

LEGISLATIVE COUNCIL BRIEF

2015-16 JUDICIAL SERVICE PAY ADJUSTMENT

INTRODUCTION

At the meeting of the Executive Council on 29 September 2015, the Council ADVISED and the Chief Executive (CE) ORDERED that the pay for judges and judicial officers¹ (JJOs) for 2015-16 should be increased by **4.41%** with effect from 1 April 2015.

JUSTIFICATIONS

Deliberations of the Standing Committee on Judicial Salaries and Conditions of Service

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 after considering the recommendations of the independent Standing Committee on Judicial Salaries and Conditions of Service (Judicial Committee)². For the 2015 judicial remuneration review (JRR), the Judicial Committee submitted its report to the CE on 13 July 2015, recommending a 4.41% increase in the pay for JJOs for 2015-16. In coming up with this recommendation, the Judicial Committee has taken into account the basket of factors as approved by the Chief Executive in Council in May 2008 (see items (a) to (l) of paragraph 33 below), the principle of judicial independence and the position of the Judiciary. A copy of the Judicial Committee's report is at Annex. Key deliberations of the Judicial Committee and our assessment are set out in the ensuing paragraphs.

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 Judicial Committee is chaired by The Hon Bernard Chan. Other members are The Hon Chow Chung-kong, Mr Lester Garson Huang, Mrs Ayesha Macpherson Lau, Mr Benjamin Yu, Ms May Tan and Professor Wong Yuk-shan.

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 does not observe any major change in the responsibility and working conditions of JJOs. While the total caseloads of the Judiciary as a whole remained steady in the past few years, there was a noticeable decrease in the number of cases at the Obscene Articles Tribunal in 2014, which was mainly attributable to the reduction in the number of articles referred by the Magistrates' Courts to the Tribunal for determination. The Judicial Committee recognises that caseload figures alone do not fully reflect the workload of JJOs, and that complexity of cases is also an important element.

4. Despite the relatively steady caseload figures, the Judiciary pointed out that, inter alia, the increased complexity of cases, a high ratio of unrepresented litigants in civil cases, and new development in law such as the introduction of the Competition Ordinance (Chapter 619), had translated into a heavy workload. This was particularly felt at the level of the High Court.

5. Overall, the Judicial Committee maintains the view that the nature of judicial work is unique which renders direct comparison between legal practitioners in the private sector and JJOs inappropriate. We have no particular comment on the observations of the Judicial Committee in this regard.

(ii) Recruitment and retention in the Judiciary

6. In 2014-15, seven new judicial posts, viz. three Justices of Appeal of the Court of Appeal of the High Court (JA), one Judge of the Court of First Instance of the High Court (CFI Judge), one District Judge and two Magistrate posts, were created, bringing the establishment of JJOs from 193 as at 31 March 2014 to 200 as at 31 March 2015. The Judicial Committee notes that up to 31 March 2015, a total of 77 judicial appointments were made in the nine open recruitment exercises conducted between 2011 and 2014, with 24 judicial appointments made in 2014-15. Appointments of four CFI Judges were also made in April 2015. As of 31 March 2015, against the establishment of 200 judicial posts, 169 were filled substantively. This represents a net increase of 15 in the strength of JJOs as compared with 31 March 2014. Meanwhile, the Judiciary has continued to engage temporary judicial resources to help relieve workload, including internal/external deputy and temporary or

acting JJOs. The number of external deputy/temporary JJOs decreased from a total of 41 as at 31 March 2014 to 23 as at 31 March 2015.

7. The Judicial Committee notes the Judiciary's advice that it is apparent that there are some recruitment difficulties at the CFI level. For three consecutive recruitment exercises for CFI Judges conducted in 2012, 2013 and 2014, not all vacancies could be filled. The number of eligible candidates found suitable for appointment was much smaller than the available vacancies. In the latest recruitment exercise conducted in 2014, whilst it has yet to be concluded, the Judicial Committee understands from the Judiciary that not all vacancies could be filled. The Judicial Committee considers that the above presents clear evidence that there are persistent recruitment difficulties at the CFI level.

8. The Judicial Committee notes that the Judiciary has already taken various steps to address this issue. Since 2013, the Judiciary has been conducting recruitment exercises for CFI Judges on a yearly basis instead of every three years, having regard to the fact that the timing for joining the bench is a crucial factor for legal practitioners. Moreover, the Judiciary has embarked on specific reviews on two important areas, i.e. the terms and conditions of service, which cover the existing package of benefits and allowances, and retirement ages of JJOs with a view to attracting quality candidates and experienced private practitioners to join the bench at the later stage of their career life, in particular at the CFI level. In addition, preparation for the 2015 Benchmark Study on the Earnings of Legal Practitioners in Hong Kong (Benchmark Study) is underway, which will provide useful information to the Judicial Committee on the earnings levels and trends of private legal practitioners in order to ascertain whether judicial pay has been kept broadly in line with the movements of legal sector earnings over time. The Judicial Committee hopes that in the context of the next, i.e. 2016, JRR, it will be able to draw on the findings of the 2015 Benchmark Study, the outcome of the 2014 recruitment exercise for CFI Judges as well as any conclusions (if available) from the aforementioned reviews being conducted by the Judiciary, in further examining the recruitment difficulties at the CFI level and tendering advice on how they may be addressed.

9. For the rank of District Judge, the Judicial Committee notes that all the vacancies could be filled as a consequence of the outcome of the 2011 recruitment exercise. As regards the Permanent Magistrate and Special Magistrate ranks, all fillable vacancies have been filled as at 31 March 2015 following the latest recruitment exercises in 2014.

10. On the other hand, the Judicial Committee notes the Judiciary's observation that upon the completion of the West Kowloon Law Court Building in 2015-16, additional courtrooms will be provided. Thereafter, up to 13 posts at Magisterial level which are currently not fillable due to insufficient courtroom facilities will become fillable. Depending on the operational needs at the time, a sizeable number of Permanent Magistrate posts may need to be filled shortly after 2015-16. Moreover, the Judiciary also points out that during the past year or so, it has been encountering difficulties in inviting suitable persons from the private practice to deputise as Special Magistrates. The Judiciary considers that this is an issue which may require more thorough and detailed study and has been taking a closer look into the concerned matters.

11. We take note of the Judicial Committee's observation that there are recruitment difficulties at the CFI level. We will keep a close watch on the developments and results of the reviews on terms and conditions of service and retirement ages of JJOs being conducted by the Judiciary to see how the recruitment difficulties can be addressed. Meanwhile, we are of the view that the total package for JJOs, which comprises not only the remuneration package, but also other factors such as the high esteem of the Judiciary, individuals' commitment to serve the public and the opportunity to move to the next level of one's career, etc., remains reasonably attractive to outside talents who wish to join the bench.

(iii) Retirement age and retirement benefits of JJOs

12. Judges enjoy security of tenure³. The statutory normal retirement age for JJOs is 60 or 65, depending on the level of the court. Beyond that, extension of service may be approved up to the age of 70 or 71, depending on the level of the court and subject to consideration on a case-by-case basis. For retirement benefits, JJOs are entitled to pension or provident fund according to their terms of appointment. The Judicial Committee notes that retirement is the main source of wastage among JJOs. The anticipated retirement will be five (or 3.0% of current strength) in 2015-16, increasing to seven (or 4.1% of current strength) in 2016-17, and going up to nine (or 5.3% of current strength) in 2017-18. The Judicial Committee notes that the retirement situation may pose challenges to judicial manpower in the coming years, and considers that the Judiciary should continue to attract new blood and to groom and

³ 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 (LegCo) and reported to the Standing Committee of the National People's Congress for the record.

retain existing talents. As mentioned in paragraph 8 above, the Judicial Committee notes that the Judiciary is conducting a review on the retirement ages of JJOs with a view to attracting and retaining talents.

(iv) Benefits and allowances enjoyed by JJOs

13. 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 was no change to the fringe 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. In addition, with the Judicial Committee's support, the Government approved the Judiciary's proposals to revise the rates for two Extraneous Duties Allowances (Responsibility) (EDA(R)s) for JA⁶ in 2014-15. The Judicial Committee notes that the existing package of benefits and allowances is an integral part of judicial remuneration, and is an important component that has helped attract capable legal practitioners to join the bench. The Judicial Committee will continue to keep the situation under review. Since there is no major change in the package of benefits and allowances enjoyed by JJOs, we consider that this factor should not affect the overall consideration of judicial pay for 2015-16.

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

14. The Judiciary is unique in many aspects. One 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 CE. These are long established arrangements and nothing was changed during the 2015-16 judicial pay review exercise.

⁴ Leave Passage Allowance is an allowance to reimburse eligible officers (and their eligible family members, where applicable) their travel-related expenses.

⁵ The Home Financing Allowance and Non-accountable Cash Allowance are two different types of housing allowance offered to JJOs.

⁶ Both EDA(R)s are payable in recognition of the higher responsibilities taken up by JAs. One is for JAs sitting as Non-Permanent Judges of the Court of Final Appeal, while the other is for JAs appointed as Vice Presidents of the Court of Appeal of the High Court.

(vi) *Overseas remuneration arrangements*

15. The Judicial Committee continues to keep track of major developments, if any, on judicial remuneration of six overseas common law jurisdictions, namely, Australia, Canada, New Zealand, Singapore, the United Kingdom and the United States. There was no systemic change to the judicial remuneration systems in these jurisdictions in 2014-15. The six jurisdictions took different, but generally prudent, actions in their latest annual salary reviews for judges, with the annual adjustment rates more or less similar to the previous year. A key consideration behind their actions appeared to be their prevailing state of economy.

16. While the Judiciary has not recruited from overseas in recent years, we consider that overseas remuneration arrangements remain a relevant factor in considering judicial pay since this provides a good reference of the international norm of how judicial pay reviews are handled. We note the observations of the Judicial Committee on overseas remuneration arrangements and have no particular comment.

(vii) *Cost of living adjustment*

(viii) *General economic situation in Hong Kong*

(ix) *Budgetary situation of the Government*

17. The Judicial Committee takes note of the information provided by the Government in May and June 2015 respectively on the cost of living adjustment, general economic situation in Hong Kong and the budgetary situation of the Government. For the 12-month period ended March 2015, the headline inflation averaged at 4.5% and the underlying inflation netting out all Government's one-off relief measures averaged at 3.2%. The economy was then forecast to grow by 1-3% for 2015 according to the forecast in May 2015, while the forecast headline inflation and underlying inflation for 2015 were 3.2% and 2.7% respectively. The seasonally adjusted unemployment rate was at 3.2% in March to May 2015, as compared to 3.1% in the same period in 2014. The consolidated surplus of the Government for 2014-15 was \$72.8 billion and the fiscal reserves stood at \$828.5 billion as at end March 2015. The 2015-16 Budget forecasts a consolidated surplus of \$36.8 billion, equivalent to 1.6% of our Gross Domestic Product (GDP).

18. After the submission of the Judicial Committee's report in July 2015, the official GDP growth forecast for 2015 as a whole was revised to 2-3% in mid-August 2015, taking into account the actual growth outturn in the first half, and with the economy poised for further moderate growth

in the second half. Besides, with the actual inflation outturn so far this year somewhat lower-than-expected, the forecast rates of headline and underlying consumer price inflation for 2015 were revised slightly downward to 3.1% and 2.6% respectively. Meanwhile, the seasonally adjusted unemployment rate edged up to 3.3% in May to July 2015, albeit still a relatively low level.

19. The fiscal outlook for Hong Kong remains positive in the short to medium term. However, Government's recurrent expenditure has grown at a trend rate of 7.8% per annum for the past five years (from 2010-11 to 2015-16), far outpacing the 5.5% growth in nominal GDP and 4.9% growth in government revenue. With labour force projected to decline as from 2018 and with a fast ageing population, government expenditure is expected to grow even more rapidly. The Government is duty bound to contain the growth of expenditure. Personal emoluments and related expenses, together with staff-related spending on subventions, account for around 60% of Government's operating expenditure. In absolute dollar terms, these provisions have grown at a trend rate of 7.1% per annum for the past five years.

(x) *Private sector pay levels and trends*

20. 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. A Benchmark Study was commissioned by the Judicial Committee in September 2010, and concluded that no clear trends in differentials between judicial pay and legal sector earnings could be established. The Study also reaffirmed that remuneration was not a key concern in considering judicial appointment. The Judicial Committee decides that the next Benchmark Study would be conducted in 2015. The findings would be reflected in the 2016 JRR.

21. The private sector pay levels and trends being one of the factors under the balanced approach for determining judicial remuneration, the Judicial Committee continues to make reference to the Pay Trend Indicators (PTIs) from the annual Pay Trend Survey (PTS)⁷, which

⁷ 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. The 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 2015 PTS as an example, the ranges of the three salary bands are as follows –

- (i) Lower Salary Band covering employees in the salary range below \$19,410 per month;

reflects the overall year-on-year change of 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 increments for JJOs is +3.91% in 2015 (i.e. the relevant gross PTI at 4.46% less the consolidated cost of increments (CCOI) for JJOs at 0.55%). We agree with the assessment of the Judicial Committee.

(xi) Public sector pay as a reference

22. The judicial pay adjustment mechanism is now delinked from that of the civil service. Public sector pay is only one of the factors for consideration under the balanced approach in determining judicial pay. In the 2015 JRR, the Judicial Committee made reference to the decision of the Chief Executive in Council in June 2015 to increase the pay for civil servants in the directorate and upper salary band by 3.96% (equal to the net PTI for the Upper Salary Band (3.46%) plus 0.5%) with effect from 1 April 2015. The Judicial Committee also notes the findings of the 2013 Pay Level Survey (PLS) and the decision of the Chief Executive in Council in February 2015 that the salaries of senior civil servants remunerated on Master Pay Scale points 45 or above and directorate officers should be increased by 3% with retrospective effect from 1 October 2014. The Judicial Committee notes that while the PLS is conducted at six-yearly intervals for civil servants to ascertain whether the level of civil service pay is broadly comparable with the level of private sector pay at a particular reference point in time, the Benchmark Study is conducted every five years to monitor the changes in the pay differentials between the levels of judicial pay and the earning levels of legal practitioners under the existing mechanism for the determination of judicial remuneration. The Judicial Committee considers it appropriate to examine the level of judicial pay vis-à-vis the earnings levels in the private sector in the upcoming Benchmark Study as mentioned in paragraph 20.

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- (ii) Middle Salary Band covering employees in the salary range of \$19,410 to \$59,485 per month; and
 - (iii) Upper Salary Band covering employees in the salary range of \$59,486 to \$118,840 per month.

In the absence of a comprehensive or representative pay trend survey on the legal sector, the PTI for the Upper Salary 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 \$72,155.

23. We agree with the Judicial Committee that public sector pay is just one of the factors for consideration under the balanced approach. We also note that preparation for the 2015 Benchmark Study is underway and that the results will shed light on whether judicial pay has been kept broadly in line with the movements of legal sector earnings over time.

B. Judicial independence

24. Apart from considering the basket of factors 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 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.

C. Position of the Judiciary

25. The Judiciary sought a pay increase of 4.41% for the judicial service in 2015-16. This is equivalent to the addition of 0.5% to the private sector pay trend indicator as adjusted by the cost of increments for JJOs (net PTI for JJOs) at 3.91% in 2015. The Judiciary considers that if the civil service pay adjustment is based on the net PTI plus 0.5%, the same approach should be adopted for the judicial pay adjustment in 2015. If the “plus 0.5%” is not adopted for the judicial pay adjustment in 2015, it would put the position of judicial remuneration in a disadvantaged position when compared to the public sector pay adjustment as a whole. The Judiciary also reiterated its position that there should not be any reduction in judicial pay as a matter of principle.

Recommendation of the Judicial Committee

26. Having considered the above factors, the Judicial Committee recommends that judicial pay for 2015-16 should be increased by 4.41%.

The Government’s views

27. We consider that the Judicial Committee has thoroughly examined the basket of factors as approved by the Chief Executive in Council in May 2008. It has taken into account the principle of judicial independence and reaffirmed its stance that it is 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. It has also taken the position of the Judiciary in its deliberations. 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 2015-16 should be increased by 4.41%.

28. We note in particular that the Judicial Committee has taken into account the basket of factors relevant to judicial pay adjustment, including the situation on recruitment, inflation and public sector pay increase, as well as the Judiciary's position, in recommending to apply the additional 0.5% to net PTIs for JJOs in 2015-16.

IMPLICATIONS OF THE PROPOSAL

29. The estimated financial implication for 2015-16⁸ arising from a 4.41% increase in the pay for JJOs is \$15.91 million which comprises \$14.11 million based on net PTI for JJOs of 3.91% and \$1.8 million attributable to the addition of 0.5%. 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 the established mechanism. The recommendation is in conformity with the Basic Law, including the provisions concerning human rights, and has no staffing, economic, family, environmental, gender or sustainability implications.

PUBLIC CONSULTATION

30. The Judicial Committee has invited both the Judiciary and the Government to provide information relating to the basket of factors for its consideration. After the Judicial Committee submitted its recommendation to the CE, we have invited the Judiciary to give its response to the Judicial Committee's recommendation to increase the pay for JJOs for 2015-16 by 4.41%. The Judiciary has indicated its support for the Judicial Committee's recommendation. No public consultation outside the Judiciary has been conducted.

⁸ The estimate was calculated by the Judiciary in around mid-August 2015 by multiplying the proposed judicial pay increase of 4.41% to the actual salaries and acting allowances for JJOs for the four months from April to July 2015 and their projected salaries and acting allowances for the eight months from August 2015 to March 2016.

PUBLICITY

31. We have informed the Judiciary and the Judicial Committee of the Government's decision on the 2015-16 judicial service pay adjustment. We will also issue a press release and a spokesman will be made available to handle press enquiries. We will also brief the LegCo Panel on Administration of Justice and Legal Services before we proceed to seek the approval of the LegCo Finance Committee on the proposed pay adjustment. The Judicial Committee will separately release its report to the public.

BACKGROUND

32. Having considered the recommendations of the Judicial Committee, the Chief Executive 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 Chief Executive 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. The Judicial Committee has decided that the Benchmark Study should in principle be conducted every five years to check whether judicial pay is kept broadly in line with the movements of legal sector earning over time, with its frequency subject to periodic review. The last Benchmark Study was conducted in 2010. The Judicial Committee decided that the next Benchmark Study should be conducted in 2015, and preparatory work is underway.

33. 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) retirement age and retirement benefits of JJOs;
- (d) benefits and allowances enjoyed by JJOs;
- (e) unique features of the judicial service, such as the security of tenure, the prestigious status and high esteem of the judicial

offices;

- (f) prohibition against return to private practice in Hong Kong;
- (g) overseas remuneration arrangements;
- (h) cost of living adjustments;
- (i) general economic situation in Hong Kong;
- (j) budgetary situation of the Government;
- (k) private sector pay levels and trends; and
- (l) public sector pay as a reference.

ENQUIRIES

34. Enquiries on this brief should be addressed to Mrs Do Pang Wai-yee, Deputy Director of Administration, at 2810 3008 or Ms Christine Wai, Assistant Director of Administration, at 2810 3946.

Administration Wing
Chief Secretary for Administration's Office
29 September 2015

STANDING COMMITTEE ON JUDICIAL SALARIES AND CONDITIONS OF SERVICE

Report on Judicial Remuneration Review 2015

July 2015

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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 (JRR) 2015. 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 (CFA); Judge, CFA; Judge of the High Court; and Judge of the District Court (District Judge). 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 Judicial 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 tendering advice to the Chief Executive on matters concerning judicial remuneration.

Judicial Remuneration Review 2015

1.6 In conducting the Review in 2015, the Judicial Committee invited the Judiciary and the Government to provide relevant data and views pertaining to the basket of factors³. The Judicial Committee then

³ The basket of factors which the Judicial Committee takes into account in reviewing judicial remuneration are set out in paragraphs 2.5 and 2.6.

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 4.41% in 2015-16.

Chapter 2

Mechanism for Judicial Remuneration Review

Mechanism

2.1 The mechanism for JRR, 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 In its 2005 Report, the Judicial Committee took the view that a benchmark study on the levels of earnings of legal practitioners should be conducted on a regular basis, in order to ascertain their earnings levels, monitor such trends and review judicial salaries where appropriate. The Judicial Committee also recommended 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 made⁴.

2.3 The Judicial Committee decided in 2009 that a benchmark study should in principle be conducted every five years, with its frequency subject to periodic review. The last benchmark study, entitled the “2010 Benchmark Study on the Earnings of Legal

⁴ The 2005 Report, paragraph 3.26.

Practitioners in Hong Kong” (the 2010 Study) was conducted in 2010⁵, five years since the previous pilot study conducted in 2005, with the assistance of a professional consultant. Having completed the 2010 Study, the Judicial 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. The Judicial Committee has decided that the next benchmark study should be conducted in 2015. Preparatory work for the 2015 Benchmark Study is underway.

Annual Review

2.4 The Judicial 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 Judicial 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 Judicial Committee will consider whether and, if so, how judicial pay should be adjusted.

Balanced Approach

2.5 Consistent with its recommendations in the 2005 Report as approved by the Chief Executive-in-Council, the Judicial Committee adopts a balanced approach in reviewing judicial remuneration by taking into account a basket of factors. The basket of factors includes 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;

⁵ The findings of the 2010 Study are set out in the Survey Report, accessible at the Joint Secretariat’s website at http://www.jsscs.gov.hk/reports/en/jscs_11/r_benchmarkstudy2010.pdf.

- (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.

2.6 In addition to the above, the Judicial Committee has also agreed to take into account the following factors suggested by the Government –

- (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 2015 – Annual Review

The Annual Review

3.1 This is the seventh 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 Judicial 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 Judicial 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 have remained the same as set out in **Appendix D**.

3.3 As regards workload, the caseloads of the Judiciary as a whole remained steady in the past few years. In 2014, there was a noticeable decrease in the number of cases at the Obscene Articles Tribunal, which was mainly attributable to the reduction in the number of articles referred by the Magistrates' Courts to the Tribunal for determination. The number of articles referred by the Magistrates' Courts for determination is related to the number of concerned prosecutions brought before the Magistrates' Courts. The caseloads in

different levels of court between 2012 and 2014 are shown in **Appendix E**.

3.4 Despite the relatively steady caseload figures, the Judiciary has pointed out that for all levels of court, cases were getting more complex. More time and effort were required for JJOs to deal with trials as well as to conduct pre-hearing preparation and write judgement after the hearings. Indeed, the Judicial Committee has all along recognised that caseload figures alone do not fully reflect the workload of JJOs, and the complexity of cases is also an important element. The Judicial Committee maintained 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.

3.5 The Judiciary also indicated that for the High Court in particular, the increased complexity of cases and new development in law such as the introduction of the Competition Ordinance (Cap. 619), inter alia, had translated into a heavy workload⁶. The high ratio of unrepresented litigants in civil cases also creates great challenges for JJOs who are not assisted by legal representatives during the conduct of the hearings. The Judicial Committee trusted that the Judiciary would continue to monitor any changes in workload and keep in view its manpower position to ensure provision of quality services to court users and members of the public.

Recruitment and Retention

3.6 On the establishment front, with the creation of seven new judicial posts, namely three Justices of Appeal of the Court of Appeal of the High Court (JA), one Judge of the Court of First Instance of the High Court (CFI Judge), one District Judge and two Magistrates, in March this

⁶ As advised by the Judiciary, in recent years, there have been many complex trials involving Mainland undertakings, big money matrimonial disputes, complicated commercial crime and important public law cases. In addition, there has been new development in law, e.g. the introduction of new legislation such as Competition Ordinance, which has an important impact on the already heavy workload.

year to cope with the increasing workload of the High Court and to cover the absence of JJOs at various levels of court for attending training and dealing with judicial education matters, the establishment of JJOs has increased from 193 as at 31 March 2014 to 200 as at 31 March 2015. As of 31 March 2015, against the establishment of 200 judicial posts, 169 were filled substantively. This represents a net increase of 15 in the strength of JJOs as compared with 31 March 2014, which arose because of judicial appointments. The establishment and strength of JJOs as at 31 March 2015 are in **Table 1** below –

Table 1: Establishment and strength of JJOs

Level of court	As at 31.3.2015*		Net change in strength over 31.3.2014
	Establishment	Strength	
CFA ⁷	4 (4)	4 (4)	0
High Court ⁸	59 (55)	37 (40)	-3
District Court ⁹	41 (40)	42 [#] (42)	0
Magistrates' Courts and Specialised Tribunals/Court ⁸	96 (94)	86 (68)	+18
Total	200 (193)	169 (154)	+15

* Figures in brackets denote position as at 31.3.2014.

Strength of JJOs at the District Court level exceeded its establishment as some of them were appointed as temporary Deputy Registrars for the High Court Masters' Office under the cross-posting policy.

3.7 On recruitment of JJOs, the Judiciary advised that a total of nine open recruitment exercises for various judicial ranks were conducted between 2011 and 2014, including recruitment exercises for CFI Judges, Permanent Magistrates and Special Magistrates in 2014. Up to 31 March 2015, a total of 77 judicial appointments were made as a result of the recruitment exercises conducted between 2011 and 2014, with 24 judicial appointments made in the 2014-15 financial year. The 24 appointees included one CFI Judge, one District Judge, 17 Permanent

⁷ The figures exclude one Permanent Judge post created for Non-Permanent Judge (NPJ) of the CFA. In practice, an NPJ is invited to sit in the CFA as required in accordance with the Hong Kong Court of Final Appeal Ordinance (Cap. 484).

⁸ For Senior Deputy Registrar and Deputy Registrar vacancies in the Masters' Office of the High Court, the functions are now mostly carried out by District Judges who are appointed as temporary Deputy Registrars under the cross-posting policy.

⁹ 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.

Magistrates and five Special Magistrates, with 21 joined from the outside. Appointments of four CFI Judges were also made in April 2015.

3.8 At the CFI level, the Judicial Committee noted the Judiciary's advice that it is apparent there are some recruitment difficulties. For three consecutive recruitment exercises for CFI Judges conducted in 2012, 2013 and 2014, not all vacancies could be filled. The number of eligible candidates found suitable for appointment was much smaller than the available vacancies. In the latest recruitment exercise conducted in 2014, whilst it has yet to be concluded, the Judicial Committee understood from the Judiciary that not all vacancies could be filled.

3.9 The Judicial Committee considered that the above presented clear evidence that there are persistent recruitment difficulties at the CFI level. The Judicial Committee noted that the Judiciary has already taken various steps to address this issue. Since 2013, the Judiciary has been conducting recruitment exercises for CFI Judges on a yearly basis instead of every three years, having regard to the fact that the timing for joining the bench is a crucial factor for senior legal practitioners. Moreover, the Judiciary has embarked on specific reviews on two important areas, i.e. the terms and conditions of service which cover the existing package of benefits and allowances¹⁰ and retirement ages of JJOs with a view to attracting quality candidates and experienced private practitioners to join the bench at the later stage of their career life, in particular at the CFI level. The Judiciary will keep the Government posted of developments at appropriate juncture of the reviews.

3.10 Furthermore, as mentioned in paragraph 2.3 of this Report, preparation for the 2015 Benchmark Study is underway, which will provide useful information to the Judicial Committee on the earnings levels and trends of private legal practitioners in order to ascertain whether judicial pay has been kept broadly in line with the movements of legal sector earnings over time. The Judicial Committee hopes that

¹⁰ Housing benefits, medical benefits and education allowance, etc are covered in the review.

in the context of the next, i.e. 2016, JRR, it will be able to draw on the findings of the 2015 Benchmark Study, the outcome of the 2014 recruitment exercise for CFI Judges as well as any conclusions (if available) from the aforementioned reviews being conducted by the Judiciary, in further examining the recruitment difficulties at the CFI level and tendering advice on how they may be addressed.

3.11 For the rank of District Judge, the Judicial Committee noted that all the vacancies could be filled as a consequence of the outcome of the 2011 recruitment exercise. As regards the Permanent Magistrate¹¹ and Special Magistrate¹² ranks, all fillable vacancies have been filled as at 31 March 2015 following the latest recruitment exercises in 2014.

3.12 Meanwhile, the Judiciary has continued to engage temporary judicial resources to help relieve workload, including internal/external deputy and temporary or acting JJOs. The number of external deputy JJOs has decreased from a total of 41 as at 31 March 2014 to 23 as at 31 March 2015.

Retirement

3.13 The statutory normal retirement ages for JJOs are 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.

¹¹ As advised by the Judiciary, upon completion of the West Kowloon Law Court Building in 2015-16, additional courtrooms would be provided. Thereafter, up to 13 posts at Magisterial level which are currently not fillable due to insufficient courtroom facilities would become fillable. Depending on the operational needs at the time, a sizeable number of Permanent Magistrate posts may need to be filled shortly after 2015-16.

¹² As advised by the Judiciary, during the past year or so, it has been encountering difficulties in inviting suitable persons from the private practice to deputise as Special Magistrates. The Judiciary considers that this is an issue which may require more thorough and detailed study and has been taking a closer look into the concerned matters.

3.14 Retirement is the main source of wastage among JJOs. The anticipated retirement will be five (or 3.0% of current strength) in 2015-16, increasing to seven (or 4.1% of current strength) in 2016-17, and going up to nine (or 5.3% of current strength) in 2017-18.

3.15 The retirement situation may still pose challenges on judicial manpower in the coming years. To address the situation, the Judicial Committee considered that the Judiciary should continue to attract new blood and to groom and retain existing talent. As mentioned in paragraph 3.9 above, the Judicial Committee noted that the Judiciary is conducting a review on retirement ages of JJOs with a view to attracting and retaining talents.

Benefits and Allowances

3.16 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.

3.17 The Judicial Committee noted that there was no change to the package of existing fringe benefits and allowances for JJOs in the past year, except the following –

- (a) The rates of Leave Passage Allowance¹³, Home Financing Allowance and Non-accountable Cash Allowance¹⁴ were revised following similar revisions in the civil service; and
- (b) With the Judicial Committee's support, the Government has approved the Judiciary's proposals to

¹³ 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, as well as car hire and related expenses.

¹⁴ The Home Financing Allowance and Non-accountable Cash Allowance are two different types of housing allowance offered to JJOs.

revise the rates for two Extraneous Duties Allowances (Responsibility) (EDA(R)) for JA¹⁵ in 2014-15, based on the annual judicial pay adjustment of 6.77% for 2014-15.

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

Unique Features of the Judicial Service

3.19 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 CFA 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 tenure¹⁶ and high esteem, which may be seen as attractions for legal practitioners joining the bench. The Judicial Committee noted that these were all long established arrangements and nothing was changed during the annual salary review in 2015.

Overseas Remuneration Arrangements

3.20 The Judicial Committee continued to keep track of major development, if any, on judicial remuneration in six overseas common

¹⁵ Both EDA(R)s are payable in recognition of the higher responsibilities taken up by JAs. One is for JAs sitting as NPs of the CFA, while the other is for JAs appointed as Vice Presidents of the Court of Appeal of the High Court.

¹⁶ 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 CFA 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.

law jurisdictions, namely, Australia, Canada, New Zealand, Singapore, the United Kingdom and the United States. There was no systemic change to the judicial remuneration systems in these jurisdictions in 2014-15. The jurisdictions took different, but generally prudent, actions in their latest annual salary reviews for judges, with the annual adjustment rates more or less similar to the previous year. A key consideration behind their respective actions appeared to be the prevailing states of economy of the respective jurisdictions.

General Economic Situation and Cost of Living Adjustments in Hong Kong

3.21 The Government has provided detailed information on Hong Kong's economic and fiscal indicators for the Judicial Committee's reference. Hong Kong's economic growth remained on a modest expansion path in the first quarter of 2015, with Gross Domestic Product (GDP) growing at 2.1% year-on-year in real terms over a year earlier, slightly lower than the 2.4% growth in the fourth quarter of 2014. Domestic demand remained the key source of economic growth which cushioned against the disappointing performance of the external factor. For 2015 as a whole, the Hong Kong economy is projected to grow by 1-3%. The year-on-year changes in GDP in real terms are shown in **Table 2** below –

Table 2 : Changes in GDP in real terms

Year	Quarter (Q)	GDP year-on-year % change
2014	Q1	+2.7%
	Q2	+2.0%
	Q3	+2.9%
	Q4	+2.4%
2015	Q1	+2.1%*

(Source: Figures published by the Census and Statistics Department)

* Preliminary figure

3.22 Hong Kong's labour market remained broadly stable in the first quarter of 2015, with the seasonally adjusted unemployment rate staying at 3.3% for the third consecutive quarter. The figure stood at 3.2% in March to May 2015. As compared to 3.1% in the same period

in 2014, unemployment rate has generally held steady over the past 12 months.

3.23 On changes in cost of living, headline consumer price inflation, as measured by the year-on-year rate of change of the Composite Consumer Price Index¹⁷, receded to 4.4% year-on-year in the first quarter of 2015, from 5.1% in the fourth quarter of 2014. For the 12-month period ended March 2015, headline inflation averaged at 4.5%¹⁸. Looking ahead, the upside risks to inflation should remain contained given the abating imported inflation as well as moderate local cost pressures. Taking the latest developments into account, the forecast headline inflation for 2015 as a whole is 3.2%¹⁹.

Budgetary Situation of the Government

3.24 Based on the information from the Government, it had a consolidated surplus of \$72.8 billion in 2014-15 and the fiscal reserves stood at \$828.5 billion as at end March 2015. For 2015-16, a surplus of \$38.3 billion and a deficit of \$1.5 billion are estimated for the Operating Account and Capital Account respectively. This resulted in a surplus of \$36.8 billion in the Consolidated Account, equivalent to 1.6% of our GDP.

3.25 The annual staff cost of the Judiciary in 2015-16 is estimated at about \$1.1 billion, which is roughly 0.31% of the Government's total operating expenditure of \$354.3 billion in the 2015-16 Estimates.

¹⁷ Composite Consumer Price Index reflects the impact of consumer price change on the household sector as a whole.

¹⁸ The underlying inflation netting out all Government's one-off relief measures for the 12-month period ended March 2015 averaged at 3.2%.

¹⁹ The forecast underlying inflation for 2015 is 2.7%.

Private Sector Pay Levels and Trends

3.26 The Judicial 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 Judicial Committee continued to make reference to the gross Pay Trend Indicators (PTIs) from the annual Pay Trend Survey (PTS)²⁰, 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. As the gross PTIs already included merit and in-scale increment in the private sector, it is appropriate to subtract the cost of increments for JJOs from the relevant gross PTI to arrive at a private sector pay trend suitable for reference in the context of the JRR.

Cost of Increments for JJOs

3.27 JJOs are remunerated on the JSPS as set out in Appendix C. Save for the Special Magistrate and Permanent 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 and then another

²⁰ 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. The PTIs derived from the PTS are divided into three salary bands, reflecting the average pay movements of private sector employees in three salary ranges, i.e. –

- (i) Lower Salary Band covering employees in the salary range below \$19,410 per month;
- (ii) Middle Salary Band covering employees in the salary range of \$19,410 to \$59,485 per month; and
- (iii) Upper Salary Band covering employees in the salary range of \$59,486 to \$118,840 per month.

In the absence of a comprehensive or representative pay trend survey on the legal sector, the PTI for the Upper Salary Band in the PTS is considered as a suitable reference for comparison with judicial salaries, which start at JSPS 1, currently at \$72,155.

three years of service for the first and second increments respectively²¹. 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 six years based on information from the Judiciary are set out in **Table 3** below –

Table 3 : CCOI for JJOs (2009-10 to 2014-15)

Year	CCOI for JJOs
2009-10	0.34%
2010-11	0.16%
2011-12	0.35%
2012-13	0.23%
2013-14	0.14%
2014-15	0.55%

3.28 The Judicial Committee considered that adopting a CCOI for all JJOs (as opposed to having separate costs of increments for JJOs remunerated on incremental scales/spot rates) would avoid over-complicating the system. Moreover, it would help maintain the established internal relativities of judicial pay among various ranks. The Judiciary also agreed to this arrangement.

Private Sector Pay Trend for Judicial Remuneration Review Purpose

3.29 The gross PTI of private sector employees in the highest salary range was +4.46% for the 12-month period from 2 April 2014 to 1 April 2015²². As mentioned in paragraph 3.27 above, the CCOI for JJOs in 2014-15 was 0.55%. The private sector pay trend for JRR purpose (i.e. calculated by subtracting the CCOI for JJOs from the gross PTI) in 2015 is therefore +3.91%.

²¹ Pay points on JSPS 10 to 14 each has two increments. An officer remunerated on this segment of the JSPS 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.

²² The gross PTI of private sector employees in the highest salary range as reflected from the 2015 PTS was +4.42% for the 12-month period from 2 April 2014 to 1 April 2015. In considering this year's PTS Report, the Pay Trend Survey Committee (PTSC) noted that a company had adjusted the data it submitted in 2014. The PTSC decided to include this adjustment in the calculation of the 2015 PTIs. Accordingly, the gross PTI for the Upper Salary Band was increased by 0.04%, i.e. from +4.42% to +4.46%.

3.30 The Judicial Committee also made reference to other private sector pay indicators. In 2014, private sector remuneration generally maintained an overall upward adjustment.

Public Sector Pay as a Reference

3.31 Historically, there was an informal linkage between judicial salaries and senior civil service salaries before the implementation of the existing 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 has also 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 Government has established with the civil service unions and staff associations²³. Public sector pay is hence one of the factors under the balanced approach for determining judicial remuneration.

3.32 Under the improved civil service pay adjustment mechanism endorsed in 2007, civil service pay is compared with the prevailing market situation on a regular basis through three different surveys, namely (a) a PTS conducted every year to ascertain the year-on-year pay improvements in the private sector; (b) a Starting Salaries Survey (SSS) conducted every three years to compare civil service starting salaries with those of the private sector having similar academic qualifications and/or experience requirements; and (c) a Pay Level Survey (PLS) conducted every six years to ascertain whether civil service pay is broadly comparable with private sector pay. Noting that SSS focuses only on the starting salaries of civil service jobs at entry level, only (a) and (c) may thus be relevant in the consideration of judicial remuneration.

²³ The 2005 Report, paragraph 3.14.

3.33 In the context of the 2015 annual review, the Judicial Committee has made reference to the decision of the Chief Executive-in-Council in respect of the annual civil service pay adjustment²⁴ which was made in June 2015. The Judicial Committee has also taken note of the Chief Executive-in-Council's decision in respect of the findings of the 2013 PLS which was made in February 2015 (with further details elaborated in paragraphs 3.35 and 3.36 below).

Annual Civil Service Pay Adjustment

3.34 On annual civil service pay adjustment, the Judicial Committee has made reference to the decision of the Chief Executive-in-Council in June 2015 that the pay for civil servants in the Upper Salary Band and above should be increased by 3.96% (equal to the net PTI for the Upper Salary Band (3.46%) plus 0.5%) with retrospective effect from 1 April 2015, subject to the approval from the Finance Committee of the Legislative Council.

The 2013 Pay Level Survey

3.35 The Judicial Committee noted that the Standing Commission on Civil Service Salaries and Conditions of Service completed the 2013 PLS and submitted its findings and recommendations to the Chief Executive on 30 October 2014. In view of the findings of the 2013 PLS, the Chief Executive-in-Council decided in February 2015 that the salaries of senior civil servants remunerated on Master Pay Scale points 45 or above and directorate officers should be increased by 3% with retrospective effect from 1 October 2014. The proposals will be submitted to the Finance Committee of the Legislative Council for approval.

3.36 The 2013 PLS was the first of its kind conducted after the establishment of the existing mechanism for determining judicial remuneration in May 2008. The Judicial Committee noted that JJOs

²⁴ In arriving the decision, the Chief Executive-in-Council has taken into account all relevant factors under the established mechanism, namely, the net PTIs derived from the 2015 PTS; the state of Hong Kong's economy; the Government's fiscal position; changes in the cost of living; the pay claims of the staff sides; and civil service morale.

and civil servants are subject to different and separate mechanisms for pay adjustment as judicial remuneration has been delinked from civil service pay since 2008. While a PLS is conducted at six-yearly intervals for civil servants to ascertain whether the level of civil service pay is broadly comparable with the level of private sector pay at a particular reference point in time, a benchmark study is conducted every five years to monitor the changes in the pay differentials between the levels of judicial pay and the earnings levels of legal practitioners under the existing mechanism for the determination of judicial remuneration. The Judicial Committee considers it appropriate to examine the level of judicial pay vis-à-vis the earnings levels in the private sector in the context of the next benchmark study as mentioned in paragraph 2.3 above.

The Judiciary's Position

3.37 The Judiciary has pointed out that any reduction of judicial salaries may well offend the principle of judicial independence, and reiterated that, in any case, judicial pay should not be reduced. The Judiciary sought a pay increase of 4.41% (i.e. the relevant gross PTI at 4.46% less the CCOI for JJOs at 0.55% plus 0.5%) for the judicial service in 2015-16.

3.38 The Judicial Committee noted that the Judiciary considers that if the civil service pay adjustment is based on the net PTI plus 0.5%, the same approach should be adopted for the judicial pay adjustment in 2015. If the “plus 0.5%” is not adopted for the judicial pay adjustment in 2015, it would put the position of judicial remuneration in a disadvantaged position when compared to the public sector pay adjustment as a whole.

Chapter 4

Conclusion and Recommendation

4.1 Having considered the basket of factors, the Judicial Committee noted the Judiciary's advice that it is apparent there are some recruitment difficulties at the CFI level. To address this issue, the Judiciary has been conducting recruitment exercises for CFI Judges on a yearly basis instead of every three years, and has embarked on specific reviews on the terms and conditions of service as well as retirement ages of JJOs.

4.2 The Judicial 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 states of economy.

4.3 Hong Kong's economic growth remained on a modest expansion path in the first quarter of 2015, while the labour market remained broadly stable in the first quarter of 2015. The economy is forecast to grow by 1-3% for 2015 as a whole. As for cost of living, for the 12-month period ended March 2015, headline inflation averaged at 4.5%.

4.4 As regards private sector pay trend, by subtracting the annual CCOI for JJOs from the relevant gross PTI in 2015, the private sector pay trend suitable for reference in the JRR context is 3.91%.

4.5 As regards public sector pay, subject to the approval from the Finance Committee of the Legislative Council, civil service pay for the Upper Salary Band and above will be increased by 3.96% (equal to the net PTI for the Upper Salary Band (3.46%) plus 0.5%) with retrospective effect from 1 April 2015.

4.6 The Judiciary has indicated its position that any reduction of judicial salaries may well offend the principle of judicial independence, reiterated that in any case judicial pay should not be reduced, and sought a pay increase of 4.41%.

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 4.41% in 2015-16.

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. In addition, the Judicial Committee hopes that in the context of the 2016 JRR, it will be able to draw on the findings of the 2015 Benchmark Study, the outcome of the 2014 recruitment exercise for CFI Judges as well as any conclusions (if available) from the reviews on terms and conditions of services and retirement ages of JJOs being conducted by the Judiciary, in further examining the recruitment difficulties at the CFI level and tendering advice on how they may be addressed. Looking ahead, the Judicial Committee would continue to 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 Government 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 like to record our appreciations of Professor Chan Yuk-shee, SBS, JP and Mr Brian David Li Man-bun, JP for their contribution as a Member of the Judicial Committee for the past six 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 in 2015

Chairman

The Hon Bernard Chan, GBS, JP

Members

The Hon Chow Chung-kong, GBS, JP

Mr Lester Garson Huang, JP

Mrs Ayesha Macpherson Lau, JP

Ms May Tan Siew-boi

Professor Wong Yuk-shan, BBS, JP

Mr Benjamin Yu, SC, SBS, JP

Judicial Service Pay Scale
(with effect from 1 April 2014)

Judicial Service Pay Scale (JSPS)		Rank
Point	\$	
19	293,200	✧ Chief Justice, Court of Final Appeal
18	285,100	✧ Permanent Judge, Court of Final Appeal ✧ Chief Judge of the High Court
17	257,000	✧ Justice of Appeal of the Court of Appeal of the High Court
16	244,950	✧ Judge of the Court of First Instance of the High Court
15	202,450	✧ Registrar, High Court ✧ Chief Judge of the District Court
14	(195,850)	✧ Senior Deputy Registrar, High Court ✧ Principal Family Court Judge, District Court
	(190,150)	
	184,600	
13	(183,400)	✧ Deputy Registrar, High Court ✧ Judge of the District Court ✧ Chief Magistrate
	(178,200)	
	173,000	
12	(158,000)	✧ Assistant Registrar, High Court ✧ Member, Lands Tribunal
	(153,450)	
	148,850	
11	(145,350)	✧ Registrar, District Court ✧ Principal Adjudicator, Small Claims Tribunal ✧ Principal Magistrate ✧ Principal Presiding Officer, Labour Tribunal
	(141,300)	
	137,100	
10	(133,050)	✧ Adjudicator, Small Claims Tribunal ✧ Coroner ✧ Deputy Registrar, District Court ✧ Presiding Officer, Labour Tribunal
	(129,100)	
	125,400	
10	(133,050)	✧ Magistrate
	(129,100)	
	125,400	
9	116,445	
8	113,720	
7	111,010	

Judicial Service Pay Scale (JSPS)		Rank
Point	\$	
6	85,250	◇ Special Magistrate
5	81,300	
4	77,525	
3	75,715	
2	73,920	
1	72,155	

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 2012 and 2014

No. of Cases Level of Court	2012	2013	2014
Court of Final Appeal			
– application for leave to appeal	113	113	141
– appeals	41	31	23
– miscellaneous proceedings	0	3	1
Total	154	147	165
Court of Appeal of the High Court			
– criminal appeals	526	453	452
– civil appeals	283	281	262
Total	809	734	714
Court of First Instance of the High Court			
– criminal jurisdiction			
• criminal cases	486	571	545
• confidential miscellaneous proceedings	158	326	346
• appeals from Magistrates' Courts	862	809	771
– civil jurisdiction	17 212	18 573	19 367
Sub-total	18 718	20 279	21 029
– probate cases	16 308	16 967	17 931
Total	35 026	37 246	38 960
District Court			
– criminal cases	1 207	1 190	1 079
– civil cases	20 847	20 636	20 639
– divorce jurisdiction	23 674	23 392	22 416
Total	45 728	45 218	44 134
Magistrates' Courts	322 918	319 702	322 964
Lands Tribunal	5 156	5 035	4 733
Labour Tribunal	4 744	4 154	4 039
Small Claims Tribunal	48 201	48 982	50 083
Obscene Articles Tribunal	60 619	42 129	12 143
Coroner's Court	178	156	146