

**For discussion
on 25 May 2020**

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

**Proposed Creation of a Judicial Post in the Judiciary and
Making Permanent a Directorate Post in the Judiciary Administration**

PURPOSE

This paper seeks Members' views and support on the Judiciary's proposals to create the following permanent posts with immediate effect upon approval of the Finance Committee ("FC") -

- (I) Creation of a judicial post
 - (a) one judicial post of Justice of Appeal of the Court of Appeal of the High Court ("JA") (JSPS 17) to cope with the increased workload of the Court of Appeal ("CA") of the High Court arising from, inter alia, the upsurge of civil appeals in relation to non-refoulement claims cases filed with the CA; and

- (II) Creation of a civil service directorate post
 - (b) one Principal Executive Officer ("PEO") post (D1) to rationalise the existing manpower of the Accommodation Section so as to provide on-going and long-term strategic and management support to the Judiciary Administration ("Jud Adm") on accommodation and court security matters.

I. CREATION OF AN ADDITIONAL JUDICIAL POST

PROPOSAL

2. The Judiciary proposes to create one permanent judicial post of JA (JSPS 17) in the Judiciary to strengthen the establishment of the CA to cope with its heavy workload.

JUSTIFICATIONS

3. The High Court is composed of the CA and the Court of First Instance (“CFI”). For cases heard (including applications for leave to appeal) in the CA, at least two JAs are required. For hearing substantive appeals, three JAs are required.

4. The establishment of the CA was last increased from 11 to 14 in 2015, when additional posts of three JAs were created. Since then, the CA has a complement of 14 Judges, comprising the Chief Judge of the High Court (“CJHC”) (who, as the Court Leader of the High Court and the President of the CA, has considerable administrative responsibilities in addition to his judicial duties) and 13 JAs. Normally, three substantive JAs are required to form one division for the purpose of listing cases. With the existing complement, at most four divisions can be formed at any one time.

5. An additional JA post is needed for the CA to cope with the increased workload for the following reasons:

- (a) in recent years, the Government has to deal with a huge number of claims under the Convention Against Torture. Applicants who are dissatisfied with the result given by the Torture Claims Appeal Board established under Section 37ZQ of the Immigration Ordinance (Cap. 115) may seek relief by way of an application for leave to apply for judicial review to the CFI of the HC. If this is refused, the decision is then appealed to the CA and from there, to the Court of Final Appeal. In the past four years from 2016 to 2019, the number of civil appeals has shot up by about 143% from 246 cases in 2016 to 597 cases in 2019. This was mainly due to an upsurge of 350 appeals in relation to non-refoulement claims cases filed with the CA (from 1 in 2016 to 26 in 2017 and further up to 393 and 351 in 2018 and 2019 respectively). Overall, the total caseload, mainly substantive appeals, of the CA has seen a rapid increase of about 51% over the past four years from 646 in 2016 to 973 in 2019. The rapid surge in civil appeals in recent years has imposed a great pressure on the workload of the CA;
- (b) the caseload alone does not fully reflect the demand on judicial resources in the CA. There has also been an increasing number of complex cases that generally take longer time to conclude. In particular, the percentage of hearing for criminal appeals involving unrepresented litigants has been consistently staying at a high level (at around 50%) in recent years and this has correspondingly

increased the work handled by JAs. The percentage of civil appeals involving unrepresented litigants has increased significantly from 25% in 2016 to 43% in 2017 and further up to 77% in 2019. A high ratio of appeals involving unrepresented litigants has contributed to the heavy workload for JAs;

- (c) in order to cope with the heavy workload of Judges in the CA and help improve court waiting times, a number of measures have been adopted. One of these involve drawing judicial manpower from the CFI by deploying CFI Judges to sit as additional judges of the CA. Whilst such arrangement is meant to provide temporary relief to the judicial manpower of the CA, we see a need for the judicial manpower of the CA be strengthened by creation of an additional permanent JA post, thereby increasing listing flexibility and maximising the number of divisions that can be formed (i.e. five divisions, vis-à-vis four divisions at most currently, can be formed at any one time) to hear cases;
- (d) apart from sitting in court, JAs need to do a substantial amount of work out of court, i.e. preparation for cases, dealing with paper applications and writing of judgments, etc. in order to discharge their judicial duties properly and efficiently; and
- (e) on top of judicial work, JAs have been taking up more administrative duties in the past few years. Leaving aside the position of the CJHC who is unable to perform judicial duties on a full time basis due to his heavy administrative duties as the Court Leader of the High Court, the four Vice Presidents also need to shoulder administrative duties and look after procedural issues. Certain JAs also need to oversee the development of mediation, review of family and matrimonial issues and criminal appeal procedures, and the operation of the Judicial Institute etc.

6. Having regard to the above, the Judiciary considers it necessary to enhance the judicial manpower of the CA by creating an additional permanent JA post in the CA. The Judiciary will continue to review the need for additional permanent JA post in the CA in due course. The job description of the JA in the CA is at **Annex A**.

II. CREATION OF A DIRECTORATE POST

PROPOSAL

7. The Judiciary proposes to make permanent one supernumerary post of PEO (D1) under the Jud Adm with immediate effect upon approval of the FC.

JUSTIFICATIONS

8. The Chief Justice of the Court of Final Appeal (“CJ”) is the head of the Judiciary and is charged with the administration of the Judiciary under the Hong Kong Court of Final Appeal Ordinance (Cap. 484). In discharging his administrative responsibilities, the CJ is assisted by, among others, the Judiciary Administrator and staff in the Jud Adm.

9. A review in 2014 on the accommodation needs of the Judiciary revealed that there was an acute shortage of courtrooms, chambers and supporting facilities at the High Court (“HC”) and the District Court (“DC”) levels. In order to help steer the important tasks of identifying suitable sites for reprovisioning the HC (which includes the Competition Tribunal and the Judicial Institute) and the DC (which will co-locate the Family Court and the Lands Tribunal); to examine the feasibilities of the potential sites in meeting the Judiciary’s accommodation requirements; to work out a new planning and design strategy for courtrooms and court-related facilities for achieving synergy and maximising operational efficiency; and to take follow up actions on the construction of the new law courts buildings (“LCBs”), a supernumerary post of PEO (Project Planning and Accommodation) (“PEO(P&A)”) has been created since 1 February 2016¹ to spearhead the two mega courts building projects. In response to operational needs, the PEO(P&A) has also been charged with the responsibility for court security matters.

10. The supernumerary post of PEO(P&A) under the Jud Adm lapsed on 1 April 2020. In view of the long-term work demand, we need continued staffing support at the directorate level to provide strategic support for policy matters on accommodation and court security issues, and to take forward tasks in relation to the long-term strategic planning and implementation of court building facilities and court security measures. It is proposed to make

¹ In view of the imminent operational need to kick start the tasks, a supernumerary PEO(P&A) post was first created under delegated authority on 1 February 2016 until 30 November 2017 to provide directorate and strategic inputs for this long-term initiative. On 1 December 2017, the FC approved the creation of the supernumerary PEO(P&A) post for around three years until 31 March 2020.

permanent the supernumerary PEO post, to be re-designated as Assistant Judiciary Administrator (Accommodation), under the Jud Adm. The major considerations are as follows:

- (a) it is an ongoing process to review accommodation needs of the Judiciary, which is conducive to the effective delivery of court services to the community and administration of justice in the long run. As part of the Judiciary's long-term accommodation strategy, the Judiciary is taking forward the two mega courts building projects to relocate the HC and the DC for meeting the operational needs in the next few decades. The Judiciary is also conducting a review on the long-term need for new Magistrates' Courts in Hung Shui Kiu, Tseung Kwan O and Hong Kong Island. On top of the above, several existing LCBs will have been in use for over 40 years in 2020s, 2030s and 2040s, thereby posing another perpetual dimension to the strategic planning of the long-term accommodation needs of the Judiciary. There is a continued need for staffing support at the directorate level to formulate and implement long-term accommodation strategy for the Judiciary to ensure that the operational challenges are met;
- (b) the recent years has seen an increase in high-profile cases at all levels of court, involving a large number of people attending the courts. Crowd management and court security are essential matters to be taken into account in ensuring the smooth, orderly and safe operation of the courts. There is a genuine and operational need to enhance strategic overview at directorate level in the planning of crowd management and court security measures, e.g. security screening, at LCBs and implementation of such measures through its Judiciary Security Team in support of venue managers in the maintenance of court security in 12 LCBs;
- (c) it is necessary to provide continued strategic management support at directorate level to the Jud Adm for the formulation and overview of the policies and guidelines on accommodation and court security matters in all Judiciary premises which will meet the needs of all court premises under changing circumstances and preserve the solemnity and independence of the Judiciary. One recent example is to plan and put in place necessary measures in the midst of the COVID-19 situation.

11. The job description of the permanent PEO post proposed in Annex B paragraph 7 above is at Annex B.

FINANCIAL IMPLICATIONS

12. The proposed creation of one permanent judicial post of JA (JSPS 17) will bring about an additional notional annual salary cost at mid-point of \$3,857,400.² The additional full annual average staff cost, including salaries and staff on-costs, is \$8,172,000.³

13. The proposed making permanent of one supernumerary PEO post will bring about an additional notional annual salary cost at mid-point of \$1,923,600. The additional full annual average staff cost, including salaries and staff on-costs, is \$2,762,000.

14. The Judiciary has included sufficient provision in the 2020-21 Estimates to meet the cost of the staffing proposals mentioned in this paper and will reflect the resources required in the Estimates of subsequent years.

ADVICE SOUGHT

15. Members are invited to give their views on and support to the proposals as set out in paragraphs 2 and 7 above.

WAY FORWARD

16. Subject to Members' views and support, the Judiciary intends to submit the proposals to the Establishment Subcommittee for endorsement and the FC for approval. The Judiciary hopes to implement the proposals as soon as practicable.

The Judiciary
May 2020

² The additional notional annual salary cost at mid-point and the additional full annual average staff cost of the JA post have not taken into account the proposed 2019-20 Judicial Service Pay Adjustment which is subject to the approval of the FC.

³ Please see footnote 2 above.

Job Description

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)

Major Duties and Responsibilities –

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

Annex B

Proposed Job Description

- Post title** : Assistant Judiciary Administrator (Accommodation)
- Rank** : Principal Executive Officer (D1)
- Responsible to** : Deputy Judiciary Administrator (Planning and Quality)
(AOSGB1, D4)

Major Duties and Responsibilities –

1. To formulate and implement long-term accommodation strategy for the Judiciary.
2. To take forward the major initiative to relocate the High Court and the District Court, including -
 - (a) coordinating/analysing comments and seeking steer from Court Leaders in drawing up the future requirements of the High Court and the District Court; and
 - (b) overseeing the planning and implementation of the new High Court and the new District Court projects.
3. To plan and implement other new, maintenance and improvement projects addressing the accommodation needs of the Judiciary in short, medium and long terms.
4. To oversee policy matters and operational issues on accommodation and court security issues.
5. To supervise the Accommodation Section tasked with the responsibility to formulate policy for and oversee property management issues in 12 Judiciary premises.
