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Panel on Administration of Justice and Legal Services

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 24 November 2014**

Judicial Service Pay Adjustment

Purpose

This paper provides updated 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 2002, the Judiciary Administration ("JA") commissioned Sir Anthony Mason to undertake a consultancy study with a view to recommending the appropriate system for the determination of judicial remuneration in Hong Kong. The Consultancy Report on "System for the Determination of Judicial Remuneration" ("the Mason Report") was completed in February 2003.

3. Following completion of the Mason Report, the Chief Justice ("CJ") put forward to the Chief Executive ("CE") the Judiciary's proposal that the recommendations and views contained in the Mason Report should be adopted as the appropriate system for the determination of judicial remuneration in Hong Kong. Relevant recommendations made in the Mason Report include, inter alia, judicial remuneration should be fixed by the Executive after considering recommendations by an independent body which should be established by statute; the members of the independent body should be appointed by the Executive; and the methodology, i.e. the factors to be considered, should be specified in the statute.

4. On 21 January 2004, CE appointed the Standing Committee on Judicial Salaries and Conditions of Service¹ ("the Judicial Committee") to make recommendations to him on the appropriate institutional structure, mechanism and methodology for the determination of judicial remuneration and in particular, to make recommendations on whether the Judiciary's proposal based on the Mason Report should be accepted.

5. In May 2008, CE-in-Council agreed that judicial remuneration should be determined according to a mechanism separate from that of the civil service. Specifically, judicial remuneration is determined by CE-in-Council after considering the recommendations of the independent Judicial Committee. The new mechanism comprises (a) a benchmark study to be conducted on a regular basis² which seeks to check whether judicial pay is kept broadly in line with the movements of legal sector earnings over time; and (b) an annual review.

6. In coming up with the recommendations, the Judicial Committee would take into account the basket of factors approved by the CE-in-Council in May 2008, the principle of judicial independence and the position of the Judiciary³. The basket of factors include the responsibility, working conditions and workload of judges vis-à-vis those of lawyers in private practice; recruitment and retention in the Judiciary; retirement age and retirement benefits of the Judges and Judicial Officers ("JJOs")⁴; unique features of the judicial service; 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.

7. The first time judicial pay for JJOs was increased under the new mechanism for determining judicial remuneration was in 2011-2012. In conducting its 2011 judicial remuneration review ("JRR"), the Judicial Committee had also taken into account the principle of judicial independence and the position of the Judiciary. In particular, both the Judiciary and the Judicial Committee

¹ The Standing Judicial Committee on Judicial Salaries and Conditions of Service ("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"). 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 services of JJOs to be dealt with separately from those of the civil service.

² 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.

³ The Judiciary considers that there should not be any reduction in judicial pay as a matter of principle.

⁴ "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.

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 2011-2012; and had based their respective calculations on the same set of data. Having considered all relevant factors, the Judicial Committee submitted its report to the CE recommending that judicial salaries should be increased by 4.22% in 2011-2012 with effect from 1 April 2011.

Previous judicial service pay adjustments

8. 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 2009-2010 and 2010-2011.

9. The judicial pay increases recommended by the Judicial Committee for 2011-2012, 2012-2013 and 2013-2014 were 4.22%, 5.66% and 3.15% respectively. The proposed pay adjustments were generally supported by members of the Panel, and subsequently approved by the Finance Committee ("FC") of the Legislative Council⁵.

Past discussions

10. The Panel considered the proposed pay increase for JJOs at its meetings held on 20 October 2011, 30 October 2012 and 26 November 2013. Major views/concerns of members and the Administration's responses are set out in the ensuing paragraphs.

Judicial remuneration

11. At its meeting held on 20 October 2011 to discuss the 2011-2012 judicial service pay adjustment, members observed that the proposed judicial pay increase (i.e. 4.22%) recommended by the Judicial Committee did not meet with the increase (i.e. 4.23%) sought by the Judiciary with the difference being 0.01%. The Panel was of the view that there should be a consensual mechanism for JRR.

12. JA advised that different percentages of judicial pay increase proposed by the Judiciary and recommended by the Judicial Committee were the result of the different arithmetical approaches adopted in calculating the judicial pay increase and did not represent any fundamental differences regarding matters of principle. With the experience of the 2011-2012 JRR, the Judiciary would adopt the same calculation method as adopted by the Judicial Committee in a similar situation in

⁵ The proposed judicial service pay adjustments for 2011-2012, 2012-2013 and 2013-2014 were approved by the FC at its meetings held on 18 November 2011, 7 December 2012 and 20 December 2013 respectively.

future.

13. During the discussion of the 2012-2013 judicial service pay adjustment held on 30 October 2012, a member pointed out that the monthly salary of the CJ of the Court of Final Appeal ("CFA"), i.e. \$251,950, was much lower than that of the Secretaries of Departments, i.e. \$350,000, despite the fact that CJ ranked higher than Secretaries of Departments in the Precedence List of the Hong Kong Special Administrative Region. Question was raised as to whether the Judicial Committee had looked into such salary gap.

14. 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, such as housing and retirement benefits and education allowances, in addition to salary, which was not the case for the latter. Moreover, JJOs enjoyed security of tenure until they reached retirement age, which was not the case for political appointees. In recognition of the independence and uniqueness of the Judiciary, JJOs were remunerated according to an independent salary scale. Further, judicial salaries were subject to regular reviews that were distinct from that carried out in respect of the civil service, with the Judicial Committee rendering advice to CE on matters concerning judicial remuneration.

15. The Administration pointed out that whilst it was inappropriate to make direct comparison between judicial pay and private legal sector pay having regard to the uniqueness of judicial work, the findings of the 2010 benchmark study revealed that whilst the pay of Magistrates and District Judges was higher than that of the legal practitioners with comparable level of experience in the private sector, the pay of the Judges of the Court of First Instance ("CFI") of the High Court ("HC") was lower than that of the legal practitioners with comparable level of experience in the private sector. In respect of the pay differentials between CFI Judges and senior counsels with the same years of practice, the pay differential had narrowed from 47% to 42% since 2005. It should however be noted that the changes in differentials between judicial pay and legal sector pay, with some widening and some narrowing at different ranges, pointed to the diversity of legal sector pay. No clear trend could be established from such pay differentials. One interesting observation from the benchmark study was that comparing with solicitors who participated in the benchmark study, a greater number of barristers who participated in the same had expressed interests in joining the bench.

16. Question was raised as to whether the total remuneration package for JJOs was reasonably attractive to outside talents who wished to join the bench. The Administration responded that apart from the remuneration package, 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 remained reasonably attractive to outside talents who wished to join the bench.

Judicial manpower situation and long court waiting times

17. Noting the long court waiting times, concern was raised as to whether the Judiciary had adequate judicial manpower to cope with the increasing workload.

18. The Administration advised that the Judiciary had kept under constant review its judicial establishment and manpower situation having regard to operational needs. For instance, to cope with the increasing workload in the Lands Tribunal, particularly arising from more compulsory sale cases since 2009, two new judicial posts were created in 2012⁶. Further, according to the Judiciary, it had not encountered any undue recruitment and retention problem in recent years. Pending the filling of vacancies in the substantive posts, the Judiciary would continue its established practice of engaging temporary judicial resources to help relieve workload. The deployment of external deputy/temporary JJOs also served the need for private solicitors and barristers to gain actual experience in the Judiciary, before making a decision on whether to join the bench. The Administration further advised that the Judiciary had reviewed the frequency of conducting recruitment exercises for CFI Judges. Noting that the recruitment trawl might not match the timing for some interested parties to join the bench, CJ considered that CFI recruitment exercises should be conducted regularly on a yearly basis, instead of approximately every three years in the past. Since the last round of recruitment exercise for CFI Judges conducted in March 2012, the latest recruitment exercise was launched in July 2013.

19. As regards long court waiting times, the Administration advised that the problem should be viewed in totality. According to the Judiciary, whilst the waiting times for the CFI, insofar as the Civil Running List and the Criminal Running List were concerned, had exceeded their waiting time targets, the respective court waiting times for the CFA, the District Court, the Family Court, the Magistrates' Courts and specialized courts and tribunals had generally been met. The Chief Judge of the HC was giving top priority to deploying judicial resources for hearing appeals by the CFI.

Staff and other support for JJOs

⁶ The Judiciary proposed to seek funding support from FC in 2014-2015 to create seven permanent judicial posts to enhance the establishment of judicial manpower at various levels of court.

20. Some members were concerned about the lack of staff and other support for JJOs. These members pointed out that judges were not provided with sufficient support in preparing judgements, especially judgements in the Chinese language, and some judges had to make use of their personal time to prepare judgements. A member further pointed out that in some overseas common law jurisdictions, judges were supported by a team of qualified barristers serving as judges' clerks to alleviate the workload of judges.

21. The Administration advised that the Judiciary had launched the Scheme on Judicial Assistants ("the Scheme") in 2010 to provide enhanced support to appellate judges in discharging their duties. The objectives of the Scheme were: (a) to provide assistance to appellate judges in the CFA and the Court of Appeal of the HC in conducting research on law points and assisting in other work of the court; and (b) to enable fresh and bright law graduates who were about to embark upon careers in the legal profession to acquire an insight into the appellate process and to benefit from working with appellate judges.

Latest position

22. For the 2014-2015 JRR, the Judicial Committee recommended a 6.77% increase in the pay for JJOs for 2014-2015. As in the case of the past judicial service pay adjustments, the Administration intends to seek the views of the Panel prior to seeking funding support from FC.

23. The Panel will discuss the 2014-2015 judicial service pay adjustment for JJOs at its meeting on 24 November 2014.

Relevant papers

24. A list of the relevant papers is in the **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: <u>CSO/ADM CR 6/3221/02</u> Minutes of meeting LC Paper No. <u>CB(2)1356/11-12</u>
30 October 2012	Panel on Administration of Justice and Legal Services	Legislative Council Brief File Ref: <u>CSO/ADM CR 6/3221/02</u> Background brief on "2012-2013 Judicial service pay adjustment" prepared by the Legislative Council ("LegCo") Secretariat LC Paper No. <u>CB(4)61/12-13(01)</u> 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. <u>CB(4)79/12-13(01)</u> Minutes of meeting LC Paper No. <u>CB(4)220/12-13</u>

Date	Meeting/Event	References
26 November 2013	Panel on Administration of Justice and Legal Services	<p>Legislative Council Brief File Ref: <u>CSO/ADM CR 6/3221/02</u></p> <p>Background brief on "Judicial service pay adjustment" prepared by LegCo Secretariat LC Paper No. <u>CB(4)157/13-14(03)</u></p> <p>Minutes of meeting LC Paper No. <u>CB(4)511/13-14</u></p> <p>Administration's response to the information requested by members concerning "Judicial service pay adjustment" LC Paper No. <u>CB(4)223/13-14(01)</u></p>

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