

ITEM FOR FINANCE COMMITTEE

JUDICIAL SERVICE PAY ADJUSTMENTS

Members are invited to –

- (a) approve an increase in pay by 4.85% for Judges and Judicial Officers¹ (JJOs) with effect from 1 April 2016; and
- (b) approve an increase in pay by 4% for JJOs below the Court of First Instance of the High Court (CFI) level and 6% for Judges at the CFI level and above with effect from 1 September 2016.

PROBLEM

We need to adjust the pay scales for JJOs in accordance with the decisions of the Chief Executive (CE) in Council.

PROPOSAL

2. We propose that –

- (a) with effect from 1 April 2016, the dollar value of the pay points for JJOs be increased by 4.85%; and

(b)

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.

- (b) with effect from 1 September 2016, the dollar value of the pay points for JJOs below the CFI level (Judicial Service Pay Scale (JSPS) Points 1 to 15) be increased by 4% and for Judges at the CFI level and above (i.e. JSPS Points 16 and above) be increased by 6%.

Encl. 1

3. Upon approval of the proposals in paragraph 2 above, the JSPS will be revised as set out at Enclosure 1.

JUSTIFICATION

Judicial Service Pay Mechanism

4. As approved by the CE-in-Council in May 2008, judicial remuneration is determined according to a mechanism separate from that of the civil service. Specifically, judicial remuneration is determined by the CE-in-Council after considering the recommendations of the independent Standing Committee on Judicial Salaries and Conditions of Service (Judicial Committee)². The mechanism comprises an annual salary review and a regular benchmark study which seeks to check whether judicial pay is kept broadly in line with the movements of legal sector earnings over time. In coming up with the recommendations, the Judicial Committee adopts a balanced approach, taking into account the basket of factors as approved by the CE-in-Council in May 2008, the findings of the 2015 Benchmark Study on the Earnings of Legal Practitioners in Hong Kong (2015 Benchmark Study), the principle of judicial independence and the position of the Judiciary. The basket of factors includes the following –

- (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)

² The Judicial Committee is appointed by the CE. At present, it is chaired by Professor Wong Yuk-shan. Other members are Mr Alfred Chan Wing-kin, Mr Ignatius Chan Tze-ching, Ms May Tan Siew-boi, Ms Melissa Wu, Mr Dieter Yih and Mr Benjamin Yu.

- (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.

The 2016 Judicial Remuneration Review

5. In conducting the 2016-17 annual salary review, the Judicial Committee examined the basket of factors listed in paragraph 4 above, and exercised its best judgment in analysing and balancing all relevant considerations in formulating its recommendation on whether and, if so, how judicial pay should be adjusted in 2016-17.

6. In considering private sector pay levels and trends, the Judicial Committee continues to make reference to the Pay Trend Indicators (PTIs) from the annual Pay Trend Survey (PTS)³, which reflect the overall year-on-year change of private sector pay. As the gross PTIs include merit and in-scale increment in the private sector, the Judicial Committee considers it appropriate to subtract the cost of increments for JJOs from the gross PTI for the upper salary band to arrive at a private sector pay trend indicator suitable for comparison with judicial pay. Accordingly, the private sector pay trend indicator as adjusted by the cost of increment for JJOs is +4.85% in 2016 (i.e. the relevant gross PTI at 5.28% less the consolidated cost of increments for JJOs at 0.43%).

7.

³ The annual PTS measures the year-on-year average pay movements of full-time employees in the private sector over a 12-month period from 2 April of the previous year to 1 April of the current year. The PTIs derived from the PTS are divided into three salary bands, reflecting the average pay movements of private sector employees in the three salary ranges. Using the 2016 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 \$20,305 per month;
- (ii) Middle Salary Band covering employees in the salary range of \$20,305 to \$62,235 per month; and
- (iii) Upper Salary Band covering employees in the salary range of \$62,236 to \$127,250 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 starts at Point 1 of the JSPS, currently at \$75,335.

7. 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 2016 Judicial Remuneration Review, the Judicial Committee made reference to the decision of the CE-in-Council in June 2016 to increase the pay for civil servants in the directorate and upper salary band by 4.19% with effect from 1 April 2016. The Judicial Committee also notes the findings of the 2013 Pay Level Survey (PLS) and that with the approval of the Finance Committee (FC) of the Legislative Council (LegCo) on 16 July 2015, the salaries of senior civil servants remunerated on Master Pay Scale Point 45 or above and directorate officers have been 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 levels of earnings in the private sector in the context of the 2015 Benchmark Study.

2015 Benchmark Study on the Earnings of Legal Practitioners in Hong Kong

8. A benchmark study on the levels of earnings of legal practitioners should in principle be conducted every five years to collect information/data on legal sector earnings for analysis and comparison with judicial remuneration in Hong Kong, with a view to checking whether judicial pay is kept broadly in line with the movements of legal sector earnings over time. Following the completion of the 2005 pilot study and the 2010 Benchmark Study, the Judicial Committee commissioned a consultant in August 2015 to provide professional advice on the survey methodology and to conduct the fieldwork of the 2015 Benchmark Study.

9. The 2015 Benchmark Study consisted of (a) a questionnaire survey on earnings of barristers and solicitors; and (b) interviews with randomly selected barristers and solicitors on their perceptions on judicial service and remuneration. The upper quartile (P75) level of earnings of legal practitioners was compared to judicial pay at the three entry levels, i.e. Magistrate, District Judge and CFI Judge. Based on the findings of the 2015 Benchmark Study, the differential between judicial pay and legal sector earnings (in HK\$ million) in the 2005, 2010 and 2015 studies are illustrated as follows –

/Judicial

Judicial Entry Rank	Legal Sector Reference (Years of Practice)	Differential ⁴		
		2005 (Pilot Study)	2010	2015
Magistrate	Junior Counsel (5 to 14 years)	12%	7%	-16%
	Solicitors (5 to 14 years)	46%	13%	20%
District Judge	Junior Counsel (15 to 24 years)	8%	10%	-4%
	Solicitors (15 to 24 years)	8%	10%	-4%
CFI Judge	Senior Counsel (15 to 24 years)	-47%	-42%	-60%

10. Consistent with the 2005 and 2010 studies, the Judicial Committee has endorsed general guidelines for the application of the findings. First, the data collected from the 2015 Benchmark Study will not be translated into precise figures for determining the levels of judicial salaries. The data will facilitate the Judicial Committee in monitoring the private sector pay trends and considering whether and how adjustments to judicial pay should be made. The need for judicial pay adjustment should have regard to a basket of factors, including but not limited to the findings of the benchmark study. Second, there would be strong arguments for proposing adjustments to judicial pay if –

- (a) the findings demonstrate a clear trend of widening differential between judicial pay and earnings of legal practitioners; or
- (b) the Judiciary encounters recruitment and retention difficulties; or
- (c) there are obvious changes in perception and attitude from survey respondents that remuneration has become an important factor in considering judicial appointment.

Third, in a benchmark study, differential analysis between judicial pay and legal sector earnings is conducted for the three judicial entry ranks, i.e. CFI Judges, District Judges and Magistrates. If adjustments to judicial pay of these entry ranks are made, the pay for the other levels of JJOs would be determined by internal relativities.

/11.

⁴ Based on the responses collected in the questionnaire survey, differentials between judicial pay and legal sector earnings are presented as a percentage:

$$\frac{\text{Judicial Pay less Legal Sector Earnings}}{\text{Legal Sector Earnings}} \times 100\%$$

11. The Judicial Committee recognises that there is no precise “formula” as such in applying the findings of the 2015 Benchmark Study. The task of the Judicial Committee is to take on board and balance amongst the relevant factors and considerations, exercise its best judgment and tender its impartial advice to the Government. As set out in paragraph 10(a), there would be strong arguments for proposing adjustments to judicial pay if the findings of the Benchmark Study demonstrate a clear trend of widening differential between judicial pay and earnings of legal practitioners. In the 2010 Benchmark Study, no clear trend could be detected and hence at that time, the Judicial Committee decided not to recommend any pay adjustment for JJOs. For the 2015 Benchmark Study, the findings showed that, for the first time since 2005, judicial pay at all the three entry ranks lagged behind legal sector earnings. For the two ranks which were ahead of their legal sector references in the previous two studies in 2005 and 2010 (i.e. Magistrates and District Judges), the direction reversed this time round with judicial pay lagging behind. For the one rank which was below its legal sector reference in both 2005 and 2010 (i.e. CFI Judges), the pay deficiency enlarged in 2015.

12. Regarding recruitment, the Judicial Committee notes that the Judiciary is facing persistent recruitment difficulties at the CFI level. Despite the Judiciary’s conscious efforts in recent years to improve the situation, such as conducting recruitment exercises at more frequent intervals, the vacancy rate stands at 24%⁵, and this clearly is not satisfactory and requires positive action. The Judicial Committee also observes that whilst a pay lag exists at all three levels covered by the 2015 Benchmark Study, the recruitment difficulties have only been experienced at the CFI level. The Judicial Committee notes that vacancies at the CFI level are filled by open recruitment. Both external candidates and serving Judges from within the Judiciary have been appointed in the past recruitment exercises. Hence, the Judicial Committee considers it essential to ensure judicial pay is sufficiently attractive even at lower levels of court, so that there is a sufficient pool of talents who can be groomed to rise through the ranks to fill the important positions at the higher levels. At the same time, with the very significant and widening pay deficiency as well as the proven and persistent recruitment difficulties at the CFI level, the Judicial Committee sees a strong case for a further increase to the judicial pay for JJOs at the CFI level and above, on top of any across-the-board pay rise to all JJOs. On the magnitude of any pay increase to be proposed, the Judicial Committee is aware of the need to balance amongst conflicting factors. On one hand, with clear evidence of a pay lag at all levels and persistent recruitment difficulties at the CFI level, any proposed pay adjustment should at least be meaningful and of some use in helping the Judiciary to recruit and retain the best possible talents to serve as JJOs. On the other hand, given that

/judicial

⁵ According to the Report on Judicial Remuneration Review 2016 submitted by the Judicial Committee to the CE on 21 September 2016, the vacancy rate at the CFI level at that time stood at 24%. According to the Judiciary, the vacancy rate has increased to 26% as at mid-November 2016.

judicial pay is funded by public money, it is equally imperative that the Judicial Committee adopts a prudent approach in formulating the magnitude of any upward pay adjustment. The Judicial Committee recognises that it is never the policy intention to align judicial pay with legal sector earnings.

Encl. 2

13. The Judicial Committee has also considered and supported the package of proposals to enhance some of the conditions of service for JJOs at Enclosure 2. The Judicial Committee is therefore mindful that in considering whether and by how much judicial pay should be adjusted as a result of the 2015 Benchmark Study, the effect of the proposed enhancements to the total remuneration package of JJOs should also be borne in mind. Moreover, as a reference, the Judicial Committee notes that following the 2013 PLS, the salaries of senior civil servants remunerated on Master Pay Scale Point 45 or above and directorate officers have been increased by 3% with retrospective effect from 1 October 2014.

Judicial Independence

14. Apart from considering the basket of factors and the findings of the 2015 Benchmark Study described 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.

The Position of the Judiciary

15. The Judicial Committee has also considered the Judiciary's views. On the 2016-17 annual pay adjustment, the Judiciary sought a pay increase of 4.85% for JJOs (i.e. the relevant gross PTI at 5.28% less the consolidated cost of increments for JJOs at 0.43%). The Judiciary also reiterated its position that there should not be any reduction in judicial pay as a matter of principle. For the 2015 Benchmark Study, having regard to the pay differentials for the three entry levels as reflected in the findings, the Judiciary is of the view that consideration can be given to an across-the-board upward adjustment to judicial pay of all judicial ranks. In addition, in view of the huge differential between judicial pay and legal sector earnings at the CFI level as well as the acute recruitment difficulties encountered at this level, consideration may be given to granting a further increase for JJOs at the CFI level and above on top of the across-the-board increase for all JJOs.

/Recommendations

Recommendations of the Judicial Committee

16. Having considered all the above factors, the Judicial Committee submitted its report to the CE on 21 September 2016, recommending a 4.85% increase in the pay for JJOs with effect from 1 April 2016 as the 2016-17 annual adjustment; and a 4% increase in the pay for JJOs below the CFI level (i.e. those remunerated on JSPS Points 1 to 15) and a 6% increase for Judges at the CFI level and above (i.e. those remunerated on JSPS Points 16 and above) with effect from 1 September 2016 taking account of the 2015 Benchmark Study.

Judicial Service Pay Adjustment Rates

17. After consideration of the Judicial Committee's recommendations and the Judiciary's position, the CE-in-Council decided on 15 November 2016 that the pay for JJOs should be increased by 4.85% with effect from 1 April 2016 as the annual adjustment; and the pay for JJOs below the CFI level be increased by 4% and for Judges at the CFI level and above be increased by 6% with effect from 1 September 2016 taking account of the 2015 Benchmark Study.

18. The review of judicial pay is a regular exercise. It has been the established practice that proposed annual adjustments, if any, will take effect from 1 April (i.e. the beginning of a financial year). The last pay adjustment for 2015-16, as approved by the FC on 19 March 2016, took effect from 1 April 2015. The benchmark study is conducted every five years. The proposed adjustments will take effect on the first day of the month when the Judicial Committee submitted its report to the Government, i.e. 1 September 2016.

FINANCIAL IMPLICATIONS

19. The financial implication arising from the proposed 4.85% pay increase for JJOs in 2016-17 is \$17.7 million. For the 2015 Benchmark Study, the financial implication is \$10.6 million for 2016-17 (\$21.4 million in a full year). The total financial implication for 2016-17 is therefore estimated to be \$28.3 million.

20. We have not made extra provision in Head 80 – Judiciary in the 2016-17 Estimates for the proposed pay adjustments. We expect that the Judiciary’s savings in the current financial year should be sufficient to cover the additional expenditure arising from the proposed pay adjustments in 2016-17. On 9 March 1983 (vide Item B170), FC delegated to the Financial Secretary (FS) the authority to approve supplementary provision without limit in personal emoluments subheads, provided that the supplementary provision is required for salaries in accordance with approved pay scales in respect of approved posts. Subject to FC’s approval of the proposal, FS shall approve under delegated authority the supplementary provisions for 2016-17, if required, by the Judiciary.

PUBLIC CONSULTATION

21. We briefed the LegCo Panel on Administration of Justice and Legal Services on the Judicial Service Pay Adjustments and the review of conditions of service for JJOs at its meeting held on 23 January 2017. Members had no objection to the proposed pay adjustments and noted that we would seek approval from FC.

Administration Wing
Chief Secretary for Administration’s Office
February 2017

Enclosure 1 to FCR(2016-17)81

Judicial Service Pay Scale

Point	(As at 31.3.2016)	(w.e.f. 1.4.2016)	(w.e.f. 1.9.2016)
	\$	\$	\$
19	306,150	321,000	340,250
18	297,650	312,100	330,850
17	268,350	281,350	298,250
16	255,750	268,150	284,250
15	211,400	221,650	230,500
	(204,500)	(214,400)	(223,000)
	(198,550)	(208,200)	(216,550)
14	192,750	202,100	210,200
	(191,500)	(200,800)	(208,850)
	(186,050)	(195,050)	(202,850)
13	180,650	189,400	197,000
	(164,950)	(172,950)	(179,850)
	(160,200)	(167,950)	(174,650)
12	155,400	162,950	169,450
	(151,750)	(159,100)	(165,450)
	(147,550)	(154,700)	(160,900)
11	143,150	150,100	156,100
	(138,900)	(145,650)	(151,500)
	(134,800)	(141,350)	(147,000)
10	130,950	137,300	142,800
9	121,580	127,475	132,575
8	118,735	124,495	129,475
7	115,905	121,525	126,385
6	89,010	93,325	97,060
5	84,885	89,000	92,560
4	80,945	84,870	88,265
3	79,055	82,890	86,205
2	77,180	80,925	84,160
1	75,335	78,990	82,150

Note Figures in brackets represent increments.

**Enhanced Package of Conditions of Services for
Judges and Judicial Officers
with effect from 1 April 2017**

As part and parcel of Judges and Judicial Officers (JJO)'s remuneration package, JJOs are entitled to a range of benefits and allowances. There have been no major changes to the existing package of benefits and allowances since the establishment of the mechanism for determining judicial remuneration in 2008. The Judiciary completed a comprehensive review of the conditions of service for JJOs in January 2016 and recommended status quo for the current arrangement of nine items^{Note} and proposes enhancement to five items, namely, housing benefits, medical and dental benefits, Local Education Allowance (LEA), Judicial Dress Allowance (JDA) and provision of transport service for leave travel.

2. The Government has consulted the Judicial Committee on the Judiciary's proposals to enhance the conditions of service for JJOs. The Judicial Committee supports the proposals and considers them reasonable and well-justified, and are indeed necessary for the Judiciary to form a reasonably attractive remuneration package in order to recruit and retain the best possible talents to serve as JJOs.

3. The Government considers the rule of law and judicial independence the cornerstone of a stable and prospered society. To perform its duties under the Basic Law, the Judiciary must be adequately resourced to ensure its effective operation and to attract high calibre individuals to join the Bench.

4. Apart from judicial pay, the conditions of service for JJOs constitute an equally important factor in attracting quality candidates to join the Bench. As potential CFI judges are at the height of their earning powers and professional achievement in private practice, the Judiciary needs an attractive package of fringe benefits to attract the best talents to join the Bench. Besides, the judicial service is unique in that it is characterised by a prohibition against return to private practice. While we believe those potential candidates who decide to join the Bench would consider a host of factors and fringe benefits is just one of them, a sufficiently

/attractive

^{Note} The nine items which the Judiciary recommends maintaining status quo are: (i) pension; (ii) leave entitlements; (iii) Leave Passage Allowance; (iv) Overseas Education Allowance; (v) School Passage Allowance; (vi) Sea Passage; (vii) Travelling Expenses in Country of Origin or Place of Study; (viii) Accommodation Allowance; and (ix) Air-conditioning Allowance.

attractive remuneration package is essential in facilitating these senior and successful lawyers from the private practice to make the important decision on the change in career path.

5. Having considered the Judiciary's proposals and the Judicial Committee's recommendation, the CE-in-Council approved on 6 December 2016 the following enhancements to the conditions of service for JJOs with effect from 1 April 2017 –

Housing benefits

- (a) an enhanced non-accountable cash allowance, to be referred to as the Judiciary Quarters Allowance (JQA), should be introduced. The JQA which is taxable, will serve as an alternative housing benefit that is comparable to Judiciary Quarters for Judges at the High Court level and above who are not provided with Judiciary Quarters, at an initial rate of \$161,140 per month. Upon the introduction of JQA, the current Non-accountable Cash Allowance will cease to be provided for Judges at the High Court level and above;

Medical and dental benefits

- (b) a new accountable allowance which is taxable, to be referred to as the Medical Insurance Allowance (MIA), should be introduced as a supplement to the existing provision of medical and dental benefits provided by the Department of Health and the Hospital Authority, for reimbursing serving JJOs (including new recruits) and their eligible dependents the premium of taking out medical insurance that confers pure medical coverage. The initial annual rates of MIA are proposed to be pegged to the ages of JJOs and their eligible dependents in the range of \$19,300 (for dependent children) to \$53,690 (for JJOs aged 60 and above);

Local Education Allowance

- (c) LEA should continue to be payable to all serving JJOs and new recruits with the annual ceiling rates to be adjusted upwards by 40% to catch up with the price increase over the period from 2006 to 2016 as follows –

Primary education	: \$44,730
Secondary Forms I to III	: \$74,235
Secondary Forms IV and above	: \$68,933

Judicial Dress Allowance

- (d) the existing JDA should be improved by expanding the list of reimbursable items and adopting a wider interpretation of the “once-and-for-all” principle such that reimbursement of JDA be given to any unclaimed items on the approved list for once, with no restriction on the number of the same item purchased, subject to the approved maximum JDA limits for the rank concerned;

Provision of transport services for leave travel

- (e) existing transport service for JJOs’ leave travel should be extended to cover hire of taxis if Judiciary cars are not available and up to two taxis for one single trip having regard to the number of accompanying family members and number of baggage; and

Annual adjustment mechanism

- (f) the ceiling rates of JQA, MIA and JDA will be adjusted annually on 1 April with reference to the change in the Composite Consumer Price Index (CCPI) over the past 12 months ending 31 December while LEA will be adjusted on 1 September each year with reference to the change in CCPI over the past 12 months ending 31 May. Given that the Judiciary’s remuneration package is delinked from the civil service system, the Director of Administration will approve future revisions to the rates of JQA, MIA, LEA and JDA for JJOs in accordance with the adjustment mechanisms approved by the CE-in-Council under delegated authority.

Details of the enhancements to the conditions of service for JJOs as approved by the CE-in-Council are set out in the LegCo Brief on “Review of Conditions of Service for Judges and Judicial Officers” of 7 December 2016 (CSO/ADM CR 2/3222/88).

Financial implications

6. The estimated net additional annual expenditure of the enhancements is about \$34.2 million. Necessary provision in 2017-18 and beyond will be reflected in the draft Estimates of 2017-18 and subsequent years.
