



GOVERNMENT BUDGET 2019-2020

LAW SOCIETY SUBMISSION

1. The Law Society has produced a detailed submission to the HKSAR Government on the Budget 2018-2019. The submission was sent to the Government in February 2018. We have not received responses to our submission. The only matter that has been progressed appears to be the establishment of the Intellectual Property Specialist Court.
2. Of the other matters which we have raised, we are not advised as to whether the Government is considering those, and if so the status of its deliberations.
3. Without the benefit of responses from the Government, for the purpose of the Government Budget 2019-2020, **we repeat the following as set out in our last submission**, i.e.
 - (a) the commitment of resources for family services (para 5(a)-(c) of the submission) and matters relating to maintenance (para 6) and cross-border marriages (para 7);
 - (b) the urgent need to reform the insolvency law regime (para 12 – 18);
 - (c) the allocation of resources to the Inland Revenue Department, in view of the volume of revenue-related legislation introduced and to be introduced (para 19-21); and
 - (d) the need to upgrade technology for the courts and court users (para 23(a)).
4. For the purpose of the above repeats, we attach a copy of our previous submission (dated 13 February 2018).
5. We have the following additional comments and recommendations for the Government Budget 2019-2020.

Resources for the Judiciary

6. In our submission on the Government Budget last year, we have set out the concerns on pays and conditions for Judges and Judicial Officers (“JJOs”) (para 8 and 24). We recommended that the Standing Committee on Judicial Salaries and Conditions of Service (“Judicial Committee”) to have a thorough review on the conditions of service for JJOs (para 25).
7. In a recent press release we note the Judicial Committee has recommended the pay for JJOs for 2018-19 be increased by 4.69%. The pay adjustment will take retrospective effect from April 1, 2018¹. The Government was said to be satisfied that the Judicial Committee has taken a holistic view on the issue and therefore supported the recommendation.²
8. The proposed increase in the above was approved by the Finance Committee of the LegCo at its meeting of 14 December 2018³. The latest increase could be said to be better than the one in the previous year, but yet it is still not realistically attractive or competitive.
9. According to a LegCo Paper of 24 October 2018⁴, there were no increases in the judicial salaries in 2009-2010 and 2010-2011, whereas the Judicial Committee recommended pay increases in subsequent annual reviews.

Details are as follows (including the latest increase):

<u>Year</u>	<u>Adjustment rates</u>
2011-2012	+4.22%
2012-2013	+5.66%
2013-2014	+3.15%

¹ See the press release of 10 October 2018:
<https://www.info.gov.hk/gia/general/201810/10/P2018101000354.htm>

² See the LegCo Brief for AJLS Panel on “2018-19 Judicial Service Pay Adjustment” of October 2018 (para 23) (File Ref: AW-275-010-015-001):
<https://www.legco.gov.hk/yr18-19/english/panels/ajls/papers/ajls20181029-aw275010015001-e.pdf> ;
see also LegCo Paper for Finance Committee of November 2018
<https://www.legco.gov.hk/yr18-19/english/fc/fc/papers/f18-66e.pdf>

³ See <https://www.legco.gov.hk/yr18-19/english/fc/fc/results/fc20181214.htm> ; see also
<https://www.legco.gov.hk/yr18-19/chinese/fc/fc/results/v201812142.pdf>

⁴ AJLS Panel Paper (LC Paper No. CB(4)102/18-19(03)):
<https://www.legco.gov.hk/yr18-19/english/panels/ajls/papers/ajls20181029cb4-102-3-e.pdf>

2014-2015	+6.77%
2015-2016	+4.41%
2016-2017	+4.85%
2017-2018	+2.95%
2018-2019	+4.69%

10. The above increases are modest – in two periods (2009-2010 and 2010-2011), there were actually no increases in the judicial salaries.
11. When it comes to the calculation, mathematically, percentage increases would not be significant in dollars and cents when the starting bases are low. On the other hand, the *cumulative* effects with a low starting base over the years could produce only ever-disappointing adjustments.
12. In this connection:
 - (a) the Judicial Committee itself already acknowledged that “*as compared with that of Magistrates, the pay differential between judicial pay and legal sector earnings at the CFI level was significant and widening.*”⁵ (emphasis supplied);
 - (b) in a previous judicial remuneration review, the Judicial Committee noted “*there have been recruitment difficulties at the Court of First Instance (CFI). The number of eligible candidates suitable for appointment could not fill all the available vacancies.*” The recruitment difficulties at CFI level is said to be persistent. In the judicial remuneration review 2016, the Judicial Committee “*examined the findings of the 2015 Benchmark Study on the Earnings of Legal Practitioners in Hong Kong (2015 Benchmark Study) and noted a clear trend of widening differential between judicial pay and earnings of legal practitioners. In particular, for CFI Judges, the findings clearly indicated that judicial pay had been consistently lower than legal sector earnings over the years, and the pay lag had further widened in recent years.*” (emphasis supplied)⁶.

⁵ Para 11, AJLS Panel Paper (LC Paper No. CB(4)102/18-19(03)):
<https://www.legco.gov.hk/yr18-19/english/panels/ajls/papers/ajls20181029cb4-102-3-e.pdf>

⁶ Para 7, AJLS Panel Paper (File Ref: AW-275-010-015-001):
<https://www.legco.gov.hk/yr18-19/english/panels/ajls/papers/ajls20181029-aw275010015001-e.pdf>

13. There is no indication, anecdotally or otherwise, that recruitment difficulties as alluded to in the above have been alleviated⁷. To the contrary, the situation seems to be worsening. In the Report on Judicial Remuneration Review 2016, it was stated that the vacancy rate across all level of the judiciary (as of the time the report being published) was 24%.⁸ This is by any standard not low. In subsequent years, the vacancy rate continues to remain stubbornly high⁹. There have been recruitment attempts by the Judiciary, but we were given to understand these recruitment exercises did not receive encouraging responses at all.

In the meantime:

- (a) the system is still dogged by delays in getting hearing dates and for handing down judgments, notwithstanding the fact that judges have already been working long periods of time. We are aware that many judges write their judgments only at weekends and during the public and their own holidays;
- (b) there have been continual calls from the legal profession and the community for more family judges to expedite the hearing of matrimonial disputes. If these disputes could be brought for resolution at an earlier date, that might help prevent escalating of sentiments and avoid tragic cases;¹⁰
- (c) we anticipate growing jurisprudence in competition law and intellectual property law (following respectively the prosecution by the Competition Commission, and the setting up of the Intellectual Property Specialist List);

⁷ See AJLS Panel Paper (LC Paper No. CB(4)323/18-19(04)), where there is no mentioning of improvement to the recruitment:

<https://www.legco.gov.hk/yr18-19/english/panels/ajls/papers/ajls20181219cb4-323-4-e.pdf>

⁸ See para 4.12 (c) of the Report on Judicial Remuneration Review 2016 :

https://www.jssc.gov.hk/reports/en/jscs_16/jscs_16.pdf

⁹ See the LegCo Paper LC Paper No. CB(4)817/16-17(07) of April 2017, and the enclosure thereto:

<https://www.legco.gov.hk/yr16-17/english/panels/ajls/papers/ajls20170424cb4-817-7-e.pdf>

¹⁰ Various child abuses and e.g. the triple murder case in 2015 where a 10-year-old boy and his 8-year-old brother were killed by their father who then committed suicide. See SCMP news report at

<https://www.scmp.com/news/hong-kong/law-crime/article/1855699/school-mourns-hong-kong-boy-8-found-dead-flat-brother-and>; <https://www.scmp.com/news/hong-kong/law-crime/article/1855917/classmates-hong-kong-boy-8-killed-father-murder-suicide>

- (d) the Judiciary is facing challenges from the large volume of non-refoulement claims¹¹;
- (e) the cases that the Courts are handling are more complex and are more controversial¹²; and
- (f) the work environment of judges have become more challenging, as judges (in particular, those handling controversial cases) are subject to abusive criticism. The hostility against the Judiciary based on mis-information and inaccuracy could drive away potential applicants.
14. Remuneration package for judges is not the only factor to attract practitioners to join the Judiciary, but should be one of the significant considerations to help address recruitment difficulties.
15. The Judiciary in Australia and in the UK are facing similar recruitment difficulties for their judges. In Australia, we have been told that there are problems in recruiting sufficient judges in both the State and Federal jurisdictions, including the Family Court. The difference between what the top senior counsel are earning and the average salary (annual) of a Federal judge in Australia is actually widening. It is most undesirable if, because of this disparity and the resultant recruitment difficulties, judges of a lesser calibre will be recruited in the absence of better candidates.
16. In the UK, in a “Major Review of the Judicial Salary Structure”, a Review Body appointed by the Government in their report dated October 2018¹³ pointed out that, while there are factors other than pay which affects recruitment, the principal problem in recruiting judges is that the conditions of service for a judge has become less attractive to potential applicants. The Review Body is among other things proposing double-digit percentage increases on pays to attract talents.

¹¹ See the CJ's speech at Ceremonial Opening of the Legal Year 2019:
<https://www.info.gov.hk/gia/general/201901/14/P2019011400413.htm>

¹² Also see the CJ's speech at Ceremonial Opening of the Legal Year 2019
<https://www.info.gov.hk/gia/general/201901/14/P2019011400413.htm>

¹³ See
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/751903/Supp_to_the_SSRB_Fortieth_Annual_Report_2018_Major_Review_of_the_Judicial_Salary_Structure.pdf

17. The LegCo AJLS panel at a recent meeting discussed the adjustment to judicial service pay (see the LegCo paper LC Paper No. CB(4)102/18-19(03) of 24 October 2018¹⁴). From what were recorded, apparently all LegCo members were in favour for more realistic increases to the pays for JJOs. At the same time, suggestions were made to improve judicial pays. However, these suggestions were turned down, on unconvincing reasons.
18. The mechanism of determining the judicial pay adjustments is explained in the same LegCo Paper dated 24 October 2018 (LC Paper No. CB(4)102/18-19(03), para 2-6 thereof)¹⁵. In short, the mechanism followed a consultancy report prepared in 2003. In the course of the review of the report, the Chief Executive-in-Council in May 2008 approved a basket of 12 factors to be considered by Judicial Committee in judicial pay reviews. Since then, in a decade, the methodology on pay review has apparently not been revisited. In the meantime, there have been significant developments, including the latest upward adjustment in solicitors hourly rates which come into effect on 1 January 2018.
19. The Judicial Committee is tasked with the “*review of methodology and mechanism for the determination of judicial salary and other matters*”¹⁶. We are not aware the Judicial Committee has itself been engaged in any such review. **In the light of, among others, the recruitment difficulties for judges and judicial officers, it is imperative that the Judicial Committee should have a review of the mechanism or, preferably, engage an independent consultancy report (outside of the Judicial Committee) similar to that in 2003, to have an overhaul of the mechanism. The overhaul should address the recruitment difficulties and should commence as soon as possible; resources must be committed for this purpose.**
20. In making this suggestion, we feel obliged to point out that a strong Judiciary is fundamental to the maintenance of the rule of law for Hong Kong. Necessarily this must be underpinned by reasonable and competitive remuneration for JJOs which are to be reviewed with relevant updates. The Judiciary, the legal profession and the general public are entitled to unambiguous support from the Government on the provision of a budget necessary for the above purpose.

¹⁴ See <https://www.legco.gov.hk/yr18-19/english/panels/ajls/papers/ajls20181029cb4-102-3-e.pdf>

¹⁵ See <https://www.legco.gov.hk/yr18-19/english/panels/ajls/papers/ajls20181029cb4-102-3-e.pdf>

¹⁶ See para 1(b) of the terms of reference <https://www.jsscs.gov.hk/en/jscs/jscs.htm>

21. By way of further remark, we take the view that sufficient budget should also be provided to ensure:
- (a) suitably qualified assistants are employed to render legal and professional support to JJOs for their discharge of judicial duties, such include the Judicial Assistants Scheme and the Judicial Associates Scheme.¹⁷ **There should also be serious consideration that, with the necessary budget, the above professional support be extended to the CFI and the courts below;**
 - (b) **the statutory retirement ages for JJOs be extended as soon as possible.** The Law Society is in support of the above.

Other Policy Initiatives

22. The Property Committee of the Law Society is having discussions on matters relating to the Land Titles Ordinance, including the indemnity cap thereof (currently set at HK\$30 million). In order that the Land Titles Ordinance could be implemented it is proposed **to remove or raise the level of the said indemnity cap.** Furthermore, in anticipation of the litigation arising from the Land Titles Ordinance, or otherwise, the Government should take step to consider to **set up a specialist court at least at the level of Court of First Instance to handle land related issues.**
23. **We are in support of the continual efforts of the Government to promote Hong Kong as a disputes resolution hub and the allocation of budget for the promotion and the development of arbitration in Hong Kong.**
24. For mediation, the Government has hardly put in significant resources in the promotion of mediation in past decades. In the past, the Government claimed that due to the lack of empirical data etc, no allocation of resources would be possible. The development of mediation has relied almost entirely on various mediation stakeholders themselves, including the Law Society. Now that there are reports available on various mediation pilot schemes and empirical data on costs and time effectiveness of mediation (and such convincingly illustrate the positive effect of mediation on savings of judicial resources and improvements on social harmony), **the Government should be**

¹⁷ See AJLS Panel Paper (LC Paper No. CB(4)323/18-19(04) (ibid):
<https://www.legco.gov.hk/yr18-19/english/panels/ajls/papers/ajls20181219cb4-323-4-e.pdf>

more pro-active in allocating sensible and sufficient resources to promote and support the development of mediation in Hong Kong. One recent example is the West Kowloon Mediation Centre which is now operated by JMHO, which the Government prides itself to be the flagship project for mediation in Hong Kong. JMHO is now under financial pressure to operate and is actively seeking sponsorship. **The Government must realise that in order to commit to the healthy development of mediation, proper resources must be allocated.**

Improvements to the Legal Aid Regime

25. The Legal Aid Committee of the Law Society is reviewing the Legal Aid regime in Hong Kong, with a view to making recommendations to the Government on improvements to the Financial Eligibility Limits and on extension of the scope of the Supplementary Legal Aid Scheme. We will later send in a submission on the above.
26. As for the Government Budget 2019-2020, **we ask that there should be a careful review on the establishment and the strength of the Legal Aid Department** (i.e. the number of staff working at the department and the positions filled / vacancies at the department). This proposal for the budget of the department is different from the budget for legal aid costs, which we understand does not have a ceiling.
27. Additional manpower for the Legal Aid Department would help not only the general public with their applications, and the processing and the monitoring of their assigned cases, but also the legal profession with the administration of their assignments. Such would boost the support service to the aided persons and that, in turn, would help combat the problem of unethical touts.

**The Law Society of Hong Kong
22 January 2019**



**GOVERNMENT BUDGET 2018-19
LAW SOCIETY SUBMISSION**

SYNOPSIS

1. In respect of the Government Budget 2018-19, The Law Society of Hong Kong makes the following proposals.
2. The proposals below aim to further improve access to justice for Hong Kong in various areas, viz. family law, intellectual property, insolvency law and revenue law.
3. In the following paragraphs, we have identified the issues of concerns and set out our recommendations. Additionally, we consider that, with a huge financial surplus, the Administration should comfortably revisit the terms of appointment for judges and judicial officers. This would help attract and retain talents, thereby maintain a robust and strong Judiciary for Hong Kong.

RECOMMENDATIONS

FAMILY LAW

4. The recent spate of child abuse incidents (including the tragic death of the five-year old girl Chan Sui Lam) speaks volume of the problems faced by children of Hong Kong. These sad cases of child abuses demonstrate the problems of domestic violence, child neglects, as well as the lack of cohesive and effective legal and community resources to help children and families in need.

5. Attempts to address the above problems will require appropriate policies to be implemented and adequate resources to be made available. The Administration should consider allocation of resources to the following:
- (a) re-housing arrangements for separated families in public housing. This is relevant and important in response to the Children Proceedings (Parental Responsibility) Bill, the enactment of which is long overdue. Hong Kong is desperately in need of modernizing our child law in order to properly recognize the rights of a child and responsibility of parents, and changing outdated terminology and orders, to include, inter alia, introducing a range of new court orders (e.g. Child Arrangements Orders) to replace the existing custody and access orders;
 - (b) deployments of additional manpower to streamline and coordinate efforts, whether preventive or remedial, in combating child abuses (for example, for Multi-Disciplinary Case Conferences in child abuse cases);
 - (c) deployment of support services to separated families to facilitate contact with both parents, receipt of spousal or child maintenance, public education of children's rights and parental responsibility; and
 - (d) resources allocation for the Legal Aid Department (LAD) in its oversight of legal aid assignments for the purpose of the Domestic and Cohabitation Relationships Violence Ordinance (Cap 189) and related matters. It is important that after all, the Department should be more prepared to and be pro-active to process and to grant (if appropriate) emergency domestic violence injunctions.

On resources allocation to matrimonial cases by the LAD, we take note of a trend on decreasing departmental expenditures spent on matrimonial cases (as a share of the overall government budget) despite the yearly increase of divorce petitions. The following table is compiled from various annual reports of the LAD¹ showing the share of the expenditure of matrimonial cases in the departmental budgets in various years.

¹ See: http://www.lad.gov.hk/documents/annual_rpt_2013/eng/pdf_eng/2013_Eng.pdf
http://www.lad.gov.hk/documents/annual_rpt_2014/eng/pdf_eng/2014_Eng.pdf
http://www.lad.gov.hk/documents/annual_rpt_2015/eng/pdf_eng/2015_Eng.pdf

Table 1

Analysis of Expenditure for Civil Cases by Types of Cases

Years	2012-13	2013-14	2014-15	2015-16
Type of Cases: Matrimonial (expressed as % of the overall department budget)	21.2%	19.1%	16.5%	16.1%

On this point, we notice with concern that there has been no significant increase in the LAD budgets in the past few years. We have similarly compiled a table from the various annual reports of the LAD²:

Table 2

Expenditures of the LAD

Years	2012-13	2013-14	2014-15	2015-16
Total Expenditures (\$M)	771.0	841.5	849.1	860.5

We ask the Administration to take full note of the above trends and deploy resources accordingly.

6. Enforcement of matrimonial judgments and orders is another challenge for parties and practitioners. The Family Law Committee of the Law Society is now revisiting a proposal to set up a Maintenance Board for Hong Kong. We ask the Administration to take advance notice of the above proposal, and its financial implications. Resources will be required by the Administration to set up any organization to practically assist recipients in enforcing such orders.
7. We note enforcement of matrimonial orders often include a cross-border

² See the references in footnote 1 above

dimension. In this regard, we welcome the signing of the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil Matrimonial and Family Cases by the Courts of Mainland and of the HKSAR last year. As a result, we expect increases in applications for and the disposal of the reciprocal enforcement of judgments by the courts. The Administration should consider resources implications arising therefrom.

8. We also seek resources to improve the services of our family courts. Members of our Family Law Committee have advised that it is not uncommon for parties to wait months to obtain a time slot for a simple directions hearing, or to deal with urgent matters such as interim child arrangements or interim financial support. Such long period of waiting time creates additional burdens on the parties who are already emotionally vulnerable and are often in distress. The effect of such delays is intolerable when it comes to children's matters where the child's welfare deserves a prompt resolution. We need additional suitably experienced family judges to deal with the heavy caseload of our Family Court.
9. The family court services should at the same time be improved at the registry or the counter-levels. In this regard, the Family Law Committee is made aware of a worrying problem of non-professionals touting matrimonial cases at the reception areas of the Family Courts. These non-professionals in the counter area are offering to "help" unrepresented parties with their proceedings. They try to explain the legal procedures and help fill in forms. The touts are not legally trained and are not subject to any disciplinary codes. They offer their service (usually in the guise of a counselor or a consultancy firm) in return for a fee. This is unacceptable. Furthermore, when the court forms are incorrectly filled in or proper procedures are not followed, court hearings would need to be adjourned. More manpower should be devoted at the counters of family courts to combat this problem of unethical touting.
10. In respect of judiciary hierarchy, we ask the Administration to take note of the important, sensitive and ever increasing workload of the Family Court. This distinct area of law dealing with the most vulnerable members of our society, namely the children of Hong Kong, and litigating parties who are placed at what is often the most difficult time of their lives, requires specialist attention and calls for its own set of rules and procedures. The above calls for a serious consideration of the setting up of a unified / single Family Court in Hong Kong. We will later write to the Bureau and/or the Judiciary with

detailed proposal on the above. At this juncture of time, the Administration's attention should be drawn to this repeated request.

INTELLECTUAL PROPERTY

11. Our Intellectual Property Committee is considering a similar proposal to have an "IP list" or an "IP court" with "IP judges" who are familiar with the intellectual property law and practices. The IP list or IP Court is dedicated to the hearing of IP cases. We will later revert with a full submission on this intended proposal. At this moment, we ask the Administration to take due notice of the above and any resources and manpower implications possibly arising therefrom.

INSOLVENCY LAW

12. There is an urgent need to reform the insolvency law regime for Hong Kong. The reform is long overdue, notwithstanding requests repeated time and again from practitioners and the market. For one thing, the current regime could not meet the growing demands for debt restructuring and cross-border insolvency cases. It pales in comparison with Hong Kong's competitors in the Asian hub notably Singapore, who has decisively updated its insolvency law and capably marketed itself to the international community. Urgent updates to our regime are required.
13. As long ago as 1996 (i.e. 22 years ago) the Law Reform Commission (LRC) recommended in its Report on Corporate Rescue and Insolvent Trading the introduction of a corporate rescue procedure to provide, amongst other reforms, a provisional supervision procedure to provide a moratorium on legal action for companies facing financial difficulties³. As a major financial centre, it is an anomaly, and something of an embarrassment, that Hong Kong does not have these basic safeguards in place to meet any challenges of a

³ See <http://www.hkreform.gov.hk/en/docs/rrescue-e.pdf>

financial crisis⁴. According to the Secretary for Justice's Annual Report to the LegCo Panel on Administration of Justice and Legal Services meeting on 26 June 2017 on Implementation of the recommendations from LRC⁵, the target was to introduce the amendment bill to LegCo in 2018⁶. The Financial Services and the Treasury Bureau has already completed the consultation process as long ago as 2010. The legislative proposals for the purposes of preparing an amendment bill were formulated in 2014. A substantive part of the amendment was modelled on the earlier Companies (Corporate Rescue) Bill 2001, subject to suggested modifications, particularly as regards employees' claims in the context of provisional supervision. These reforms are desperately needed. We already have the full support of the Companies' Judge and, we trust, the rest of the Judiciary, for the above reform.

14. Apart from drawing up a statutory provisional supervision regime to function as a restructuring tool and the provision for automatic stay provisions within the scheme of arrangement regime, reforms must also embrace the enactment of a conventional cross-border insolvency provision (similar in nature to section 426 of the UK's Insolvency Act 1986). At the moment, insolvency law practitioners and the Companies Court have to resort to common law principles to overcome this problem. This certainly is unsatisfactory.
15. We ask that adequate resources be allocated to put the requisite reforms in place without further delay. The legislative amendments should be prioritized, in consultation with the views of the professionals⁷ and the market.
16. Another area which causes grave concerns to practitioners is the dire lack of judicial manpower hearing bankruptcy and insolvency law cases. Members of the Insolvency Law Committee of the Law Society find that they have to wait for some 3 to 4 months before they could have a hearing date of 1 day for their matters. The delays in the fixing of dates, coupled with time required for

⁴ It has been reported that HK's World Bank ranking has dropped because of the lack of progress in reform of insolvency law. See <http://www.scmp.com/news/hong-kong/economy/article/2117984/world-bank-ranks-hong-kong-no-5-list-easiest-places-world-do>

⁵ LC Paper No. CB(4)1255/16-17(05): <https://www.leqco.gov.hk/yr16-17/english/panels/ajls/papers/ajls20170626cb4-1255-5-e.pdf>

⁶ See item 44 of <https://www.leqco.gov.hk/yr16-17/english/panels/ajls/papers/ajls20170626cb4-1255-5-e.pdf>

⁷ See, e.g. a recent submission by the *Company and Insolvency Law Society* on "Urgent Reform to Hong Kong's Insolvency Law" in 2017

the delivery of judgments and in the approving of the release of trustee-in-bankruptcy, causes substantial injustice. By way of illustration, in some cases, the trustee-in-bankruptcy needed to wait for 6 to 9 months for approval or comment on their applications for release

17. The Insolvency Law Committee has been advised that the main cause of the delays is that the Judiciary has to deal with a very substantial number of files. The delays have been aggravated by the fact that some of the applications require clarifications. As a result, the Judiciary needs to laboriously send off a number of requisitions to parties to seek rectifications and clarifications.
18. There is a clear need to increase the number of judges hearing and handling insolvency and bankruptcy cases.

REVENUE LAW

19. We note the department budget and headcounts for the Inland Revenue Department (IRD) has remained stagnant for a number of years, despite a dramatic increase in the number of tax treaties and in the volume of new tax-related legislation. See for example the following chart which is taken from Chapter 8 of IRD's Annual Report 2016-17.



20. Among other things, the new transfer pricing legislation released at the end of 2017 will of itself dramatically increase the compliance burden for companies in Hong Kong. Additionally, the volume of new legislation plus treaty considerations, transfer pricing, common reporting standards, country-by-country reporting, small business tax rates and so on will mean increased complexity for the IRD. The department cannot adequately cope with these workloads on existing resources, without an unavoidable decrease in service levels.
21. In the light of the above, we recommend the Administration to allocate more and adequate resources to the IRD.

CONCLUSION

22. The Law Society asks the Administration to carefully consider the concerns raised in this submission.
23. Apart from the above-mentioned, we would like to draw the attention of the Administration to (1) the needs for upgrades on technology for the courts and for the court users; (2) the extremely heavy caseloads the Judiciary is having and (3) the complexity of the cases the judges are to dispose of. As for the technology upgrades which should embrace initiatives such as e-filing and e-payment and which calls for resources allocation, we may send in further submissions later.
24. As for the resources and manpower, we are aware of a recent news report that “Judges will get a pay rise of 2.95 per cent, the lowest in eight years, as Hong Kong’s judiciary seeks to bring salaries to competitive levels to tackle a manpower shortage that has left more than 20 per cent of posts on the bench vacant” (SCMP report dated 4 October 2017).
25. Although remuneration for judges by itself is not the main attraction for private practitioners to join the bench, we consider the widening gap in earnings between private practice and the bench could on occasions serve as a disincentive to aspiring practitioners. Furthermore and importantly, the issue is not and should not be merely a matter of headcounts; it is vital to attract and to retain bright, skilled and experienced judges and judicial officers.

When the Administration is having a huge finance surplus for the upcoming fiscal year, they should consider asking the Standing Committee on Judicial Salaries and Conditions of Service to have a thorough review on the conditions of service for judges, as well as the mechanism for the evaluation of their terms⁸. This review should be comprehensive, and should be *on top of* the annual adjustment exercise. In addition, there should also be a serious consideration to recruit more judicial assistants and officers to help with the caseloads of the Judiciary. These recruitments and deployments should be for different levels of courts.

The Law Society of Hong Kong

13 February 2018

⁸ See paragraph I(b) of the Terms of Reference of the Standing Committee on Judicial Salaries and Conditions of Service: <http://www.jsscs.gov.hk/en/jscs/jscs.htm#terms>

