

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).

BackgroundAllowances 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, opportunity was taken to review the basis for determining the rates of jurors’ allowances. Before that, the overall MMEE, which reflected the median income of an average employee aged above 15 regardless of education, had been adopted. It was agreed at that time that the overall MMEE was not the most suitable index to reflect the statutory and administrative requirements that only persons aged between 21 to 65 who have at least attained an education standard of matriculation or above, or equivalent, may become prospective jurors.

4. As a result, the basis for determining the rates has been refined since then 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).

5. 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 2017 based on the biennial review in 2016.

Fees Payable to Adjudicators

6. 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.

7. The rates for the fees payable to adjudicators were first set in 1987 by reference to the then remuneration of a Lay Magistrate¹. In the review in 2016, it was agreed that as the adjudicators come from the general public on a voluntary basis and there is no specific requirement on professional expertise and experience, it would 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.

8. The Judiciary Administration has tied 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 since 2016.

Proposed Revisions in Rates

Allowances for Jurors and Witnesses

9. Following the latest review conducted in 2018, and after taking into account the need to maintain the real value of the rates to minimise 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 2016 to the third quarter of 2018 at 5.2%;
- (b) the rates of allowances for ordinary witnesses be revised in accordance with the movement of the overall MMEE from the third quarter of 2016 to the third quarter of 2018 at 11.3%; 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 2016 to 1 April 2018 at 10.6%.

Fees Payable to Adjudicators

10. The Government's latest ceiling remuneration for non-official members which came into effect in August 2018 is \$990 per attendance. Accordingly, it is proposed that the daily rate of fees payable to an

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

adjudicator who serves as a member of the OAT for not less than half a day be increased from \$955 to \$990. 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) Types of Allowances	(b) Existing Rates	(c) % Changes in Respective Adjustment Indicators for Daily Rates	(d) Proposed Rates²
1. Jurors	\$830 a day or part of a day Maximum additional allowance also set at \$830 a day or part of a day	+5.2%	\$875 a day or part of a day Maximum additional allowance also set at \$875 a day or part of a day
2. Ordinary witnesses	Not exceeding \$515 a day or not exceeding \$255 for not exceeding four hours	+11.3%	Not exceeding \$575 a day or not exceeding \$285 for not exceeding four hours
3. Professional and expert witnesses	Not exceeding \$2,770 a day or not exceeding \$1,385 for not exceeding four hours	+10.6%	Not exceeding \$3,065 a day or not exceeding \$1,530 for not exceeding four hours

² The proposed rates are rounded to the nearest '0' or '5'.

(a) Types of Allowances	(b) Existing Rates	(c) % Changes in Respective Adjustment Indicators for Daily Rates	(d) Proposed Rates²
4. OAT adjudicators	\$955 a day or \$480 for less than half a day	+3.7%	\$990 a day or \$495 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 \$0.76 million³ 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 –

- (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

³ 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.

- (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 Review

16. The Judiciary Administration will take appropriate action in conducting the next review in 2020.

Judiciary Administration
December 2018