

ITEM FOR FINANCE COMMITTEE

2012-13 JUDICIAL SERVICE PAY ADJUSTMENT

Members are invited to –

- (a) approve, with effect from 1 April 2012, an increase in pay by 5.66% for judges and judicial officers; and
- (b) note the financial implications of about \$16.143 million in 2012-13 arising from item (a) above.

PROBLEM

We need to adjust the pay for judges and judicial officers¹ (JJOs) in accordance with the decision of the Chief Executive in Council.

PROPOSAL

2. We propose that, with effect from 1 April 2012, the pay for JJOs be increased by 5.66%.

Encl.1 3. Upon approval of the proposal in paragraph 2 above, the revised judicial service pay scale will be as set out at Enclosure 1.

JUSTIFICATION

Judicial Service Pay Mechanism

4. As approved by the Chief Executive in Council in May 2008, judicial remuneration is determined according to a mechanism separate from that of the

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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 who serve in Magistrates’ Courts and Tribunals, as well as registrars and masters of the High Court and District Court.

civil service. Specifically, judicial remuneration is determined by the Chief Executive in Council after considering the recommendations of the independent Standing Committee on Judicial Salaries and Conditions of Service (Judicial Committee)². The mechanism comprises an annual review and a regular benchmark study which seeks to check whether judicial pay is kept broadly in line with the movements of legal sector earnings over time. In coming up with the recommendations, the Judicial Committee would take into account the basket of factors approved by the Chief Executive in Council in May 2008, the principle of judicial independence and the position of the Judiciary. The basket of factors includes the responsibility, working conditions and workload of judges vis-à-vis those of lawyers in private practice; the recruitment and retention in the Judiciary; unique features of the judicial service; retirement age and retirement benefits of JJOs; prohibition against return to private practice in Hong Kong; benefits and allowances enjoyed by JJOs; cost of living adjustment; general economic situation in Hong Kong; budgetary situation of the Government; overseas remuneration arrangements; private sector pay levels and trends; and public sector pay as a reference.

The 2012 Judicial Remuneration Review

5. In conducting the 2012 judicial remuneration review, the Judicial Committee examined the basket of factors listed in paragraph 4 above, and exercised its best judgment in analysing and balancing all relevant considerations in formulating its recommendation on whether and, if so, how judicial pay should be adjusted in 2012-13.

6. 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)³, which reflect the overall year-on-year change of

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² The Judicial Committee is appointed by the Chief Executive. At present, it is chaired by Mr Bernard Chan. Other members are Professor Chan Yuk-shee, Mr C K Chow, Mr Lester Huang, Mr Brian Li, Mrs Ayesha Macpherson Lau and Mr Benjamin Yu.

³ The annual 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 grouped into three salary bands, reflecting the average pay movements of private sector employees in three salary ranges. Using the 2012 PTS as an example, the ranges of the three salary bands are as follows –

- (i) Lower Band covering employees in the salary range below \$16,855 per month;
- (ii) Middle Band covering employees in the salary range of \$16,855 to \$51,670 per month; and
- (iii) Upper Band covering employees in the salary range of \$51,671 to \$103,900 per month.

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 Point 1 of the Judicial Service Pay Scale, currently at \$62,005 in dollar terms.

private sector pay. 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 is +5.66% in 2012 (i.e. the relevant gross PTI at 6.01% less the cost of increment for JJOs at 0.35%).

7. The Judicial Committee notes that there is no comprehensive or representative pay trend survey on the legal sector. It also considers that direct comparison between judicial pay and legal sector pay is inappropriate having regard to the uniqueness of judicial work. The Judicial Committee takes the view that a benchmark study on the level of earnings of legal practitioners should be conducted on a regular basis to check whether judicial pay was kept broadly in line with the movements of legal sector earnings over time. In September 2010, the Judicial Committee commissioned a consultant to conduct the 2010 Benchmark Study on Earnings of Legal Practitioners in Hong Kong. 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 has decided that a benchmark study should in principle be conducted every five years, with its frequency subject to periodic review.

8. Apart from considering the basket of factors 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 order to maintain an independent and effective judicial system which upholds the rule of law and commands confidence within and outside Hong Kong.

9. The Judicial Committee has also considered the Judiciary's views. The Judiciary seeks a pay increase of 5.66% for the judicial service in 2012-13 which is in line with the private sector pay trend indicator as adjusted by the cost of increment for JJOs (see paragraph 6 above). The Judiciary also reiterates its position that there should not be any reduction in judicial pay as a matter of principle.

10. Having considered all the above factors, the Judicial Committee submitted its report to the Chief Executive on 4 July 2012, recommending a 5.66% increase in the pay for JJOs for 2012-13.

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Judicial Service Pay Adjustment Rate

11. After consideration of the Judicial Committee's recommendation and the Judiciary's position, the Chief Executive in Council decided on 18 September 2012 that the pay for JJOs for 2012-13 should be increased by 5.66% with effect from 1 April 2012.

12. The review of judicial pay is a regular exercise conducted on an annual basis. It has been the established practice that proposed adjustments, if any, will take effect from 1 April (i.e. the beginning of a financial year). The last pay adjustment for 2011-12, as approved by the Finance Committee (FC), took effect from 1 April 2011.

FINANCIAL IMPLICATIONS

13. The financial implications arising from the proposed 5.66% pay increase for JJOs in 2012-13 are about \$16.143 million.

14. We have not made provision in Head 80 – Judiciary in the 2012-13 Estimates for the proposed pay adjustment. We expect that the Judiciary's savings in the current year should be sufficient to cover the additional expenditure arising from the proposed pay adjustment in 2012-13. In case supplementary provision is required, the Administration will be able to approve it under delegated authority.

PUBLIC CONSULTATION

15. We briefed the Legislative Council Panel on Administration of Justice and Legal Services on the 2012-13 judicial service pay adjustment exercise at its meeting held on 30 October 2012. Members had no objection to the proposed adjustment and noted that we would seek approval from FC. Nevertheless, the Panel requested supplementary information concerning remuneration arrangements for JJOs and senior government officials in overseas jurisdictions, statistics on extension of service of judges, the number and percentage of civil and criminal cases involving unrepresented litigants, the average time spent by the courts on adjudicating civil and criminal cases involving unrepresented litigants vis-à-vis that spent by the courts on adjudicating such cases involving represented litigants.

/They

Encl.2 They also enquired why court waiting times have become increasingly longer and whether there are any measures to tackle the problem. The Panel further requested that the Administration should include supplementary information on these issues in its submission to FC. The information requested is set out at Enclosure 2.

Administration Wing
Chief Secretary for Administration's Office
November 2012

Enclosure 1 to FCR(2012-13)56

Judicial Service Pay Scale

Point	(As at 31.3.2012)	(w.e.f. 1.4.2012)
	\$	\$
19	251,950	266,200
18	245,000	258,850
17	220,850	233,350
16	210,500	222,400
15	173,950	183,800
	(168,300)	(177,850)
	(163,400)	(172,650)
14	158,600	167,600
	(157,600)	(166,500)
	(153,150)	(161,800)
13	148,700	157,100
	(135,800)	(143,500)
	(131,850)	(139,300)
12	127,900	135,150
	(124,950)	(132,000)
	(121,450)	(128,300)
11	117,850	124,500
	(114,350)	(120,800)
	(110,900)	(117,200)
10	107,750	113,850
9	100,065	105,730
8	97,725	103,255
7	95,395	100,795
6	73,260	77,405
5	69,865	73,820
4	66,625	70,395
3	65,065	68,750
2	63,525	67,120
1	62,005	65,515

Note: Figures in brackets represent increments.

Supplementary information

The supplementary information requested by the Panel on Administration of Justice and Legal Services at its meeting on 30 October 2012 is set out in the ensuing paragraphs for Members' reference. For items (b) to (e) below, the Administration has consulted the Judiciary.

(a) Pay of Judges and Judicial Officers (JJOs) in the six common law jurisdictions referred to by the Judicial Committee in the Judicial Remuneration Review 2012; and comparison of the remuneration arrangements for JJOs and senior government officials in overseas jurisdictions

2. The Judicial Committee keeps track of major development, if any, on judicial remuneration in six overseas 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. For those granting pay rises, they were generally at lower rates 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.

3. The Administration does not have any information concerning the pay of JJOs in the six common law jurisdictions. Nor has the Administration carried out any comparative study on the remuneration arrangements for JJOs and senior government officials in overseas jurisdictions. The comparison of such data, if available, may not bear relevance to the local circumstances due to the difference in social, economic and political landscape of the judicial jurisdictions, and could easily be taken out of context which could in turn impact the objectivity of the pay review.

(b) Statistics on extension of service of judges

4. The policy of the Judicial Officers Recommendation Commission (JORC) is that extension of term of office beyond normal retirement age should not be automatic. It should be regarded as exceptional and would not normally be approved unless:

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- (i) the Judiciary has operational needs, including the need for continuity; and
- (ii) the extension would not hinder either the advancement of junior officers who are suitable for elevation or the appointment of members of the legal profession who are well suited and available for appointment.

The above policy was made in September 1998 and has been applied consistently in all cases since then.

5. In the past three years (from 2009-10 to 2011-12), the following JJOs' terms of office were extended as recommended by the JORC and approved by the Chief Executive –

- (i) Mr. Justice Robert TANG, then Vice-President and Justice of Appeal of the Court of Appeal of the High Court;
- (ii) Mr. Justice Frank STOCK, Vice-President and Justice of Appeal of the Court of Appeal of the High Court;
- (iii) Mr. Justice Michael John HARTMANN, former Justice of Appeal of the Court of Appeal of the High Court;
- (iv) Mr. Justice Anthony TO, Judge of the Court of First Instance of the High Court;
- (v) Mr. Michael CHAN, Permanent Magistrate; and
- (vi) Mr. Selwyn AU, Permanent Magistrate.

(c) Number and percentage of civil and criminal cases involving unrepresented litigants

6. The numbers and percentages of hearings/trials involving unrepresented litigants in the High Court and the District Court^{Note} during the past three years from 2009 to 2011 are set out at the Appendix.

App.

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^{Note} The Judiciary has not kept such statistics for other courts including the Court of Final Appeal, the Family Court, the Lands Tribunal and the Magistrates' Courts. No legal representation is permitted in the Small Claims Tribunal and the Labour Tribunal.

(d) Average number of days spent by courts in adjudicating civil and criminal cases involving unrepresented litigants vis-à-vis that spent by courts in adjudicating civil and criminal cases involving represented litigants

7. The Judiciary does not have the relevant statistics.

(e) Reasons why court waiting times have become increasingly longer and measures to tackle such problem

8. The Judiciary keeps a close watch of the waiting times at various levels of court; and keeps its judicial manpower situation at all levels of court under constant review, to ensure that the appropriate level of provision for judicial positions and sufficient JJOs of the highest standards of ability and integrity are available for the administration of justice.

9. As far as 2011 is concerned, it is noted that:

- (i) the court waiting time targets for the Court of Final Appeal, the District Court (including those for the Family Court) and the Magistrates' Courts (except for summons which marginally exceeded the target) and specialized court and tribunals have all been met; and
- (ii) the more difficult cases largely rest with the Court of Appeal and the Court of First Instance of the High Court where most have exceeded their targets in 2011. This was due to more complex, lengthy and re-fixed cases. It was also due to the temporary constraints in the deployment of judicial manpower in the High Court as a result of the retirement of judges and elevation of judges to higher positions.

10. As reported to the Panel on Administration of Justice and Legal Services in May 2012 (vide LC Paper No. CB(2)2107/11-12(01), a series of recruitment exercises for various judicial offices started in 2011-2012. These recruitment exercises have largely been completed resulting in 33 judicial appointments made at the various level of courts so far.

11. As regards the Court of First Instance of the High Court, seven substantive judicial appointments have been made so far and further substantive judicial appointments will be announced in due course.

12. In the interim, the Judiciary will continue to engage temporary judicial manpower to help improve the waiting times at the High Court.

**Statistics on Hearings/Trials* involving Unrepresented Litigants
in the High Court and District Court (2009-2011)**

		2009			2010			2011		
		No. of hearings involving unrepresented litigants (a)	Total no. of hearings (b)	% (a) ÷ (b)	No. of hearings involving unrepresented litigants (a)	Total no. of hearings (b)	% (a) ÷ (b)	No. of hearings involving unrepresented litigants (a)	Total no. of hearings (b)	% (a) ÷ (b)
Court of Appeal, High Court	Civil Appeals	68	197	35%	81	218	37%	38	163	23%
	Criminal Appeals	170	334	51%	186	365	51%	159	321	50%
Court of First Instance, High Court	Civil Trials	128	367	35%	116	367	32%	78	269	29%
	Civil Appeals	140	254	55%	142	226	63%	121	235	51%
	Criminal Trials	2	138	1%	1	161	1%	1	182	1%
	Magistracy Appeals	489	798	61%	499	844	59%	428	733	58%
District Court	Civil Trials	184	335	55%	202	379	53%	151	295	51%
	Criminal Trials	14	775	2%	17	818	2%	19	852	2%

* Hearings/Trials involving unrepresented litigants refer to those hearings/trials in which at least one of the parties is unrepresented.