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Panel on Administration of Justice and Legal Services

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 26 November 2013**

Judicial Service Pay Adjustment

Purpose

This paper provides background information on the past discussions of the Panel on Administration of Justice and Legal Services ("the Panel") on judicial service pay adjustment.

Background

Mechanism for judicial remuneration review

2. In May 2008, the Chief Executive ("CE")-in-Council agreed that judicial remuneration should be determined according to a mechanism separate from that of the civil service¹. Specifically, judicial remuneration is determined by the CE-in-Council after considering the recommendations of the Standing Committee on Judicial Salaries and Conditions of Service² ("the Judicial Committee") which is an independent advisory body appointed by the CE to advise and make recommendations on matters concerning the salary and conditions of service of judges and judicial officers³ ("JJOs").

¹ For more information on the new mechanism and the previous arrangements for the judicial pay adjustments, please refer to [the Legislative Council Brief](#) on "System for the determination of judicial remuneration and interim arrangement for the 2008-09 judicial service pay adjustment exercise" issued by the Administration on 20 May 2008.

² The Judicial Committee was first established in December 1987 in recognition of the independent status of the Judiciary and the need for the pay and conditions of services of JJOs to be dealt with separately from those of the civil service.

³ "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,

3. The new mechanism for judicial remuneration review ("JRR") comprises two components, namely (a) a benchmark study to be conducted on a regular basis⁴ to check whether judicial pay is kept broadly in line with the movements of legal sector earnings over time; and (b) an annual review which enables the Judicial Committee to take a holistic view on the year-on-year changes in relation to a basket of factors approved by the CE-in-Council in May 2008⁵, in conjunction with the findings of the benchmark study. During the annual review, the Judicial Committee will consider whether and, if so, how judicial pay should be adjusted.

4. In conducting the previous JRRs under the new mechanism, the Judicial Committee invited the Judiciary and the Administration to provide relevant data and views pertaining to the basket of factors. The Judicial Committee then exercised its best judgement in analyzing and balancing all relevant considerations in formulating its recommendations.

Previous judicial service pay adjustments

5. Following the CE-in-Council's acceptance of the recommendations made by the Judicial Committee in its reports on the 2009 and 2010 JRRs, the judicial salaries remained unchanged in 2009-10 and 2010-11.

6. The judicial pay increases recommended by the Judicial Committee for 2011-12 and 2012-13 were 4.22% and 5.66% respectively. The proposed pay adjustments were generally supported by members of the Panel, and subsequently approved by the Finance Committee ("FC").

Past discussions of the Panel

7. Since 2011, it has been the practice for the Administration to brief the Panel on the judicial service pay adjustment decisions made by the CE-in-Council in the respective year. A related funding proposal would then be submitted by the Administration to the FC for approval. Views and concerns

Labour Tribunal; Adjudicator, Small Claims Tribunal; Coroner; and Special Magistrate.

⁴ The Judicial Committee has decided that a benchmark study should in principle be conducted every five years, with its frequency subject to periodic review. The most recent benchmark study was conducted in 2010. The Judicial Committee will revisit the timing for the next benchmark study in 2015.

⁵ 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.

expressed by members when the subject was discussed by the Panel at the meetings on 20 October 2011 and 30 October 2012 are summarized in the ensuing paragraphs.

Difference in the proposed pay increase between the Judicial Committee and the Judiciary

8. At the meeting on 20 October 2011, members observed that the proposed judicial pay increase (i.e. 4.22%) recommended by the Judicial Committee was slightly different from the increase (i.e. 4.23%) sought by the Judiciary. The Panel was of the view that there should be a consensual mechanism for JRR.

9. The Administration explained that since the judicial pay was frozen in 2009-10 and 2010-11, both the Judicial Committee and the Judiciary agreed 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. The differential of 0.01 % was the result of the different arithmetical approaches adopted by the Judiciary and the Judicial Committee in working out the cumulative percentage of pay increases. It did not represent any fundamental differences regarding matters of principle. With the experience of the 2011 JRR, the Judiciary would adopt the same calculation method as adopted by the Judicial Committee in future.

Judicial remuneration

10. At the meeting on 30 October 2012, a member expressed concern that the salary of the Chief Justice of the Court of Final Appeal, i.e. \$251,950, was much lower than that of the Secretaries of Departments, i.e. \$350,000, despite the fact that the Chief Justice ranked higher than Secretaries of Departments in the Precedence List of the Hong Kong Special Administrative Region. The member asked whether the Judicial Committee had looked into such salary gap. On the other hand, another member expressed the view that there was no need to align the pay of JJOs with that of Secretaries of Bureaux, having regard to the fact that the Judicial Committee considered that the total package for JJOs remained attractive to outside talents who wished to join the bench.

11. The Administration advised that it was inappropriate to make direct comparison between the pay of JJOs with that of officials appointed under the Political Appointment System, in that the former was entitled to a wide range of benefits and allowances in addition to salary, which was not the case for the latter. Furthermore, JJOs enjoyed security of tenure until they reached retirement age, which was not the case for political appointees.

Judicial manpower situation and long waiting times in courts

12. Members were concerned whether the Judiciary had sufficient resources to enable judges to conduct their caseloads in an efficient manner and to ensure reasonable court waiting times. They enquired why court waiting times had become increasingly longer and whether there were any measures to tackle the problem. A member cautioned that to engage temporary judicial resources to relieve workload, such as appointing deputy judges to sit in the High Court, in the long run would affect the independence of the Judiciary.

13. With regard to the judicial manpower situation, the Administration advised that the Judiciary had kept under constant review of its judicial establishment and manpower situation having regard to operational needs. In 2011, the Judiciary conducted a comprehensive review of the judicial establishment and considered that the current level of establishment could be regarded as generally sufficient to cater for its operational needs, having regard to its prevailing workload. The next round of comprehensive review of the judicial manpower situation would be conducted by the Judiciary, upon the completion of the recruitment exercises in 2012-2013.

14. As regards the waiting times in courts, the Administration advised that in 2011, the waiting time targets for the Court of Final Appeal and the Family Court etc. were generally met. For the High Court, it was mainly due to more complex and lengthy cases as well as the refixing of cases that the waiting times for most of the cases in the High Court had exceeded the relevant target waiting times. The Administration also clarified that it was not a matter of insufficient resources that the Judiciary engaged deputy JJOs. Rather, it was due to short-term manpower re-juggling brought about by the retirement of judges and the wait for permanent judges to come to posts. It was operationally necessary to appoint deputy JJOs to fill the gaps in the interim before substantive appointments were made, and to help maintain court waiting times at reasonable levels.

15. On a members' suggestion of extending the retirement age of judges so as to further improve judicial manpower situation, the Administration advised that the statutory normal retirement age for JJOs was 60 or 65, depending on the level of the court. For the permanent judges of the Court of Final Appeal, their statutory retirement age could be extended from 65 up to 71 on a case-by-case basis.

The principle of no reduction in judicial pay

16. Taking note of the Judiciary's position that there should not be any reduction in judicial pay as a matter of principle, a member asked how this factor had been taken into account in previous JJs.

17. The Administration advised that, as approved by the CE-in-Council in May 2008, judicial remuneration was determined according to a mechanism separate from that of the civil service, having regard to the uniqueness of judicial work. Notwithstanding the Judiciary's position that there should not be any reduction in judicial pay as a matter of principle, it should be noted that judicial pay was frozen for 2009-2010 and 2010-2011 and had a 4.22% increase for 2011-2012 as against the pay reduction/increase for civil servants in the directorate and upper salary band for the same three yearly periods at -5.38%, 1.60% and 7.24% respectively.

Supplementary information

18. At members' request, the Administration provided supplementary information concerning remuneration arrangements for JJs 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 etc. in its discussion paper for the FC meeting on 16 November 2012 (FCR(2012-13)56).

Latest position

19. For the 2013 JRR, having regard to the recommendation made by the Judicial Committee, the CE-in-Council decided at its meeting on 24 September 2013 that the pay for JJs for 2013-2014 should be increased by 3.15% with retrospective effect from 1 April 2013. According to the Administration, the Judiciary has indicated its support for the Judicial Committee's recommendation. No public consultation outside the Judiciary has been conducted in this regard.

21. The Panel will discuss the 2013-2014 judicial service pay adjustment at its meeting on 26 November 2013.

22. A list of relevant papers is in **Appendix**.

Judicial Service Pay Adjustment

List of relevant papers

Date	Meeting/Event	References
20 October 2011	Panel on Administration of Justice and Legal Services	Legislative Council Brief File Ref: CSO/ADM CR 6/3221/02 Minutes of meeting LC Paper No. CB(2)1356/11-12
30 October 2012	Panel on Administration of Justice and Legal Services	Legislative Council Brief File Ref: CSO/ADM CR 6/3221/02 Background brief on "2012-2013 Judicial Service Pay Adjustment" prepared by the Legislative Council Secretariat LC Paper No. CB(4)61/12-13(01) Letter dated 30 October 2012 from The Law Society of Hong Kong on the 2012-2013 judicial service pay adjustment and related issues LC Paper No. CB(4)79/12-13(01) Minutes of meeting LC Paper No. CB(4)220/12-13
16 November 2012	Finance Committee	Administration Paper on 2012-13 Judicial Service Pay Adjustment File Ref: FRC(2012-13)56 Minutes of meeting LC Paper No. FC112/12-13