

LEGISLATIVE COUNCIL BRIEF

2011-12 JUDICIAL SERVICE PAY ADJUSTMENT

INTRODUCTION

At the meeting of the Executive Council on 20 September 2011, the Council ADVISED and the Chief Executive ORDERED that the pay for judges and judicial officers¹ (JJOs) for 2011-12 should be increased by **4.22%** with effect from 1 April 2011.

JUSTIFICATIONS

Deliberations of the Judicial Committee

2. Judicial remuneration is determined under a mechanism which is separate from that of the civil service. Specifically, judicial remuneration is determined by the Chief Executive-in-Council (CE-in-Council) after considering the recommendations of the independent Standing Committee on Judicial Salaries and Conditions of Service (Judicial Committee)². For the 2011 judicial remuneration review (JRR), the Judicial Committee submitted its report to the Chief Executive on 30 June 2011, recommending a 4.22% increase in the pay for JJOs for 2011-12. In coming up with this recommendation, the Judicial Committee has taken into account the basket of factors as approved by the CE-in-Council in May 2008, the principle of judicial independence and the position of the Judiciary. A copy of the report is at **Annex A**. Key deliberations of the Judicial Committee and the Administration's assessment are summarized in the ensuing paragraphs.

A

¹ "Judges" comprise Judges of the Court of Final Appeal, Justices of Appeal of the Court of Appeal, Judges of the Court of First Instance and District Judges. "Judicial officers" are those serving in Magistrates' Courts and Tribunals, as well as registrars and masters of the High Court and District Court.

² The Judicial Committee is chaired by Mr Bernard Chan. Other members are Professor Chan Yuk-shee, Mr C K Chow, Mr Lester Huang, Ms Jacqueline Pamela Leong, Mr Brian Li and Mrs Ayesha Macpherson Lau.

(a) Basket of factors

(i) Responsibility, working conditions and workload of judges vis-à-vis those of lawyers in private practice

3. The Judicial Committee maintains the view that the nature of judicial work is unique and that direct comparison between legal practitioners in the private sector and JJOs is inappropriate. The Judicial Committee also notes that there has not been any major change in the responsibility and working conditions of JJOs. The total caseload of the Judiciary as a whole has also remained steady in the past few years. We have no particular comment on the observations of the Judicial Committee in this regard.

(ii) Recruitment and retention in the Judiciary

4. The Judicial Committee notes that the Judiciary has not encountered any undue recruitment and retention problem in recent years. Of note is that the open recruitment exercises in 2010-11 resulted in a total of 36 judicial appointments being made, comprising 11 Court of First Instance Judges, 12 District Judges and 13 Permanent Magistrates. We consider that the success of the recruitment exercises is an indication that the total package for JJOs (comprising not only the remuneration package, but also other factors such as the high esteem of the Judiciary, individual's commitment to serve the public and the opportunity to move to the next level of one's career, etc.) remains attractive to outside talents who wish to join the bench.

(iii) Retirement age and retirement benefits of JJOs

5. JJOs enjoy security of tenure³ until they reach retirement age. The statutory normal retirement age for JJOs is 60 or 65, depending on the level of the court. Further extension of service may be approved up to the age of 70 or 71, depending on the level of the court and subject to

³ Article 89 of the Basic Law stipulates that a judge of a court of the HKSAR may only be removed for inability to discharge his or her duties, or for misbehaviour, by the Chief Executive on the recommendation of a tribunal appointed by the Chief Justice of the Court of Final Appeal and consisting of not fewer than three local judges. The Chief Justice may be investigated only for inability to discharge his or her duties, or for misbehaviour, by a tribunal appointed by the Chief Executive and consisting of not fewer than five local judges and may be removed by the Chief Executive on the recommendation of the tribunal and in accordance with the procedures prescribed in the Basic Law. In addition, Article 90 of the Basic Law stipulates that in the case of the removal of Judges of the Court of Final Appeal and the Chief Judge of the High Court, the Chief Executive shall obtain the endorsement of the Legislative Council.

consideration on a case-by-case basis. The Judicial Committee notes that retirement is the main source of wastage among JJOs. The anticipated retirement will be 12 (or 7.7% of current strength) in 2011-12, going down to 4 (or 2.6% of current strength) in 2012-13, and increasing to 14 (or 9% of current strength) in 2013-14. Arising from the retirement of JJOs, among others, the Judiciary plans to launch another round of open recruitment exercises in 2011-12. For retirement benefits, JJOs are entitled to pension or provident fund according to their terms of appointment.

(iv) Unique features of the judicial service

(v) Prohibition against return to private practice in Hong Kong

6. While the Judiciary is unique in many aspects, a prominent feature is the prohibition against return to private practice in Hong Kong. Specifically, the Chief Justice and Judges of the Court of Final Appeal are prohibited by statute from practising as barristers or solicitors in Hong Kong while holding office or at any time after ceasing to hold office. Judges at the District Court level and above must give an undertaking not to practise in future as barristers or solicitors in Hong Kong without the permission of the Chief Executive.

(vi) Benefits and allowances enjoyed by JJOs

7. Depending on their rank, length of service and terms of appointment, JJOs enjoy a range of fringe benefits including leave, housing benefits, medical and dental benefits, education allowances, school passage allowance, leave passage allowance, etc. The Judicial Committee notes that there has been no change to the package of benefits and allowances for JJOs in the past year, except that the rates of Leave Passage Allowance⁴, Home Financing Allowance and Non-accountable Cash Allowance⁵ were revised upwards following similar revisions in the civil service. Since there is no new or major change in the package of benefits and allowances enjoyed by JJOs, we agree that this factor should not affect the overall consideration of judicial pay for 2011-12.

⁴ Leave Passage Allowance is an allowance to reimburse eligible officers (and their eligible family members, where applicable) their travel-related expenses. The rates for JJOs were adjusted upwards by 12.7% with effect from 1 April 2011.

⁵ Home Financing Allowance and Non-accountable Cash Allowance are two different types of housing allowance offered to JJOs. The rates for JJOs were both adjusted upwards by 0.5% with effect from 1 April 2011.

- (vii) *Cost of living adjustment*
- (viii) *General economic situation in Hong Kong*
- (ix) *Budgetary position of the Government*

8. The Judicial Committee takes note of the information provided by the Administration in May and June 2011 respectively on the cost of living adjustment, general economic situation in Hong Kong and the Government's fiscal position. In this connection, the economy was forecast to grow by 5-6% in 2011. The seasonally adjusted unemployment rate was 3.5% in March to May 2011, down from 4.6% in the same period in 2010. The rate of the underlying consumer price inflation (i.e. excluding one-off relief measures introduced by the Government) in 2011 was forecast to be 5.5% according to the May round of forecast. The consolidated surplus of the Government for 2010-11 was \$75.1 billion and the fiscal reserves stood at \$595.4 billion at end March 2011. The 2011-12 budget forecast a consolidated deficit of \$8.5 billion, equivalent to 0.5% of our Gross Domestic Product (GDP).

9. Since the submission of the Judicial Committee's report in June 2011, the official GDP forecast and the underlying consumer price inflation forecast for 2011 remained unchanged. The seasonally adjusted unemployment rate was 3.4% in May to July 2011.

(x) *Overseas remuneration arrangements*

10. The Judicial Committee notes that there is no change to the judicial remuneration system of six overseas common law jurisdictions (namely, Australia, Canada, New Zealand, Singapore, the United Kingdom and the United States) in the past year. The six jurisdictions have taken different, but generally prudent, actions in their latest annual pay reviews for judges. Such actions include pay freeze, deferral of pay adjustment, or a pay rise at an increased rate. A key consideration behind their actions appeared to be their prevailing state of economy.

11. While the Judiciary has not recruited from overseas in recent years, we consider that overseas remuneration arrangements remain relevant in considering judicial pay since they provide good reference of the international norm of how judicial pay is handled. We note the research outcome of the Judicial Committee on overseas remuneration arrangements and have no particular comment.

(xi) Public sector pay as a reference

12. The judicial pay adjustment mechanism is now delinked from that of the civil service and public sector pay is only one of the factors for consideration under the balanced approach in determining judicial pay. In the 2011 JRR, the Judicial Committee has taken note of the decision of the CE-in-Council in June 2011 and the approval of the Finance Committee of the Legislative Council (LegCo) on 8 July 2011 to increase the pay for civil servants in the directorate and upper salary band by 7.24% with effect from 1 April 2011. The Judicial Committee also notes that the pay for civil servants in the Upper Band and above was reduced by 5.38% in 2009-10 and increased by 1.6% in 2010-11. During the same periods, judicial pay remained unchanged following CE-in-Council's acceptance of the Judicial Committees' recommendations in the 2009 and 2010 JRRs.

13. In taking public sector pay as a reference, the Judicial Committee considers that the arrangement in 2007 and 2008 (where judicial pay at comparable level was frozen until civil service pay caught up with and exceeded judicial pay, in which case, judicial pay was increased to the extent of the excess), as well as the experience in the JRR exercises conducted in 2009 and 2010, to be good arrangements for reference in future reviews of judicial remuneration.

14. We agree with the Judicial Committee that public sector pay is just one of the factors for consideration under the balanced approach. We also agree with the Judicial Committee's view that the experience in the past judicial review exercises should be good reference for future reviews.

(xii) Private sector pay levels and trends

15. In September 2010, the Judicial Committee commissioned a consultant to conduct the 2010 Benchmark Study on Earnings of Legal Practitioners in Hong Kong. The objective of the Study is to check whether judicial pay was kept broadly in line with the movements of legal sector earnings (i.e. whether the pay relativities were widening or narrowing) over time. The 2010 Study concludes that no clear trends in differentials between judicial pay and legal sector earnings could be established. The Study also reaffirms that remuneration is not an important factor in considering judicial appointment. The Judicial

Committee therefore concludes that there is no strong argument to propose adjustments to judicial pay based on the findings of the 2010 Study. A copy of the executive summary of the consultancy report is at

B Annex B.

16. In considering private sector pay levels and trends, the Judicial Committee continues to make reference to the Pay Trend Indicators (PTIs) from the annual Pay Trend Survey (PTS)⁶, which reflects the overall private sector pay trend. Since the gross PTIs include merit and in-scale increment in the private sector, the Judicial Committee considers it appropriate to subtract the cost of increments for JJOs from the gross PTI for the upper salary band to arrive at a private sector pay trend indicator suitable for comparison with judicial pay. Accordingly, the private sector pay trend indicator as adjusted by the cost of increment for JJOs are -5.03% in 2009, +1.86% in 2010 and +7.74% in 2011. Furthermore, since judicial pay was frozen in 2009 and 2010 (i.e. it has not been adjusted since 2008 in line with movements in the private sector pay trend), the Judicial Committee considers it appropriate to take into account the cumulative effect of the private sector pay trends in 2009, 2010 and 2011 in succession. Assuming private sector pay was 100 in 2008, the cumulative effect of the private sector pay trend for JRR purpose in 2009, 2010 and 2011 would mean that private sector pay has increased to 104.22⁷, i.e. exceeding the 2008 pay by +4.22%. We agree with the assessment of the Judicial Committee and consider the calculation method adopted by the Judicial Committee to be in order.

(b) Judicial independence

17. Apart from considering the basket of factors as summarised above, the Judicial Committee continues to premise its deliberations on the need to uphold the principle of judicial independence. In particular, the Judicial Committee considers it essential to ensure that judicial remuneration is sufficient to attract and retain talents in the Judiciary, in

⁶ PTS measures the year-on-year average pay movements of full-time employees in the private sector over a 12-month period from 2 April of the previous year to 1 April of the current year. PTIs derived from the PTS are divided into three salary bands, reflecting the average pay movements of private sector employees in three salary ranges. Using the 2011 PTS as an example, the ranges of the three salary bands are as follows -

- (i) Lower Band covering employees in the salary range below \$15,875 per month;
- (ii) Middle Band covering employees in the salary range of \$15,875 to \$48,670 per month; and
- (iii) Upper Band covering employees in the salary range of \$48,671 to \$96,885 per month (the range was \$48,401 to \$95,360 in the 2010 PTS, and \$48,401 to \$97,545 in the 2009 PTS).

⁷ $100 \times (100 - 5.03)\% \times (100 + 1.86)\% \times (100 + 7.74)\% = 104.22$

order to maintain an independent and effective judicial system which upholds the rule of law and commands confidence within and outside Hong Kong.

(c) Position of the Judiciary

18. The Judiciary considers that any adjustment accumulated since 2009 (as indicated from the gross PTIs less the cost of increment for JJOs) that were not applied to the judicial service should be taken into account in subsequent judicial pay adjustment exercises. Taking into account such cumulative effect in 2009, 2010 and 2011, the Judiciary seeks a pay increase of 4.23% for the judicial service in 2011-12. Nevertheless, the Judiciary indicates that they would leave it to the Administration to decide on whether the judicial pay increase should be 4.23% or 4.22% (as proposed by the Judicial Committee).

Recommendation of the Judicial Committee

19. Having balanced the above considerations, the Judicial Committee recommends that judicial pay for 2011-12 should be increased by 4.22%.

Views of the Administration

20. We consider that the Judicial Committee has thoroughly examined the basket of factors as approved by the CE-in-Council in May 2008. It has also taken into account the principle of judicial independence and the position of the Judiciary in its deliberations.

21. As regards the 0.01% difference between the pay increase sought by the Judiciary and that recommended by the Judicial Committee, we note that both the Judiciary and the Judicial Committee agree in principle that the cumulative effect of the private sector pay trends in 2009, 2010 and 2011 should be taken into account in determining judicial pay adjustment for 2011-12; and have based their respective calculations on the same set of data. The difference in the proposed pay increase is due to the fact that the Judiciary has worked out the cumulative percentage of pay increase on a year-by-year basis : the product of the multiplication for a year is rounded up to two places after the decimal

point, and the rounded up figure then forms the basis of the multiplication in the following year⁸. On the other hand, the calculation of the Judicial Committee is carried out in succession with no rounding up until the final product is obtained.

22. We consider the calculation method adopted by the Judicial Committee to be more appropriate. This is because the interim products obtained by the Judiciary in its year-by-year calculation should only be used as reference points rather than base points for calculation, since no actual pay adjustment was made in the interim years of 2009 and 2010. Since no pay adjustment has been made based on these interim values, the base value for calculation of pay adjustment in a year where pay increase is to be made should be the value of the last pay adjustment (in this case, the value in 2008). The calculation method adopted by the Judicial Committee, which uses the value in 2008 as the base value and takes into account the cumulative effect of the private sector pay trends in 2009, 2010 and 2011 in succession, would be the appropriate calculation method in working out the pay increase for 2011-12. Indeed, the difference in dollar terms between the two calculation methods is negligible.

23. We are satisfied that the Judicial Committee has taken a holistic view on the issue before arriving at its recommendation. We therefore support its recommendation that judicial pay for 2011-12 should be increased by 4.22%.

IMPLICATIONS OF THE PROPOSAL

24. The recommendation is in conformity with the Basic Law, including the provisions concerning human rights, and has no staffing, economic, productivity, environmental or sustainability implications.

25. The estimated financial implication for 2011-12 arising from the 4.22% increase in the pay for JJOs is \$ 11.902 million. The established practice is that the additional resources required for coping with the pay rise in a particular year will first be absorbed by the Judiciary. Additional provision, if required, will be sought according to established

⁸ The Judiciary has worked out the cumulative effect of the private sector pay trends on a year-by-year basis as follows:

Year 1: $100 \times (100 - 5.03)\% = 94.97$

Year 2: $94.97 \times (100 + 1.86)\% = 96.736$ (Rounded up to 96.74)

Year 3: $96.74 \times (100 + 7.74)\% = 104.227$ (Rounded up to 104.23)

mechanisms.

PUBLIC CONSULTATION

26. The Judicial Committee has invited both the Judiciary and the Administration to provide information relating to the basket of factors for its consideration. After the Judicial Committee had submitted its recommendation to the Chief Executive, we have invited the Judiciary to give its response to the Judicial Committee's recommendation. No public consultation outside the Judiciary was conducted.

PUBLICITY

27. We have informed the Judiciary and the Judicial Committee of the Administration's decision on the 2011-12 judicial service pay adjustment. A press release will be issued and a spokesman will be made available to respond to enquiries. We will also brief the LegCo Panel on Administration of Justice and Legal Services before we proceed to seek approval from the LegCo Finance Committee on the proposed pay adjustment. The Judicial Committee will separately release its report to the public.

BACKGROUND

28. Having considered the recommendations of the Judicial Committee, the CE-in-Council decided in May 2008 that a new mechanism, separate from that of the civil service, should be put in place to determine judicial remuneration. Specifically, the CE-in-Council agreed that judicial remuneration should be determined by the Executive after considering the recommendations of the independent Judicial Committee. The new mechanism comprises a benchmark study to be conducted on a regular basis and an annual review.

29. With respect to the benchmark study, the Judicial Committee has decided that this should in principle be conducted every five years with its frequency subject to periodic review. The most recent benchmark study was conducted in 2010. In advising on judicial remuneration, the Judicial Committee adopts a balanced approach, taking into account a

basket of factors, including –

- (a) responsibility, working conditions and workload of judges vis-à-vis those of lawyers in private practice;
- (b) recruitment and retention in the Judiciary;
- (c) unique features of the judicial service, such as the security of tenure, the prestigious status and high esteem of the judicial offices;
- (d) retirement age and retirement benefits of JJOs;
- (e) prohibition against return to private practice in Hong Kong;
- (f) benefits and allowances enjoyed by JJOs;
- (g) cost of living adjustment;
- (h) general economic situation in Hong Kong;
- (i) budgetary situation of the Government;
- (j) overseas remuneration arrangements;
- (k) private sector pay levels and trends; and
- (l) public sector pay as a reference.

ENQUIRIES

30. Enquiries on this brief should be addressed to Mr Howard Lee, Assistant Director of Administration, at 2810 3946.

Administration Wing
Chief Secretary for Administration's Office
20 September 2011

STANDING COMMITTEE ON JUDICIAL SALARIES AND CONDITIONS OF SERVICE

Report on Judicial Remuneration Review 2011

June 2011

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Chapter 1

Introduction

1.1 This Report sets out the findings and recommendation of the Standing Committee on Judicial Salaries and Conditions of Service (the Judicial Committee) in the Judicial Remuneration Review 2011. The Review was conducted in accordance with the mechanism for the determination of judicial remuneration as approved by the Chief Executive-in-Council in 2008.

The Judicial Committee

1.2 The Judicial Committee is an independent advisory body appointed by the Chief Executive to advise and make recommendations on matters concerning the salary and conditions of service of Judges and Judicial Officers (JJOs)¹. It was first established in December 1987 in recognition of the independent status of the Judiciary and the need for the pay and conditions of service of JJOs to be dealt with separately from those of the civil service.

1.3 In May 2008, the Chief Executive-in-Council accepted all the major recommendations of the Judicial Committee's Report on the Study on the Appropriate Institutional Structure, Mechanism and Methodology for the Determination of Judicial Remuneration in Hong Kong in 2005² (the 2005 Report). With the approval of the Chief Executive, the Judicial Committee's terms of reference and membership

¹ Judges refer to officers in the grades of Chief Justice, Court of Final Appeal; Judge, Court of Final Appeal; Judge of the High Court; and Judge of the District Court. Judicial Officers refer to officers in the grades of Registrar, High Court; Registrar, District Court; Member, Lands Tribunal; Magistrate; Presiding Officer, Labour Tribunal; Adjudicator, Small Claims Tribunal; Coroner; and Special Magistrate.

² The 2005 Report can be found in the website http://www.jsscs.gov.hk/en/publications/reports_jscs.htm.

were expanded. Its terms of reference and membership are at Appendix A and Appendix B respectively.

Judicial Independence

1.4 The Judicial Committee continues to premise its deliberations on the need to uphold the principle of judicial independence. It enables the court to adjudicate cases in a fair and impartial manner by ascertaining the facts objectively and applying the law properly. In discharging its functions, the Committee has to ensure that judicial remuneration is sufficient to attract and retain talent in the Judiciary, in order to maintain an independent and effective judicial system which upholds the rule of law and commands confidence within and outside Hong Kong. The need to maintain an independent Judiciary of the highest integrity is of utmost importance.

Judicial Remuneration

1.5 In recognition of the independence and uniqueness of the Judiciary, JJOs are remunerated according to an independent salary scale known as the Judicial Service Pay Scale (JSPS) (Appendix C). Judicial salaries are subject to regular reviews that are distinct from that carried out in respect of the civil service, with the Judicial Committee rendering advice to the Chief Executive on matters concerning judicial remuneration.

Judicial Remuneration Review 2011

1.6 In conducting the Review in 2011, the Committee invited the Judiciary and the Administration to provide relevant data and views pertaining to the basket of factors. The Committee then exercised its best judgement in analysing and balancing all relevant considerations in formulating its recommendation. Having considered all relevant

factors, the Judicial Committee **recommends** that judicial salaries should be increased by 4.22% in 2011-12.

Chapter 2

Mechanism for Judicial Remuneration Review

Mechanism

2.1 The mechanism for Judicial Remuneration Review, as approved by the Chief Executive-in-Council in May 2008, comprises two components: a regular benchmark study and an annual salary review.

Benchmark Study

2.2 The Judicial Committee reaffirms its view that a benchmark study on the level of earnings of legal practitioners should be conducted on a regular basis, in order to ascertain their earning levels, monitor such trends and review judicial salaries where appropriate.

2.3 The Judicial Committee conducted a pilot study on earnings of legal practitioners in Hong Kong in the last quarter of 2005. Through the pilot study, the Committee confirmed the feasibility of such benchmark study and noted the then relativities between judicial salaries and earnings of legal practitioners. The Committee has decided that a benchmark study should in principle be conducted every five years, with its frequency subject to periodic review.

2.4 As the last benchmark study (though a pilot) was conducted five years ago in 2005, the Judicial Committee considered it appropriate to embark on a benchmark study in the latter part of 2010. In September 2010, the Committee commissioned a Consultant (the Hay Group Limited) to conduct the 2010 Benchmark Study on Earnings of Legal Practitioners in Hong Kong (the 2010 Study).

2.5 The Committee reaffirmed its recommendation in the 2005 Report that the information or data collected in the benchmark study

should be analysed and compared with judicial remuneration in Hong Kong, with a view to checking whether judicial pay was kept broadly in line with the movements of legal sector earnings over time. The data collected should not be translated into precise figures for determining the levels of judicial salaries. Rather, the pay relativities between selected judicial positions and the corresponding legal sector positions should be systematically recorded to show whether the pay relativities were widening or narrowing over time. The data would facilitate the Judicial Committee in monitoring the private sector pay trends and considering whether and how adjustments to judicial pay should be made³.

2.6 Private sector pay levels and trends are amongst the basket of factors⁴ for the Judicial Committee to deliberate under the established mechanism in the annual Judicial Remuneration Review (JRR). Given the objectives of the 2010 Study, the Committee decided that its findings as set out in the Consultant's Survey Report, accessible at the Joint Secretariat's website at <http://www.jsscs.gov.hk>, would be considered alongside other relevant factors in the JRR 2011.

Annual Review

2.7 The Committee has agreed that an annual review on judicial remuneration should be conducted, including in the year when a benchmark study is carried out. This will enable the Committee to take a holistic view on the year-on-year changes in relation to the basket of factors, in conjunction with the findings of the regular benchmark study. During the review, the Committee will consider whether and, if so, how judicial pay should be adjusted.

Balanced Approach

2.8 Consistent with its recommendations in the 2005 Report as approved by the Chief Executive-in-Council, the Committee adopts a

³ The 2005 Report, paragraph 3.26.

⁴ The basket of factors which the Judicial Committee takes into account in reviewing judicial remuneration are set out in paragraphs 2.8 and 2.9.

balanced approach in reviewing judicial remuneration by taking into account a basket of factors. The basket of factors include the following –

- (a) the responsibility, working conditions and workload of judges vis-à-vis those of lawyers in private practice;
- (b) recruitment and retention in the Judiciary;
- (c) the retirement age and retirement benefits of JJOs;
- (d) the benefits and allowances enjoyed by JJOs;
- (e) prohibition against return to private practice in Hong Kong;
- (f) public sector pay as a reference;
- (g) private sector pay levels and trends;
- (h) cost of living adjustments; and
- (i) the general economic situation in Hong Kong.

2.9 In addition to the above, the Committee also agrees to take into account the following factors suggested by the Administration –

- (a) overseas remuneration arrangements;
- (b) unique features of judicial service – such as the security of tenure, the prestigious status and high esteem of judicial offices; and
- (c) the budgetary situation of the Government – which is a relevant factor for consideration in adjusting civil service pay.

Chapter 3

Judicial Remuneration Review 2011 – Annual Review

The Annual Review

3.1 This is the third year for the Judicial Committee to conduct the annual review of judicial salary in accordance with the mechanism for JRR as set out in Chapter 2. In conducting the Review, instead of applying a mechanical formula, the Committee continued to adopt a balanced approach taking into account the basket of factors and the views of the Judiciary.

Responsibility, Working Conditions and Workload

3.2 On the basis of the latest information provided by the Judiciary, the Committee did not observe any major change in the responsibility and working conditions of JJOs. Members of the Judiciary continued to discharge their functions in maintaining an independent and effective judicial system to uphold the rule of law and safeguard the rights and freedoms of the individual. The levels of court and the respective judicial ranks remained the same as set out in Appendix D.

3.3 As regards workload, the total caseloads of the Judiciary as a whole remained steady in the past few years. In 2010, there was a noticeable increase in the number of confidential miscellaneous proceedings in the criminal jurisdiction of the Court of First Instance (CFI) of the High Court, and a significant increase in the number of cases at the Obscene Articles Tribunal. On the other hand, there was a considerable reduction in the number of cases in the civil jurisdiction of the CFI of the High Court and the Labour Tribunal. Details are shown in Appendix E.

3.4 The Committee recognised that caseload figures alone did not fully reflect workload, and the complexity of cases was also an important element. The Judicial Committee maintains the view that the nature of judicial work is unique. The responsibility and working conditions of JJOs are different from those of legal practitioners, rendering any direct comparison between the two inappropriate.

Recruitment and Retention

3.5 With the completion of the last round of open recruitment exercises of JJOs for various levels of court in 2010-11, a total of 36 judicial appointments had been made by February 2011, comprising 11 CFI Judges, 12 District Judges and 13 Permanent Magistrates. Specifically, two newly appointed CFI Judges reported duty in 2010-11. The Committee noted that the successful recruitment of a substantial number of JJOs in the past two years had enhanced the substantive judicial manpower position in 2010-11. Meanwhile, eight JJOs had retired during the period. The establishment and strength of JJOs as at 31 March 2011 are in **Table 1** below –

Table 1: Establishment and strength of JJOs

Levels of Court	As at 31.3.2011		Net change in strength over 31.3.2010
	Establishment	Strength	
Court of Final Appeal ⁵	4	4 (4)*	0
High Court ⁶	53	43 (45)	-2
District Court ⁷	39	34 (36)	-2
Magistrates' Courts and Specialised Tribunals/Court ⁷	93	74 (76)	-2
Total	189	155 (161)	-6

* Figures in brackets denote position as at 31.3.2010.

⁵ The figures exclude one Permanent Judge post created for Non-Permanent Judge (NPJ) of the Court of Final Appeal (CFA). In practice, an NPJ is invited to sit in the CFA as required in accordance with the Hong Kong CFA Ordinance, Cap. 484.

⁶ For Senior Deputy Registrar and Deputy Registrar vacancies in the Masters' Office of the High Court, the functions are now carried out by some District Judges and some Magistrates who are appointed as temporary Deputy Registrars.

⁷ For judicial offices in the Masters' Office of the District Court and at the Labour Tribunal, Small Claims Tribunal and the Coroner's Court, the functions are carried out by Principal Magistrates or Magistrates under the cross-posting policy. The cross-posting policy provides greater flexibility in the posting of judicial officers between various courts to serve operational needs.

3.6 According to the Judiciary and as suggested by the above statistics, it has not encountered any undue recruitment and retention problem in recent years. Arising from the retirement and elevation of a number of JJOs at different levels of court, the Judiciary plans to launch another round of open recruitment exercises in 2011-12. Meanwhile, the Judiciary has continued to engage temporary judicial resources to help relieve workload, including internal/external deputy and temporary or acting JJOs. In the past year, the number of external deputy/temporary JJOs increased from a total of 20 as at 31 March 2010 to 27 as at 31 March 2011.

Retirement

3.7 The statutory normal retirement age for JJOs is 60 or 65, depending on the level of court. Beyond that, extension of service may be approved up to the age of 70 or 71, depending on the level of court and subject to consideration on a case-by-case basis. For retirement benefits, JJOs are either entitled to pension governed by the Pension Benefits (Judicial Officers) Ordinance (Cap. 401), or provident fund governed by the Mandatory Provident Fund Schemes Ordinance (Cap. 485) according to their terms of appointment.

3.8 Retirement is the main source of wastage among JJOs. The anticipated retirement will be 12 (or 7.7% of current strength) in 2011-12, going down to 4 (or 2.6% of current strength) in 2012-13, and increasing to 14 (or 9% of current strength) in 2013-14. As mentioned in paragraph 3.6 above, arising from the retirement of JJOs, among others, the Judiciary plans to launch recruitment exercises in 2011-12. One of the challenges for the Judiciary is to continue to attract new blood and to groom and retain existing talent.

Benefits and Allowances

3.9 JJOs are entitled to a range of benefits and allowances in addition to salary. The scope of their benefits and allowances is largely

similar to that available in the civil service, with some adaptations having regard to the unique characteristics of the judicial service.

3.10 The Committee noted that there was no change to the package of fringe benefits and allowances for JJOs in the past year, except that the rates of Leave Passage Allowance⁸, Home Financing Allowance and Non-accountable Cash Allowance⁹ were revised following similar revisions in the civil service. The Judiciary did not propose any changes to the benefits and allowances for JJOs in the past year.

3.11 The existing package of benefits is an integral part of judicial remuneration, and is an important component that has helped attract capable legal practitioners to join the bench. The Committee will continue to keep the situation under review.

Unique Features of the Judicial Service

Prohibition against Return to Private Practice

3.12 The Judiciary is unique in many aspects. A prominent feature is the prohibition against return to private practice. Judges at the District Court level and above must give an undertaking not to practise in future as barristers or solicitors in Hong Kong without the permission of the Chief Executive. The Chief Justice and Judges of the Court of Final Appeal are prohibited by statute from practising as barristers or solicitors in Hong Kong while holding office or at any time after ceasing to hold office. On the other hand, judges enjoy security of tenure¹⁰ and high esteem, which may be seen as attractions for legal

⁸ Leave Passage Allowance is an allowance to reimburse eligible officers (and their eligible family members, where applicable) their travel-related expenses, e.g. air fares, accommodation and car hire and related expenses.

⁹ Both Home Financing Allowance and Non-accountable Cash Allowance are two different types of housing allowance offered to JJOs.

¹⁰ Any removal from office is subject to detailed statutory procedures, and the removal of the most senior Judges (i.e. the Chief Justice, Judges of the Court of Final Appeal and the Chief Judge of the High Court) has to be endorsed by the Legislative Council and reported to the Standing Committee of the National People's Congress for the record.

practitioners joining the bench. The Committee noted that these were all long established arrangements and nothing was changed during the annual salary review in 2011.

Cost of Increments for JJOs

3.13 JJOs are remunerated on the JSPS as set out in Appendix C. Save for the Special Magistrate and Magistrate ranks, which are on a pay scale of JSPS 1-6 and JSPS 7-10 respectively, pay progression in the other (and majority) levels of JJOs is limited. Only a small number of incremental creeps are granted to JJOs at JSPS 10-14 upon satisfactory completion of two or five years of service. JJOs serving on JSPS 15 and above have no increment. The consolidated cost of increments (CCOI) as a percentage of total payroll cost for all JJOs in the past three years based on information from the Judiciary is set out in **Table 2** below –

Table 2 : Consolidated Cost of Increments for JJOs (2008-09 to 2010-11)

Year	CCOI for JJOs
2008-09	0.24%
2009-10	0.34%
2010-11	0.16%

3.14 The Judicial Committee considered that adopting a CCOI for all JJOs would avoid over-complicating the system, and would also be similar to the established practice adopted for the calculation of cost of increments for the civil service. Moreover, it would help maintain the established internal relativities of judicial pay at various ranks. The Judiciary also agreed to this arrangement.

Overseas Remuneration Arrangements

3.15 The Committee continued to keep track of major development, if any, on judicial remuneration in six overseas common law jurisdictions, namely, Australia, Canada, New Zealand, Singapore, the United Kingdom and the United States. There was no change to the judicial remuneration systems in these jurisdictions in the past year.

The jurisdictions took different, but generally prudent, actions in their latest annual salary reviews for judges. Some jurisdictions continued the pay freeze and deferral of pay adjustment for judges, while some had a pay rise at an increased rate as compared to the previous year. A key consideration behind their respective action appeared to be the prevailing state of economy of the respective jurisdiction.

General Economic Situation and Cost of Living Adjustments in Hong Kong

3.16 The Administration has provided detailed information on Hong Kong's economic and fiscal indicators for the Committee's reference. The overall growth rate for Hong Kong's Gross Domestic Product (GDP) in real terms in 2010 was 7.0%. The Hong Kong economy sustained a strong momentum in the first quarter of 2011. Having achieved a full-fledged upturn in 2010, our GDP leapt by 7.2% in real terms over a year earlier. Although the external environment has held up well so far this year, uncertainties remain abound. The economy is poised for a real growth of 5-6% for 2011 as a whole. The year-on-year changes in GDP in real terms are shown in **Table 3** below –

Table 3 : Changes in Gross Domestic Product in real terms

Year	Quarter	GDP year-on-year % change
2010	Q1	+8.0%
	Q2	+6.7%
	Q3	+6.9%
	Q4	+6.4%
2011	Q1	+7.2%*

Source: Figures published by the Census and Statistics Department.

* Preliminary figure.

3.17 Hong Kong's labour market further improved in 2011, benefiting substantially from the sustained vibrant economic growth since early 2010. The seasonally adjusted unemployment rate dropped to 3.5% in March to May 2011, as compared to 4.6% in the same period in 2010.

3.18 On changes in cost of living, the underlying¹¹ Composite Consumer Price Index¹² in May 2011 was 5.1%. With domestic and external factors both adding to local inflation in the near term, the forecast rate of the underlying consumer price inflation in 2011 as a whole is 5.5%.

Budgetary Situation of the Government

3.19 Based on the information from the Administration, the Government had a consolidated surplus of \$75.1 billion in 2010-11 and the fiscal reserves stood at \$595.4 billion as at end March 2011. For 2011-12, a deficit of \$8.8 billion and a surplus of \$0.3 billion are estimated for the Operating Account and Capital Account respectively, which will result in a deficit of \$8.5 billion in the Consolidated Account, equivalent to 0.5% of our GDP.

3.20 The annual staff cost of the Judiciary in 2011-12 is estimated at about \$831 million, which is roughly 0.27% of the Government's total operating expenditure of \$305 billion in the 2011-12 Estimates.

Private Sector Pay Levels and Trends

2010 Study

3.21 As mentioned in paragraph 2.6, the Judicial Committee took into account the findings of the 2010 Study in considering whether and how adjustments to judicial pay should be made in the context of the JRR 2011. The Committee considered that there would be strong arguments for proposing adjustments to judicial pay if the survey findings demonstrated a clear trend of widening differentials between

¹¹ Underlying rates net out the effects of all one-off relief measures implemented by the Government.

¹² Composite Consumer Price Index reflects the impact of consumer price change on the household sector as a whole.

judicial pay and earnings of legal practitioners, or if the Judiciary encountered recruitment and retention difficulties, or if there were obvious changes in perception and attitude from survey respondents that remuneration had become an important factor in considering judicial appointment.

3.22 The Committee noted from the Consultant's Survey Report that no clear trend on the differentials between judicial pay and legal sector earnings could be established, with some widening, some narrowing in different ranges. The interviews with the survey respondents had reaffirmed that remuneration was not an important factor in considering judicial appointment. Meanwhile, the Judicial Committee noted that the Judiciary had successfully completed the last round of open recruitment exercises of JJOs by 2010-11, and had not encountered any undue recruitment and retention problem in recent years.

3.23 In the light of the above, the Committee considered that there were no strong arguments for proposing adjustments to judicial pay based on the findings of the 2010 Study.

3.24 Having completed the 2010 Study, the Committee reaffirmed its view that a benchmark study should in principle be conducted every five years to monitor the changes in the pay differentials between the levels of judicial pay and those of legal practitioners. Nevertheless, the Committee maintained the view that the findings of such benchmark study should not be translated into precise figures for determining the levels of judicial salaries due to the uniqueness of judicial work, rendering any direct comparison between the pay levels of JJOs and legal practitioners inappropriate. Under the new mechanism, apart from the findings of the benchmark study, the Judicial Committee also has to consider private sector pay trend, which is among the basket of factors.

Private Sector Pay Trend

3.25 The Committee noted that there was no comprehensive or representative pay trend survey on the legal sector, although there were small surveys conducted by individual recruitment agencies with limited coverage, which were of little relevance to the Judiciary. Moreover, direct comparison between judicial pay and legal sector pay is inappropriate having regard to the uniqueness of judicial work. Such being the case, the Committee continued to make reference to the gross Pay Trend Indicators (PTIs) from the annual Pay Trend Survey (PTS)¹³, which reflected the overall private sector pay trend, and captured, among others, the general market changes, cost of living, merit and in-scale increment in the private sector. However, taking into account the uniqueness of the Judiciary, direct comparison using the gross PTIs would not be appropriate. As mentioned in paragraph 3.13 above, some JJOs have incremental creeps at certain intervals. The gross PTIs already included merit and in-scale increment in the private sector. In order to have a fair and suitable comparison with the private sector, the CCOI for JJOs should be subtracted from the relevant gross PTI to reflect the private sector pay trend suitable for comparison in the context of the JRR.

3.26 The gross PTI of employees in the highest salary range as reflected from the PTS was -4.79% in 2009, +2.2% in 2010 and +7.90% in 2011. The private sector pay trends for JRR purpose (i.e. calculated

¹³ The annual Pay Trend Survey (PTS) measures the year-on-year average pay movements of full-time employees in the private sector over a twelve-month period from 2 April of the previous year to 1 April of the current year. The Pay Trend Indicators (PTIs) derived from the PTS are divided into three bands, reflecting the average pay movements of private sector employees in three salary ranges, i.e. –

- (i) Lower Band covering employees in the salary range below \$15,875 per month;
- (ii) Middle Band covering employees in the salary range of \$15,875 to \$48,670 per month; and
- (iii) Upper Band covering employees in the salary range of \$48,671 to \$96,885 per month (the range was \$48,401 to \$95,360 per month in the 2010 PTS, and \$48,401 to \$97,545 per month in the 2009 PTS).

In the absence of a comprehensive or representative pay trend survey on the legal sector, the PTI for the Upper Band in the PTS is considered as a suitable reference for comparison with judicial salaries, which start at JSPS 1, currently at \$59,495 in dollar terms.

by subtracting the CCOI for JJOs from the gross PTI) in 2009 to 2011 are set out in **Table 4** below –

Table 4 : Private sector pay trends for JRR purpose from 2009 to 2011

Year	Gross PTI for highest salary range (A)	CCOI for JJOs (B)	Private Sector Pay Trend for JRR Purpose (A) – (B) = (C)
2009	–4.79%	+0.24%	–5.03%
2010	+2.20%	+0.34%	+1.86%
2011	+7.90%	+0.16%	+7.74%

3.27 As judicial salary remained unchanged in 2009 and 2010 as recommended by the Committee, i.e. it has not been adjusted since 2008 in line with movements in the private sector pay trend of –5.03% and +1.86% in the past two years, it would be appropriate for the Committee to take into account the cumulative effect of the private sector pay trends in 2009, 2010 and 2011 in succession. Assuming private sector pay was 100 in 2008, the cumulative effect of the private sector pay trend for JRR purpose in 2009, 2010 and 2011 would mean that private sector pay has increased to 104.22¹⁴, i.e. exceeding the 2008 pay by +4.22%.

3.28 The Committee also made reference to other private sector pay indicators. Private sector remuneration generally went up in 2010, as the market picked up, sustaining the uptrend evident since late 2009.

Public Sector Pay as a Reference

3.29 Historically, there was an informal linkage between judicial salaries and senior civil service salaries before the implementation of the new mechanism for determining judicial remuneration. As concluded in the 2005 Report, while some reference to public sector pay was beneficial, pegging was not appropriate. De-linking judicial remuneration from that of the civil service would not only strengthen the perception of judicial independence, but would also provide the necessary safeguard and reassurance to JJOs. The conclusion had also

¹⁴ $100 \times (100 - 5.03)\% \times (100 + 1.86)\% \times (100 + 7.74)\% = 104.22$

taken into account certain aspects that render it inappropriate for a direct comparison between the Judiciary and the civil service, e.g. judges do not have the collective bargaining process on annual pay adjustment which the Administration has established with the civil service unions and staff associations¹⁵. Public sector pay is hence one of the factors under the balanced approach for determining judicial remuneration.

3.30 The Judicial Committee believed that the experience in 2009 and 2010, including how public sector pay was taken as a reference, would shed light on future exercises. Moreover, the Committee considers that the arrangement in 2007 and 2008 would be a good arrangement for reference in future reviews on judicial remuneration.

3.31 In the context of the 2011 annual review, the Committee has made reference to the following –

- (a) The pay for civil servants in the Upper Band and above was reduced by 5.38% in 2009-10 and increased by 1.6% in 2010-11. During the same period, judicial salaries remained unchanged following the Chief Executive-in-Council's acceptance of the Judicial Committee's recommendations in the JRRs 2009 and 2010; and
- (b) In June 2011, the Chief Executive-in-Council decided that the pay for civil servants in the Upper Band and above should be increased by 7.24% with retrospective effect from 1 April 2011, subject to the approval from the Finance Committee of the Legislative Council. With this adjustment, the pay for civil servants in the Upper Band and above should have been restored to and exceeded the level before the pay reduction in 2009.

¹⁵ The 2005 Report, paragraph 3.14.

The Judiciary's Position

3.32 The Judiciary considered that any percentages of adjustment accumulated since 2009 as indicated from the gross PTIs less the CCOI for JJOs that were not applied to the judicial service should be taken into account in subsequent judicial pay adjustment exercises. Taking into account the cumulative effect of the gross PTIs less the CCOI for JJOs in 2009, 2010 and 2011, the Judiciary sought a pay increase of 4.23%¹⁶ for the judicial service in 2011-12. The Judiciary reiterated its position that, in any case, there should not be any reduction in judicial pay as a matter of principle.

¹⁶ The Judiciary applied the private sector pay trend for JRR purpose to each of the interim years and rounded up the result each year, instead of applying the private sector pay trend for JRR purpose three years in succession without any break in the interim years. The difference from applying the private sector pay trend for JRR purpose three years in succession was 0.01%.

Chapter 4

Conclusion and Recommendation

4.1 The Committee noted that the information pertaining to the Judiciary had remained more or less unchanged. With the successful completion of the last round of open recruitment exercises in 2010-11, the substantive manpower position at various levels of court had improved, indicating that the Judiciary had not encountered any undue recruitment and retention problem at the present level of remuneration.

4.2 The Committee noted that there was no systemic change to the judicial remuneration systems in all the jurisdictions to which it had made reference. Different jurisdictions tended to adopt different approaches in their annual reviews of judicial salaries, having regard to, among others, their prevailing state of economy.

4.3 In Hong Kong, the economy achieved a full-fledged upturn in 2010, and sustained a strong momentum in the first quarter of 2011. However, uncertainties remained abound in the external environment. The forecast real growth in GDP for 2011 as a whole is 5-6%.

4.4 As regards private sector pay trend, by subtracting the annual CCOI for JJOs from the relevant gross PTIs in 2009, 2010 and 2011 to reflect the private sector pay trend suitable for comparison in the JRR context, the Committee noted that the cumulative effect of three years in succession was that private sector pay had exceeded its level prior to 2009 by 4.22%.

4.5 As regards public sector pay, subject to the implementation of the adjustment in 2011-12 (i.e. a pay increase of 7.24%), together with the pay increase of 1.60% for the civil service Upper Band and above in 2010-11, civil service pay for the Upper Band and above should have

been restored to and exceeded its level before the pay reduction of 5.38% in 2009-10.

4.6 The Judiciary indicated its position as set out in paragraph 3.32.

4.7 Taking into account the basket of factors and having balanced all considerations, the Judicial Committee **recommends** that judicial salaries should be increased by 4.22% in 2011-12.

4.8 For future reviews, the Judicial Committee would continue to adopt a balanced approach taking into account the basket of factors. Among others, we would closely monitor the private sector pay trends as reflected in the gross PTIs, the changes in the cost of increments for JJOs, and other pay indicators in surveys conducted by other agencies. Looking ahead, the Judicial Committee would also take into account the experience in the past JRRs conducted under the approved mechanism.

Acknowledgements

We would like to express our sincere gratitude to both the Administration and the Judiciary for providing us with comprehensive and valuable information. Their contribution is most useful in facilitating our deliberation on the basket of factors under the approved mechanism for the determination of judicial remuneration. Our appreciation also goes to the Secretary General and the Joint Secretariat for their assistance in this review.

We would also like to record our thanks to all parties who have contributed to the conduct of the 2010 Benchmark Study, including the Bar Association, the Law Society and individual barrister/solicitor respondents and participating organisations of the survey.

Last but not least, we would like to record our appreciation of Mr Christopher Cheng Wai-chee, GBS, JP, for his outstanding leadership of the Committee in the past seven years.

Standing Committee on Judicial Salaries and Conditions of Service

Terms of Reference

I. The Committee will advise and make recommendations to the Chief Executive on –

- (a) the structure, i.e. number of levels and salary level; and conditions of service and benefits other than salary appropriate to each rank of judges and judicial officers and other matters relating thereto;
- (b) matters relating to the system, institutional structure, methodology and mechanism for the determination of judicial salary and other matters relating thereto which the Chief Executive may refer to the Committee; and
- (c) any other matter as the Chief Executive may refer to the Committee.

II. The Committee will also, when it so determines, conduct an overall review of the matters referred to in I(a) above. In the course of this, the Committee should accept the existing internal structure of the Judiciary and not consider the creation of new judicial offices. If, however, the Committee in an overall review discovers anomalies, it may comment upon and refer such matters to the Chief Justice, Court of Final Appeal.

**Standing Committee on Judicial Salaries
and Conditions of Service**

Membership

Chairman

Mr Bernard Chan, GBS, JP (since 1 January 2011)

Members

Professor Chan Yuk-shee, BBS, JP

Sir C K Chow

Mr Lester Garson Huang, JP

Ms Jacqueline Pamela Leong, SC

Mr Brian David Li Man-bun

Ms Ayesha Macpherson (since 1 January 2011)

Judicial Service Pay Scale
(with effect from 1 April 2008)

Judicial Service Pay Scale (JSPS)		Rank
Point	\$	
19	241,750	✧ Chief Justice, Court of Final Appeal
18	235,100	✧ Permanent Judge, Court of Final Appeal ✧ Chief Judge of the High Court
17	211,900	✧ Justice of Appeal of the Court of Appeal of the High Court
16	202,000	✧ Judge of the Court of First Instance of the High Court
15	166,900	✧ Registrar, High Court ✧ Chief Judge of the District Court
14	(161,500)	✧ Senior Deputy Registrar, High Court ✧ Principal Family Court Judge, District Court
	(156,800)	
	152,200	
13	(151,200)	✧ Deputy Registrar, High Court ✧ Judge of the District Court ✧ Chief Magistrate
	(146,950)	
	142,700	
12	(130,300)	✧ Assistant Registrar, High Court ✧ Member, Lands Tribunal
	(126,500)	
	122,700	
11	(119,900)	✧ Registrar, District Court ✧ Principal Adjudicator, Small Claims Tribunal ✧ Principal Magistrate ✧ Principal Presiding Officer, Labour Tribunal
	(116,550)	
	113,100	
10	(109,700)	✧ Adjudicator, Small Claims Tribunal ✧ Coroner ✧ Deputy Registrar, District Court ✧ Presiding Officer, Labour Tribunal
	(106,400)	
	103,400	
10	(109,700)	✧ Magistrate
	(106,400)	
	103,400	
9	96,015	
8	93,770	
7	91,530	

Judicial Service Pay Scale (JSPS)		Rank
Point	\$	
6	70,295	✧ Special Magistrate
5	67,035	
4	63,925	
3	62,430	
2	60,955	
1	59,495	

Note: Figures in brackets (for JSPS 10 – 14) represent increments under which the officer may proceed to the first increment after satisfactory completion of two years of service in the rank and to the second increment after satisfactory completion of another three years of service in the rank.

Levels of Court and Judicial Ranks

Level of Court	Rank	Pay Scale (JSPS)
Court of Final Appeal	Chief Justice, Court of Final Appeal	19
	Permanent Judge, Court of Final Appeal	18
High Court, Court of Appeal	Chief Judge of the High Court	18
	Justice of Appeal of the Court of Appeal of the High Court	17
High Court, Court of First Instance	Judge of the Court of First Instance of the High Court	16
High Court, Masters' Office	Registrar, High Court	15
	Senior Deputy Registrar, High Court	14
	Deputy Registrar, High Court	13
	Assistant Registrar, High Court*	12
District Court	Chief Judge of the District Court	15
	Principal Family Court Judge, District Court	14
	Judge of the District Court	13
District Court, Masters' Office	Registrar, District Court	11
	Deputy Registrar, District Court	10
Lands Tribunal	Member, Lands Tribunal	12
Magistrates' Courts	Chief Magistrate	13
	Principal Magistrate	11
	Magistrate	7 – 10
	Special Magistrate	1 – 6
Labour Tribunal	Principal Presiding Officer, Labour Tribunal	11
	Presiding Officer, Labour Tribunal	10
Small Claims Tribunal	Principal Adjudicator, Small Claims Tribunal	11
	Adjudicator, Small Claims Tribunal	10
Obscene Articles Tribunal	Magistrate	7 – 10
Coroner's Court	Coroner	10

* There is at present no post in the rank of Assistant Registrar, High Court.

Caseloads in Different Levels of Court between 2008 and 2010

Level of Court \ No. of Cases	2008	2009	2010
Court of Final Appeal			
– application for leave to appeal	158	136	148
– appeals	42	33	31
– miscellaneous proceedings	2	2	2
Court of Appeal of the High Court			
– criminal appeals	439	486	498
– civil appeals	385	285	284
Court of First Instance of the High Court			
– criminal jurisdiction			
• criminal cases	311	425	444
• confidential miscellaneous proceedings	64	64	96
• appeals from Magistrates' Courts	1 125	1 043	980
– civil jurisdiction	21 514	26 564	16 581
– probate cases	13 339	14 676	14 350
District Court			
– criminal cases	1 250	1 449	1 404
– civil cases	28 527	27 329	23 260
– divorce jurisdiction	18 364	19 616	21 218
Magistrates' Courts	337 442	327 439	318 551
Lands Tribunal	5 228	5 046	5 310
Labour Tribunal	7 199	7 758	4 670
Small Claims Tribunal	59 246	59 797	57 837
Obscene Articles Tribunal	44 464	13 507	38 348
Coroner's Court	151	182	190
Total	539 250	505 837	504 202

Executive Summary of the 2010 Benchmark Study on the Earnings of Legal Practitioners in Hong Kong Final Report

Executive Summary

1. In September 2010, the Standing Committee on Judicial Salaries and Conditions of Service commissioned the Hay Group Limited to conduct the 2010 Benchmark Study on the Earnings of Legal Practitioners in Hong Kong (2010 Benchmark Study).
2. The objective of the 2010 Benchmark Study is to collect information/data on legal sector earnings for analyses and comparison with judicial remuneration in Hong Kong, with a view to checking whether judicial pay is kept broadly in line with the movements of legal sector earnings over time. Comparison is made, where relevant, with the findings in the Pilot Study on the Earnings of Private Sector Legal Practitioners conducted in 2005.
3. The survey field covers the following (the numbers are those prevailing at the time of the survey) –
 - (a) all 1 140 barristers (Senior Counsel and junior counsel included) with practising certificates;
 - (b) all 5 242 solicitors with practising certificates in private practice in law firms; and
 - (c) 28 public bodies and major corporations which either (i) have an in-house legal unit staffed with at least five legal practitioners; or (ii) perform dedicated statutory regulatory and enforcement functions.

The target respondents are legal practitioners with at least five years of private practice as a barrister or a solicitor, including practice in common law jurisdictions.
4. The survey questionnaire was distributed by post or email. The questionnaire requests basic information about the respondent (professional status, years of practice and age) and the total annual earnings from the practice of law before taxes in the tax year ending 31 March 2010.
5. In addition to the survey questionnaire, ten barristers and ten solicitors were selected on a random basis for telephone interviews. The purpose is to collect information on the interviewees' perception on judicial service and remuneration, and how their perception affects their consideration of joining the Bench.
6. The table below summarises the key findings from the survey and the analyses of differentials between judicial pay and legal sector earnings.

Summary of Survey Results

Response	The number of target responses from barristers increased from 164 in 2005 to 292, representing an increase of 78%. For solicitors, the number increased from 402 in 2005 to 1 016, representing an increase of 153%.
Differentials between judicial pay and legal sector pay	<p>Differential between judicial pay and legal sector pay is defined as judicial pay less legal sector earnings, as a percentage of legal sector earnings.</p> <p>The 75th percentile (P75) of legal sector earnings should, in principle, be adopted as the basis for comparison with the annual average total cost of judicial pay at three entry ranks of the Judiciary, i.e. Magistrate, District Judge and Judge of the Court of First Instance (CFI Judge). The relevant legal sector reference is worked out based on the typical years of practice of the Judges and Judicial Officers (JJOs) before appointment to the relevant rank.</p> <p>Compared to the 2005 findings, differentials between judicial pay at the three entry ranks and P75 legal sector pay are as follows –</p> <ul style="list-style-type: none"> • Magistrate: Pay differential (i) above junior counsel (5-14 years) narrowed from 12% to 7%; (ii) above solicitors (5-14 years) narrowed from 46% to 13%; • District Judge: Pay differential (i) above junior counsel (15-24 years) widened from 8% to 10%; (ii) above solicitors (15-24 years) widened from 8% to 10%; and • CFI Judge: Pay differential below Senior Counsel (15-24 years) narrowed from 47% to 42%. <p>There is no fixed pattern in the changes in differentials between judicial pay and legal sector pay, with some widening and some narrowing with different ranges. No clear trend can be established. Given the significant variation of legal sector earnings and the different nature of judicial work compared to legal sector work, any direct comparison between legal sector earnings and judicial pay should be interpreted with caution. We do not recommend any increase nor reduction in judicial pay for the sake of keeping the differentials unchanged.</p>
Interview results	More barrister interviewees (including one in-house barrister) expressed interest in joining the Bench, whilst solicitor interviewees tended to be less interested. All interviewees expressing an interest to join the Bench indicated that pay was not a key concern. The majority of both barrister and solicitor interviewees appeared to be interested in short-term judicial appointments as Recorders or External Deputies.