

For information

**Legislative Council Panel
on Administration of Justice and Legal Services**

**Allowances for Jurors and Witnesses and
Fees Payable to Adjudicators**

Purpose

This paper informs Members of the proposed revisions to the rates of allowances for jurors and witnesses as well as the fees payable to adjudicators of the Obscene Articles Tribunal (“OAT”). The proposed revisions require legislative amendments as the rates are prescribed in the following –

- (a) Allowances to Jurors Order (“AJO”) (Cap. 3A);
- (b) Criminal Procedure (Witnesses’ Allowances) Rules (“CP(WA)R”)(Cap. 221B);
- (c) Coroners (Witnesses’ Allowances) Rules (“C(WA)R”) (Cap. 504E); and
- (d) Control of Obscene and Indecent Articles Regulations (“COIAR”) (Cap. 390A).

Background

Allowances for Jurors and Witnesses

2. At its meeting on 15 October 1993, the Finance Committee of the Legislative Council (“LegCo”) agreed that the former Secretary for the Treasury (now the Secretary for Financial Services and the Treasury (“SFST”)) of the Government should be delegated the authority to approve future changes in the rates of allowances for jurors and witnesses in accordance with the following adjustment indicators on a biennial basis –

- (a) rates for jurors and witnesses (other than professional or expert witnesses) (“ordinary witnesses”) – to be made in

accordance with movements in the Median Monthly Employment Earnings of Employees (“MMEE”) in Hong Kong as recorded in the General Household Survey by the Census and Statistics Department; and

- (b) rates for professional and expert witnesses – to be made in accordance with changes in the mid-point salary (“MPS”) of a Medical and Health Officer (“MHO”) in Hong Kong as recorded in the Master Pay Scale of the Civil Service Grades, Ranks and Pay Scales.

3. At the biennial review conducted by the Judiciary Administration in 2014, the opportunity was taken to review the basis for determining the rates of jurors’ allowances. As a result, the basis for determining the rates has been refined to adopt a stratified MMEE (computed on the basis of the composition of employees who fulfill the requirement of being empanelled as jurors, i.e. aged 21 or above and below 65 with education level of matriculation or above, or equivalent), instead of the overall MMEE (the computation of which is based on the composition of employees aged 15 or above, irrespective of their education level).

4. The current rates of allowances for jurors and witnesses, as set out under column (b) of the table in paragraph 11 below, were set in July 2015 based on the biennial review in 2014, taking into account the above refinements.

Fees Payable to Adjudicators

5. The OAT was set up under the Control of Obscene and Indecent Articles Ordinance (Cap. 390) to determine whether an article is obscene or indecent. Adjudicators are appointed by the Chief Justice to help such classification and determination work. To be eligible for appointment, the person must be ordinarily resident in Hong Kong and has so resided for at least seven years; and be proficient in written English or written Chinese.

6. The existing rates for the fees payable to adjudicators were set in 1987 by reference to the then remuneration of a Lay Magistrate¹. The current rates are \$800 for every day on which an adjudicator serves as a

¹ The title of the Lay Magistrate grade has been changed to Special Magistrate since 1990.

member of the OAT for not less than half a day, and \$400 for less than half a day.

7. In 2011 and 2012, the Judiciary Administration conducted a review on the basis for determining the rates for the OAT adjudicators. As the adjudicators come from the general public on a voluntary basis and there is no specific requirement on professional expertise and experience, it was considered to be more appropriate to draw reference to the ceiling of remunerations for non-official members of boards and committees determined by the Government in revising the rates instead. The Government has no objection to this. At that time, the rates determined under the new basis were similar to the prescribed rates in the law². No change to the rates and the related legislation was therefore proposed.

8. It is the intention of the Judiciary Administration to tie in the reviews of the rates of fees payable to OAT adjudicators with the biennial reviews on the rates of allowances for jurors and witnesses from now on.

Proposed Revisions in Rates

Allowances for Jurors and Witnesses

9. Following the latest review conducted in 2016, and after taking into account the need to maintain the real value of the rates to minimize any financial loss suffered by members of the public serving as jurors or testifying as witnesses in courts, it is proposed that –

- (a) the rates of allowances for jurors be revised in accordance with the movement of the stratified MMEE from the third quarter of 2014 to the third quarter of 2016 at 14.7%;
- (b) the rates of allowances for ordinary witnesses be revised in accordance with the movement of the overall MMEE from the third quarter of 2014 to the third quarter of 2016 at 15.4%; and
- (c) the rates of allowances for professional or expert witnesses be revised in accordance with that of the MPS change of a MHO from 1 April 2013 to 1 April 2016 at 14.8%.

² When the review was carried out in 2011 and 2012, the ceiling of remunerations for non-official members of boards and committees published by the Government in 2010 was at \$785, which was nearly the same as that for the fee payable to an adjudicator who serves as a member of the OAT for a day at \$800.

Fees Payable to Adjudicators

10. The latest ceiling remuneration for non-official members announced by the Government in June 2016 is \$955 per attendance. Accordingly, it is proposed that the daily rate of fees payable to an adjudicator who serves as a member of the OAT for not less than half a day be increased from \$800 to \$955. The rate for service of less than half a day is also proposed to be adjusted accordingly.

Proposed Rates

11. In summary, the proposed revisions are set out under column (d) of the following table –

(a) Type of Allowances	(b) Existing Rates	(c) % Changes in Respective Adjustment Indicators	(d) Proposed Rates³
1. Jurors	\$725 a day or part of a day Maximum additional allowance also set at \$725 a day or part of a day	+14.7%	\$830 a day or part of a day Maximum additional allowance also set at \$830 a day or part of a day
2. Ordinary witnesses	Not exceeding \$445 a day or not exceeding \$220 for not exceeding four hours	+15.4%	Not exceeding \$515 a day or not exceeding \$255 for not exceeding four hours

³ The proposed rates are rounded to the nearest '0' or '5'. The proposed rates for jurors and witnesses are subject to approval by SFST under delegated authority in accordance with established mechanism.

(a) Type of Allowances	(b) Existing Rates	(c) % Changes in Respective Adjustment Indicators	(d) Proposed Rates³
3. Professional and expert witnesses	Not exceeding \$2,415 a day or not exceeding \$1,205 for not exceeding four hours	+14.8%	Not exceeding \$2,770 a day or not exceeding \$1,385 for not exceeding four hours
4. OAT adjudicators	\$800 a day or \$400 for less than half a day	+19.4% (a day) or +20.0% (less than half a day)	\$955 a day or \$480 for less than half a day

12. In line with previous arrangements, the above proposed rates may be adjusted if there are further changes to the relevant adjustment indicators before the legislative amendments are made by the respective authorities.

Financial Implications

13. The Judiciary Administration estimates that the proposed increases in rates of allowances for jurors and witnesses as well as the fees payable to adjudicators will entail additional recurrent expenditure of about \$1.12 million⁴ per annum. This will be met from within the approved envelope allocation to the Judiciary.

Implementation

14. The implementation of the proposed revision to the rates requires amendment to the following pieces of legislation –

⁴ The estimated additional recurrent expenditure may be adjusted if there are further changes to the relevant adjustment indicators before the legislative amendments are made by the respective authorities.

- (a) AJO and COIAR, to be made by the Chief Executive in Council and subject to the negative vetting by the LegCo;
- (b) CP(WA)R, to be made by the Criminal Procedure Rules Committee and subject to the positive vetting by the LegCo; and
- (c) C(WA)R, to be made by the Chief Justice and subject to the positive vetting by the LegCo.

15. The aim is to submit the legislative proposals to the LegCo in the current legislative session and introduce the new rates as soon as the legislative process is completed.

Future Reviews

16. The Judiciary Administration will take appropriate action in conducting the next review in 2018.

**Judiciary Administration
December 2016**