5-e.pdf
		Background brief on "Judicial manpower situation at various levels of court and long court waiting time" prepared by the Legislative Council Secretariat	CB(4)225/13-14(06) http://www.legco.gov.hk/yr13-14/english/panels/ajls/papers/aj1216cb4-225-6-e.pdf
		Minutes of meeting	CB(4)497/13-14 http://www.legco.gov.hk/yr13-14/english/panels/ajls/minutes/aj20131216.pdf

Date of meeting	Meeting	Minutes/Paper	LC Paper No.
18.6.2014	Council Meeting	Hon CHUNG Kwok-pan raised a question on the waiting time for hearing of and time taken for delivery of judgments on court cases	http://www.info.gov.hk/gia/general/201406/18/P201406180425.htm
24.6.2014	Panel on Administration of Justice and Legal Services	Judiciary's paper on "Proposed Creation of Judicial Posts and a Non-civil Service Position in the Judiciary and Strengthening of the Directorate Structure of the Judiciary Administration"	CB(4)822/13-14(03) http://www.legco.gov.hk/yr13-14/english/panels/ajls/papers/aj0624cb4-822-3-e.pdf
		Updated background brief on "Judicial manpower situation at various levels of court" prepared by the Legislative Council Secretariat	CB(4)822/13-14(04) http://www.legco.gov.hk/yr13-14/english/panels/ajls/papers/aj0624cb4-822-4-e.pdf
		Minutes of meeting	CB(4)94/14-15 http://www.legco.gov.hk/yr13-14/english/panels/ajls/minutes/aj20140624.pdf
9.7.2014	Council Meeting	Hon Alan LEONG raised a question on the political requirements for judges and other judicial personnel	http://www.info.gov.hk/gia/general/201407/09/P201407090608.htm

Date of meeting	Meeting	Minutes/Paper	LC Paper No.
24.11.2014	Panel on Administration of Justice and Legal Services	Legislative Council Brief	CSO/ADM CR 6/3221/02 http://www.legco.gov.hk/yr14-15/english/panels/ajls/papers/ajls20141124-csoadmcr6322102-e.pdf
		Updated background brief on "Judicial Service Pay Adjustment" prepared by the Legislative Council Secretariat	CB(4)172/14-15(04) http://www.legco.gov.hk/yr14-15/english/panels/ajls/papers/ajls20141124cb4-172-4-e.pdf
		Minutes of meeting	CB(4)355/14-15 http://www.legco.gov.hk/yr14-15/english/panels/ajls/minutes/ajls20141124.pdf
18.5.2015		Judiciary Administration's paper on "Judicial Manpower and Other Support for the Judiciary"	CB(4)964/14-15(03) http://www.legco.gov.hk/yr14-15/english/panels/ajls/papers/ajls20150518cb4-964-3-e.pdf
		Background brief on "Manpower and other support for the Judiciary" prepared by the Legislative Council Secretariat	CB(4)964/14-15(04) http://www.legco.gov.hk/yr14-15/english/panels/ajls/papers/ajls20150518cb4-964-4-e.pdf
		Minutes of meeting	CB(4)1310/14-15 http://www.legco.gov.hk/yr14-15/english/panels/ajls/minutes/ajls20150518.pdf

Date of meeting	Meeting	Minutes/Paper	LC Paper No.
23.11.2015		Legislative Council Brief	CSO/ADM CR 6/3221/02 http://www.legco.gov.hk/yr15-16/english/panels/ajls/papers/ajls20151123-csoadmcr6322102-e.pdf
		Updated background brief on "Judicial Service Pay Adjustment" prepared by the Legislative Council Secretariat	CB(4)226/15-16(03) http://www.legco.gov.hk/yr15-16/english/panels/ajls/papers/ajls20151123cb4-226-3-e.pdf
		Minutes of meeting	CB(4)422/15-16 http://www.legco.gov.hk/yr15-16/english/panels/ajls/minutes/ajls20151123.pdf

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