

For discussion  
on 22 June 2015

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

**Reform of the current system to determine whether an offence is to  
be tried by judge and jury or by judge alone**

**Introduction**

At the meeting of the Legislative Council Panel on Administration of Justice and Legal Services (AJLS Panel) held on 23 July 2013, the Hon Dennis KWOK proposed to discuss the issue of “Reform of the current system to determine whether an offence is to be tried by judge and jury or by judge alone”. At the subsequent Panel meeting on 22 April 2014, the Department of Justice (“DoJ”) briefed members on the relevant background and the latest developments regarding the issue. Members agreed to further discuss the matter after the parties concerned have prepared detailed submissions on the subject. This paper sets out the information collated by the Administration regarding relevant issues raised at the Panel meeting on 22 April 2014.

**Issues concerned**

**(1) Whether there is a right to trial by jury**

2. At the meeting on 22 April 2014, the representative of the Bar Association suggested that there is a common law right to a trial by jury. (Para. 30 of the minutes of the meeting is relevant.)

3. Article 10 of the Hong Kong Bill of Rights guarantees the right to a fair and public hearing by an independent and impartial tribunal established by law in the determination of a criminal charge or a person’s rights and obligations in a suit at law. It does not confer the right to trial by jury in either civil or criminal proceedings, rather the touchstone is that all judicial proceedings, with or without a jury, must conform to the

guarantees of a fair trial.<sup>1</sup> Similarly, the European Court of Human Rights (ECtHR) has recognized that a State enjoys considerable freedom in the choice of the means calculated to ensure that its judicial system is in compliance with the requirements of the right to a fair trial. The Court's task is limited to considering whether the system adopted has led in a given case to results which are compatible with the European Convention on Human Rights (ECHR).<sup>2</sup>

4. As pointed out by the Administration in our submissions to the AJLS Panel in June 2010 and April 2014, the Hong Kong Court of Appeal held in *Chiang Lily v Secretary for Justice*, CACV 55/2009 (at para. 24) that there is no right to trial by jury in Hong Kong. It stated (at para. 42) that although there may be entrenched rights to a jury trial given to an accused in other jurisdictions such as Canada, the United Kingdom and the United States, there is no such absolute right in Hong Kong. The Court of Final Appeal also held in *Chiang Lily v Secretary for Justice* (2010) 13 HKCFAR 208 that “it is clear that there is no right to trial by jury in Hong Kong”.

5. It is also relevant to note that while the right to trial by jury is often regarded as central to the rights of defendants in criminal proceedings and has been described as a “constitutional right” in English law, the English courts have also held that it is not an abuse of the process for the prosecution to present a lesser summary charge appropriate to the nature of the offence when they could have charged an offence which would have carried a right to jury trial. This is so even where the prosecution make it clear that they are substituting a lesser charge because it carries no right to jury trial.<sup>3</sup>

6. It therefore remains the position of the DoJ that neither the Basic Law nor the Hong Kong Bill of Rights Ordinance confers on a defendant in criminal proceedings a right to trial by jury. That said, there is no question of any preference of the prosecution for trial by judge alone or otherwise. Indeed, as set out in the latest version of the Prosecution

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<sup>1</sup> *Wilson v Australia*, Human Rights Committee, Communication No. 1239/2004 (2004), para. 4.4; *Kavanagh v Ireland*, Human Rights Committee, Communication No. 819/1998 (2001), para. 10.1.

<sup>2</sup> *Taxquet v Belgium* (2012) 54 EHRR 26, paras. 83–84.

<sup>3</sup> See Clayton and Tomlinson, *The Law of Human Rights* (Oxford, 2<sup>nd</sup> edn, 2009), paras 11.262 - 11.264.

Code (para. 8.4 refers) as revised and updated in September 2013, the aim of the prosecutor is to select an available venue for trial that will enable the relevant court to deal most appropriately with the matter and impose an adequate sentence to address the criminality involved in the conduct. This is an objective assessment.

**(2) Recent European Court of Human Rights case on Article 7 of the European Convention on Human Rights**

7. At the AJLS Panel meeting on 22 April 2014, the representative of the Bar Association cited a decision of the ECtHR in support of his comment that a prosecutor making reference to the 2013 Prosecution Code would not be able to see how each factor should be weighed in favour of either a jury trial or a District Court trial.<sup>4</sup> It transpires that the case that he referred to is *Camilleri v Malta*, Application No. 42931/10, decided on 22 January 2013.

8. In gist, the applicant in that case was charged with possession of illegal drugs not intended for his exclusive use. The relevant domestic law (in Malta) provided two different ranges of sentence for that offence, namely four years to life imprisonment on conviction by the Criminal Court, or six months to ten years on conviction by the Court of Magistrates. Under domestic law, it was the public prosecutor who decided in which court the accused would be tried. The applicant was tried in the Criminal Court and sentenced to 15 years' imprisonment and a fine.

9. The applicant complained about the discretion of the public prosecutor to decide in which court an accused was to be tried. The ECtHR examined the complaint under Article 7 of the ECHR (which is similar to Article 12 of the Hong Kong Bill of Rights), which provides that :

“(1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the

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<sup>4</sup> Para. 31(b) of the minutes of the meeting is relevant.

one that was applicable at the time the criminal offence was committed.

- (2) This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.”

10. The ECtHR stated that “[t]he issue before the Court is whether the principle that only the law can define a crime and prescribe a penalty was observed. The Court must, in particular, ascertain whether in the present case the text of the law was sufficiently clear and satisfied the requirements of accessibility and foreseeability at the material time”. In this regard, the ECtHR found that “the law did not make it possible for the applicant to know which of the two punishment brackets would apply to him. As acknowledged by the Government, the applicant became aware of the punishment bracket applied to him only when he was charged, namely after the decision of the Attorney General determining the court where he was to be tried. ... The law did not provide for any guidance on what would amount to a more serious offence or a less serious one (based on enumerated factors and criteria). ... [T]here existed no guidelines which would aid the Attorney General in taking such a decision. Thus, the law did not determine with any degree of precision the circumstances in which a particular punishment bracket applied. ... The Attorney General had in effect an unfettered discretion to decide which minimum penalty would be applicable with respect to the same offence. The decision was inevitably subjective and left room for arbitrariness, particularly given the lack of procedural safeguards. ... A lesser sentence could not be imposed despite any concerns the judge might have had as to the use of the prosecutor’s discretion. In the light of the above considerations, the Court concludes that the relevant legal provision failed to satisfy the foreseeability requirement and provide effective safeguards against arbitrary punishment as provided in Article 7.”<sup>5</sup>

11. The aforesaid case relied on by the Bar’s representative may be distinguished from the issue of the authority of our prosecutions service

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<sup>5</sup> See paras. 39 to 44 of the judgment.

to determine the venue of trial on the following grounds :

- (a) Whereas the Maltese law fixed two punishment brackets for the same offence with different *minimum* penalties depending on which court the defendant is to be tried, the discretion as to the venue for trial exercisable by the prosecution in Hong Kong does not have the effect of determining the minimum penalty that would be applicable with respect to the same offence. The Court of First Instance will not be precluded, upon conviction, from imposing a level of sentence as low as the District Court would on an accused. Indeed, as observed by Wright J in *Chiang Lily*, HCAL 42/2008 (at para. 31), even where similar matters have been tried in the Court of First Instance the resulting sentences frequently fall within the jurisdiction of the District Court.
- (b) Chapter 8 of the Prosecution Code has already laid down clear guidelines for determining the venue for trial. These guidelines are well known and publicly available. The general case law on sentencing principles is well developed even when no tariff may have been set down for a particular offence by the appellate courts. Bearing in mind that a person may seek legal advice on the sentence likely to be imposed for a particular offence, it cannot be said that decisions as to venue for trial are made without guidance or are prone to give rise to arbitrariness.

**(3) Whether Article 86 of the Basic Law (BL 86)<sup>6</sup> prohibits the extension of jury trial to the District Court**

12. BL 86, which provides that the principle of trial by jury previously practised in Hong Kong shall be maintained, does not confer either expressly or by implication any right to jury trial. BL 86 by its terms does not have the effect of obliging the prosecution to decide whether an accused person facing a trial in the District Court should have the benefit of a jury trial.

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<sup>6</sup> Article 86 of the Basic Law provides that “[t]he principle of trial by jury previously practised in Hong Kong shall be maintained.”

13. At the meeting in April 2014, the issue was raised as to whether BL 86 would, by maintaining the principle of trial by jury previously practised in Hong Kong, have any effect of prohibiting any changes to be made to the system of trial involving a jury in the courts of the HKSAR. In this regard, reference may be made to BL 103 under which “Hong Kong’s previous system of recruitment, employment, assessment, discipline, training and management for the public service ... shall be maintained, except for any provisions for privileged treatment of foreign nationals”. In *Secretary for Justice v Lau Kwok Fai & Another* [2005] 3 HKLRD 88, the Court of Final Appeal (CFA) considered the phrase “shall be maintained” in the BL provision. The CFA held that the second sentence of BL 103 was designed to preserve the continuity of Hong Kong’s previous system of recruitment, employment, assessment, discipline, training and management for the public service. Preservation of that system does not entail preservation of all the elements of which the system consists. Some elements may change and be modified or replaced without affecting the continuity of the system as a whole<sup>7</sup>. The CFA expressly approved the interpretation of BL 103 in the Court of First Instance judgment, i.e. BL 103 cannot be interpreted in such a narrow way as to inhibit all introduction of new measures for the good governance of the public service and thereby for the good governance of Hong Kong, the public service being the constitutionally recognised servant of Hong Kong. The broad question is whether the system continues or whether it is so materially changed that it becomes another system.

14. In the light of the CFA’s decision in the *Lau Kwok Fai* case, it is reasonably arguable that the use of the phrase “shall be maintained” in BL 86 does not inhibit changes to the principle of trial by jury previously practised in Hong Kong provided that any such changes are not so material that it becomes another principle. However, this proposition does not amount to saying that there is any constitutional obligation under BL 86 for conducting a review of the principle of jury trial in the HKSAR. It remains the position of the Administration that any change to the prevailing trial by jury system, even if considered desirable and necessary, would warrant detailed and in-depth study.

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<sup>7</sup> See para. 65 of the CFA judgment.

**(4) Resource implications if the jury system is extended to the District Court**

15. At the AJLS Panel meeting in April 2014, the DoJ was requested to provide information on the estimated overall resource implications (e.g. cost and procedural implications) if jury trials were to be introduced in the District Court. For this, we have invited the input from the Judiciary Administration (JA) and a copy of an information paper that they have prepared on the matter is attached at **Annex**. We have also conducted a preliminary assessment of the implications of such a move (if indeed taken forward) on the other key players in the criminal justice system. The estimated implications are summarised in the table below.

	<b>Items</b>	<b>Estimated key costs</b>
<i>The Judiciary [based on JA's input attached at Annex]</i>		
(1)	Additional accommodation requirements	Construction of a new purpose-built court building with suitable and adequate facilities in support of jury trials at the District Court level
(2)	Increase in demand for jurors (about 3,150 on the basis that there will be an additional 450 jury trials and 7 jurors required for each trial)	Increase in allowances / expenses to jurors (about \$11.820M) <i>[taking into account JA's proposal to increase the daily rate of allowances to jurors from \$410 to \$725]</i> [There will also be an increase in - (a) summons to be issued to potential jurors to attend selection [by 447% (or 76,050)]; and (b) number of jurors to be empanelled [by 446% (or 3,150)]. The bulk of the relevant costs for these should be broadly covered under items (3) and (4) below]
(3)	Additional District Court judges (4) and supporting staff (35) <sup>8</sup>	Annual emolument of about \$16.719M <i>[based on NAMS value of the posts concerned]</i>

<sup>8</sup> This has not taken into account –

(1) the additional workload for the Registrar and Masters who have to deal with applications for exemption from juror service after summons are issued; and  
(2) the additional workload for the Magistrates' Courts arising from committal proceedings.  
(Para. 21 of JA's paper at Annex is relevant.)

	<b>Items</b>	<b>Estimated key costs</b>
(4)	Other related expenses	(a) \$400,000 for one heavy-duty letter folding machine plus annual maintenance cost of about \$40,000 (b) Addition postage fees of \$1.308M for issuing the additional summonses by registered mail
<i>The prosecutions</i>		
(1)	Increase in staff / briefing out costs arising from longer trials and the need for committal at the Magistrates' Court level	For counsel fee, about \$16.561M for trial and about \$11.040M for committal proceedings <sup>9</sup> . [The costs of supporting staff will also increase, but as the case preparation work is mainly case-based, the increase in workload for them would be relatively limited and hence not covered in this current calculation.]
(2)	Increase in court costs for acquitted cases arising from longer trials	The amount of court costs for cases at the District Court level varies from year to year depending on the number, complexity and actual outcome of the cases. Based solely on the anticipated increase in the length of trial at the District Court arising from the introduction of jury trial (increasing from an average of 3.5 days to an average of 5 days – i.e. for 1.5 days or by 43%), and taking into account the court cases in the past 5 years arising from adverse decisions at the District Court level, the increase in court costs could range from about \$1.92M to \$7.56M each year.

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<sup>9</sup> Our in-house counsel are already fully tied-up with their existing work and additional manpower is required for taking up the additional workload arising from the introduction of trial by jury in the District Court. For ease of calculation, it is assumed that all additional workload are taken up by fiat counsel. The amount for the trial is worked out by adopting the same basis as that in the Judiciary Administration's calculation (i.e. trials at District Court to lengthen by 1.5 days per case multiplied by the number of District Court cases handled each year (1,353 in 2013) times the standard rate for engagement of outside counsel at District Court level (\$8,160 / day). For committal proceedings, we assume that 1 day is required per case, and the costs are calculated based on the same formula.



	<b>Items</b>	<b>Estimated key costs</b>
<i>The defence</i>		
(1)	Increase in counsel fee (to be borne by the defence or Legal Aid Department, as the case may be) due to longer trials, and the need for committal at the Magistrates' Court level	Roughly the same as the prosecutions, assuming the same fee level as that of fiat counsel procured by the prosecutions at the District Court level at standard rate (i.e. about \$16.561M for counsel fee alone for trial, and about \$11.040M (assuming one extra day) for committal proceedings).

16. Beside the key direct, tangible costs so far identified and as set out above, we would also need to consider other relatively indirect (but nevertheless important) impacts arising from the proposal to introduce jury trials in the District Court. Based on our initial assessment, the following are relevant :

- (a) Indirect costs on self-employed jurors and on the employers of those jurors who are employed, consequential to their absence from work : apart from the time taken up by the jurors selected for the hearing of the cases, the time for attendance before the court by non-selected jurors for the empanelment process is also not insubstantial.
- (b) The skills required in handling jury trials (for the judges, the prosecutors as well as the defence counsel) are not exactly the same as those required for trial by judge alone. There may be a question (at least for the initial period after introduction of jury trials in the District Court, if taken forward) as to whether there are sufficient judges / prosecutors / defence counsel who have the necessary skills to handle such trials.
- (c) Naturally, trial by judge alone may be favoured by some defendants as the duration of the trial (and hence the corresponding legal costs) should be less substantial. If trial by jury is indeed introduced for the District Court level, there would be a legitimate question as to whether the defence should be given the option not to have a jury trial if the case stays at the District Court. This in turn will in effect be providing the defence for cases to be heard before the District Court a *de facto*

right of choosing the mode of trial. This will amount to a very fundamental change to the criminal justice system.

17. Based on the assessment above, it is apparent that the implications of the introduction of jury trials in the District Court are profound. This is so not only from the financial and operational perspectives. More importantly, the impact on the jurisprudential dimension over the whole criminal justice system cannot be lightly underestimated. Any serious examination of fundamental changes to the current system of trial by judge alone at the District Court level, which has generally worked well throughout the years since its introduction in the 1950's, should only be taken forward if there are strong merits for introduction of jury trials at that level of court. In the meantime, the DoJ has, based on the rubric of the existing well-tested system and calling on past experience, already introduced guidelines under the 2013 Prosecution Code which better articulate the prosecution policy in respect of the selection of venue of trial (as set out in AJLS Panel Paper discussed at the Panel meeting on 22 April 2014). This notwithstanding, we will maintain a dialogue with the legal profession with a view to seeking further improvements to the 2013 Prosecution Code to better address the remaining issues of concern from the legal profession to the extent necessary and practicable.

Department of Justice  
June 2015

**Estimated Resource Implications  
of the Proposal to Extend the Jury System to cover the  
Criminal Trials in the District Court**

**Purpose**

The purpose of this note is to set out the possible additional resources estimated to be required if the jury system is to be extended to cover criminal trials in the District Court.

**Present Position**

***(A) Operation of the Jury System in the High Court***

2. Under the existing system, a criminal case in the Court of First Instance (“CFI”) of the High Court is tried by a CFI Judge in the High Court sitting with a jury of seven, or when the Judge so orders, a jury of nine.

3. According to the current jury system, a resident of Hong Kong is eligible to serve as a juror if he/she:

- (a) has reached the age of 21 but is not yet 65;

- (b) is of a sound mind and has no disabilities such as hearing or visual impairments that might prevent him/her from serving as a juror;
- (c) is of good character; and
- (d) has sufficient knowledge of the language of the court proceedings concerned (Chinese or English as the case may be).

4. All persons eligible to become jurors will be included in a list compiled by the Registrar of the High Court with regular updates from time to time. At present, there are approximately 725,600 residents in Hong Kong included in the jurors' list.

5. As far as the actual operation is concerned, normally, a pool of potential jurors, selected on a random basis from the jurors' list by the computer system, will be summoned to attend before the court hearing criminal trials in the CFI, from which members of an empanelled jury will be drawn. Currently, 70 jury summonses will usually be issued each day for the criminal trials in the CFI.

6. A person who is selected and serves as a juror will be paid an allowance of \$410<sup>1</sup> in respect of each day during the whole or part of which he/she serves as a juror.

7. The following table shows for 2011 – 2013, (a) the number of criminal trials that were tried with jury in the CFI; (b) the number of potential jurors on the list who had been summoned for selection; and (c) the total number of empanelled jurors at the end.

<b>Year</b>	<b>(a) No. of criminal trials with jury</b>	<b>(b) No. of summonses issued for potential jurors to attend for selection</b>	<b>(c) No. of jurors empanelled<sup>2</sup></b>	<b>(d) No. of times of summonses issued, i.e. (b) ÷ (c)</b>	<b>(e) No. of summonses per jury trial, i.e. (b) ÷ (a)</b>
2011	112	16,983	784	22	152
2012	105	17,140	735	23	163
2013	86	16,939	602	28	197
Average per year	101	17,021	707	24	169

<sup>1</sup> The Judiciary Administration is proposing to increase the existing rate of allowances for jurors from \$410 a day or part of a day to \$725 a day or part of a day.

<sup>2</sup> Does not take into account the Coroner's Court in this paper, which provides for the empanelment of five jurors whenever a jury hearing is involved.

**(B) The Position in the District Court**

8. Criminal cases are tried before a District Judge sitting alone at the District Court. The numbers of criminal trials that had been conducted in the District Court in 2011 - 2013 are as follows:

<b>Year</b>	<b>No. of criminal trials</b>
2011	852
2012	784
2013	753
Average per year	796

9. On the basis of CFI's experience that an average of 56%<sup>3</sup> of the criminal trials would eventually proceed to be heard before a jury in 2011 - 2013, it is proposed to adopt similar percentage to the District Court for estimation purpose. Hence, the number of possible jury trials in the District Court will be about 446, say 450, a year (i.e. 796 criminal trials x 56%).

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<sup>3</sup> If the defendant pleads guilty to the offence, a jury is not required. The percentages of trials that eventually proceeded to be heard before a jury were 62%, 57% and 50% in 2011, 2012 and 2013 respectively.

## **Estimated Resource Implications Upon Extending the Jury System to the District Court**

10. Assuming that the proposal to extend the jury system to the District Court is adopted, they will then be tried before a District Judge sitting with a jury of seven in most cases. The resultant implications are set out in the ensuing paragraphs.

### ***(A) Additional Accommodation Requirements***

11. There would be far-reaching resources implications arising from the implementation of the proposal of introducing the jury system in the District Court. First and foremost is accommodation. It is essential for all the courtrooms conducting jury trials to be fitted out with a dedicated area for the jurors, and for separate passage ways and lifts to be provided for the jurors within the court building. Specifically:

- (a) There is a need to carve out an area to build a jury bench inside each of the courtrooms assigned for criminal hearings and this could not be done at the expense of other essential facilities in the courtroom; and

- (b) It is essential to provide the normal requirement for separate access for jurors (e.g. jury lifts, separate courtroom entrance to the jury bench, access to jury facilities in the restricted area, etc).

Hence, the courtrooms conducting jury trials are usually larger than those which are not used for jury trials, and special design layout needs to be accommodated within the court building.

12. In addition, in accordance with Section 22 of the Jury Ordinance, Cap 3, additional special facilities are required for jury trials and these include jury assembly room, jury waiting rooms, jury canteen, jury retiring/conference room and overnight accommodation facilities for jurors, etc. In summary, if jury trials are to be extended to the District Court, the accommodation requirements, not only in terms of space, but also in terms of design requirements, need to be met.

13. Apart from the direct impact on accommodation needs as identified above, it should be noted that extra space will also be needed for the additional judges and support staff required under the proposal (details given in paragraph 20 below).

14. Given the above requirements, it is estimated that the net additional space requirements arising from the proposal will



not be less than **3,500 square metres** (measured in net operational floor area (“NOFA”)<sup>4</sup>), i.e. around 30% of the existing NOFA of the District Court. These areas nevertheless have not taken into account those required for separate access for jury as mentioned in paragraph 11(b) above. It is also likely that further additional space may be needed to cater for the specific layout requirements.

15. In this regard, it should be pointed out that the courtrooms in the District Court currently housed in the Wanchai Law Courts Building are not built and equipped for jury trials, and that the layout of the whole building is not designed to support jury trials. In addition, the building is not in any way equipped with any of the additional facilities required for jury trials. At present, the Judiciary cannot see how sufficient accommodation with suitable layout could be provided within the existing Wanchai Law Courts Building to support the implementation of any proposal on extending jury trials to the District Court. It appears that if it is decided to extend jury trials to the District Court, a new purpose-built court building with

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<sup>4</sup> NOFA refers to the floor area actually allocated to the users of a building for carrying out the intended activities. Unlike the construction floor area which takes into account all areas within the building structure envelope, NOFA does not include areas for toilets, bathrooms and showers, lift lobbies, stair halls, public/shared corridors, stairwells, escalators and lift shafts, pipe/services ducts, refuse chutes and refuse rooms, balconies, verandas, open decks and flat roofs, car parking spaces, loading/unloading areas, mechanical plant rooms, etc.

adequate and suitable facilities in support of such trials will need to be provided.

***(B) Increased Demand for Jurors***

16. The number of members of the public needed to serve as jurors will significantly increase. For CFI, an average of 17,021 summonses were issued for 101 trials per year, i.e. an average of 169 summonses for each jury trial in 2011 - 2013. On the basis of the CFI's experience, it is estimated that this may correspondingly call for the issue of about **76,050** (i.e. 169 summonses x 450 trials) additional jury summonses. This would amount to an increase of 447% (i.e.  $76,050 \div 17,021$ ). The additional number of jurors to be empanelled as a result will be about **3,150** (i.e.  $450 \times 7$ ) given that it is a jury of seven in most cases. This would amount to an increase of 446% (i.e.  $3,150 \div 707$ ).

***(C) Additional Judges and Support Staff Required***

17. There would be immense manpower implications for both Judges and supporting staff. If jury system is introduced in the District Court, it is estimated that the trial will be lengthened by 1.5 days from an average of 3.5 days to 5 days for jury empanelling and other new processes in jury trial such as Pre-trial

Review hearing for sorting out documentary exhibits, legal argument (in the absence of jury), jury retiring for deliberation after summing-up by judge, etc. Assuming that the caseload remains constant and to maintain the present court waiting time, the number of criminal judges in the District Court will have to be increased by four from the present 17 to 21<sup>5</sup>.

18. Moreover, if the jury system is to be introduced in the District Court, the judge to support staff ratios now adopted in the High Court have to be applied in the District Court. These include:

- (a) One criminal judge is being supported by one judicial clerk;
- (b) One criminal judge has to be served by one Assistant Clerical Officer (“ACO”) who will be responsible for, among others, looking after the jury throughout the trial. The present ratio is one judge to 0.5 ACO in the District Court; and

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<sup>5</sup> Given that the total trial days will be lengthened by 675 days a year (i.e. 450 trials x 1.5 days) and the working days available per annum for a District Judge is 203.5 working days (i.e. 365 days – 17 days’ public holidays – 52 Sundays – 52 Saturdays – 40.5 days’ leave), the minimum number of judges required is estimated to be 3.32 (i.e. 675 days ÷ 203.5 days). But it is impossible to list hearing for a District Judge on each and every working day. Hence, a minimum number of four additional District Judges will be required.

- (c) One criminal judge has to be supported by 0.5 Office Assistant (“OA”) who will be required to make copies of all documentary exhibits for the jurors. The present ratio is one judge to 0.25 OA in the District Court.

Applying the above ratios, four additional judicial clerks, 13 additional ACOs and seven additional OAs will be required in the District Court.

19. At present, there are one Senior Clerical Officer (“SCO”) who serves as Jury Clerk, one ACO, one Clerical Assistant (“CA”) and one OA in the Jury Clerk’s Office of the High Court. They are responsible for compiling/updating the jurors’ list (which takes up about 40% of their manpower resources) and handling juror summonses and providing relevant jury empanelling services (these take about 60% of their manpower resources). Given that the number of jury trials in the District Court will amount to 450 a year (i.e. around 4.5 times that in the High Court) and the number of summonses issued in the District Court will amount to 76,050 a year (also 4.5 times that in the High Court) but there is no need to compile/update a separate jurors’ list in the District Court, it is considered that one SCO who will serve as Jury Clerk, one Clerical Officer (“CO”), three ACOs, three CAs and three OAs (i.e. a total of 11 support

staff) will be required in the District Court for providing jury supporting services.

20. To sum up, the following additional posts and notional annual salary cost at mid-point (“NAMS”) will be needed for coping with the additional workload arising from the proposal, if implemented, to extend the jury system to cover the District Court:

<b>Post</b>	<b>Number</b>	<b>NAMS (\$)</b>
Judge of the District Court	4	2,138,400 x 4 = 8,553,600
JC	4	355,800 x 4 = 1,423,200
SCO	1	494,400
CO	1	373,440
ACO	16	232,920 x 16 = 3,726,720
CA	3	181,740 x 3 = 545,220
OA	10	160,200 x 10 = 1,602,000
<b>Total</b>	<b>39</b>	<b>16,718,580</b>

21. The above has not taken into account the following:

- (a) the additional workload for the Registrar and Masters who have to deal with the applications for exemption from juror service after summonses are issued; and
- (b) the additional workload for the Magistrates' Courts arising from committal proceedings. At present, committal proceedings are not required for the cases to be transferred to the District Court. If jury system is to be introduced at the District Court, as in the case of the High Court, such cases will have to be initiated in the form of committal proceedings at the Magistrates' Courts (which will also involve amendments to the relevant legislation concerned). This will add more work at the Magistrates' Courts' level and have manpower implications on both the judicial officers and the supporting staff.

***(D) Allowances and Expenses for Jurors***

22. If the jury system is extended to the District Court, the number of members of the public needed to serve as jurors in the High Court and the District Court will significantly increase from about 707 by about 3,150 to about 3,857, say 3,860, a year.

23. In 2013-14, the actual expenses for jurors in the High Court are as follows, which include the allowances to jurors as mentioned in paragraph 6 above, the refreshment expenses for jurors and the overtime allowance for court support staff who are required to accompany the jurors after office hours until they reach their verdict:

<b>Allowances/Expenses to Jurors</b>	<b>Amount (\$)</b>
(i) Allowances to Jurors	2,384,490
(ii) Refreshment for Jurors	82,000
(iii) Overtime Allowance for Court Staff	8,000
<b>Total</b>	<b>2,474,490</b>

24. The estimated allowances and expenses per annum for the jurors in the District Court, by using the existing rate of \$410 for jurors' allowances, will be as follows:

Scenario 1: Using existing rate of \$410

<b>Allowances/Expenses to Jurors</b>	<b>Amount (\$)</b>
(i) Allowances to Jurors	6,457,500 (i.e. \$410 per day/part of a day x 7 jurors x 450 trials x 5 <sup>6</sup> days)
(ii) Refreshment for Jurors	365,347 (i.e. \$82,000 ÷ 101 trials x 450 trials)
(iii) Overtime Allowance for Court Staff	35,644 (i.e. \$8,000 ÷ 101 trials x 450 trials)
<b>Total</b>	<b>6,858,491</b>

25. The Judiciary Administration is proposing to increase the existing rate of allowances for jurors from \$410 a day or part of a day to \$725 a day or part of a day. If using this proposed revised rate, the estimated allowances and expenses per annum for the jurors in the District Court will be as follows:

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<sup>6</sup> Assuming 4.5 days out of 5 days' trial will involve jurors but jurors will be paid 5 day/part of a day's allowances



Scenario 2: Using proposed revised rate of \$725

<b>Allowances/Expenses to Jurors</b>	<b>Amount (\$)</b>
(i) Allowances to Jurors	11,418,750 (i.e. \$725 per day/part of a day x 7 jurors x 450 trials x 5 days)
(ii) Refreshment for Jurors	365,347 (i.e. \$82,000 ÷ 101 trials x 450 trials)
(iii) Overtime Allowance for Court Staff	35,644 (i.e. \$8,000 ÷ 101 trials x 450 trials)
<b>Total</b>	<b>11,819,741</b>

***(E) Other Related Expenses***

26. Furthermore, a heavy duty letter folding machine, which costs around \$400,000, will need to be procured for the issue of summonses. Its maintenance fee will be around \$40,000 a year.

27. All summonses are sent out by registered post. The current postal fee is \$17.2 (\$1.7 +\$15.5) for each registered post. For sending the 76,050 summonses by registered post, it will cost \$1,308,060, say \$1,308,100, a year.

28. In summary, the one-off cost will be **\$400,000** while the maintenance fee for folding machine and the postal charge for summonses will amount to **\$1,348,100 a year**.

### **Other Considerations**

29. In view of the large number of additional summonses that have to be issued in the District Court, i.e. 4.5 times more than the present level, consideration may have to be given as to whether the pool of potential jurors has to be expanded. Legislative amendments are also necessary for the introduction of jury trials in the District Court.

### **Conclusion**

30. While a broad-brush approach has been adopted in the analysis in paragraphs 11 to 28 above and the list is not exhaustive, the figures therein provide an initial indication that the resource implications of extending jury trials to the District Court will be extremely substantial and far-reaching. It should

also be noted that the estimation has not taken into account the indirect cost on self-employed jurors and on the employers of those who are employed, as a result of their absence from work.

Judiciary Administration

June 2015