

LEGISLATIVE COUNCIL BRIEF 2012-13 JUDICIAL SERVICE PAY ADJUSTMENT

INTRODUCTION

At the meeting of the Executive Council on 18 September 2012, the Council ADVISED and the Chief Executive (CE) ORDERED that the pay for judges and judicial officers¹ (JJOs) for 2012-13 should be increased by **5.66%** with effect from 1 April 2012.

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 2012 judicial remuneration review (JRR), the Judicial Committee submitted its report to the CE on 4 July 2012, recommending a 5.66% increase in the pay for JJOs for 2012-13. 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 25 below), the principle of judicial independence and the position of the Judiciary. A copy of the report is at Annex. Key deliberations of the Judicial Committee and the Administration's assessment are summarized in the ensuing paragraphs.

¹ "Judges" comprise Judges of the Court of Final Appeal, Justices of Appeal of the Court of Appeal, Judges of the Court of First Instance and District Judges. "Judicial officers" are those serving in Magistrates' Courts and Tribunals, as well as registrars and masters of the High Court and District Court.

² The Judicial Committee is chaired by Mr Bernard Chan. Other members are Professor Chan Yuk-shee, Mr CK Chow, Mr Lester Huang, Mr Brian Li, Mrs Ayesha Macpherson Lau and Mr Benjamin Yu.

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 notes that there has not been any major change in the responsibility and working conditions of JJOs. While the total caseload of the Judiciary as a whole has remained steady in the past few years, there was a slight decrease in overall caseload in 2011 from that of 2010. On the other hand, the Judicial Committee notes that there have been an increasing number of complex cases that generally take longer time to conclude and recognizes that complexity of cases is also an important element reflecting workload. The Judicial Committee maintains the view that the nature of judicial work is unique and that direct comparison between legal practitioners in the private sector and JJOs is inappropriate. We have no particular comment on the observations of the Judicial Committee in this regard.

(ii) Recruitment and retention in the Judiciary

4. The Judicial Committee notes that, further to the successful completion of the open recruitment exercises of JJOs for various levels of court in 2010-11, which has enhanced the substantive judicial manpower position, the Judiciary has launched a new round of open recruitment exercises to recruit Judges of the Court of First Instance of the High Court, District Judges, Permanent Magistrates and Special Magistrates. The recruitment of Special Magistrates has been successfully completed. With the appointment of five Special Magistrates, all the vacancies at this level were substantively filled in May 2012. The other recruitment exercises would be completed in 2012-13. According to the Judiciary, it has not encountered any undue recruitment and retention problem in recent years. Meanwhile, the Judiciary has continued to engage temporary judicial resources to help relieve workload, including internal/external deputy and temporary or acting JJOs.

(iii) Retirement age and retirement benefits of JJOs

5. JJOs enjoy security of tenure³ until they reach retirement age.

³ Article 89 of the Basic Law stipulates that a judge of a court of the Hong Kong Special Administrative Region may only be removed for inability to discharge his or her duties, or for misbehaviour, by the CE on the recommendation of a tribunal appointed by the Chief Justice of the Court of Final Appeal and consisting of not fewer than three local judges. The Chief Justice may be

The statutory normal retirement age for JJOs is 60 or 65, depending on the level of the court. Further 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.

6. As of 31 March 2012, against the establishment of 189 judicial posts, 144 were filled substantively, representing a net decrease of 11 from 31 March 2011, arising mainly from retirement. The anticipated retirement will be four (or 2.8% of current strength) in 2012-13, increasing to fourteen (or 11.1% of current strength) in 2013-14, and going down to seven (or 4.9% of current strength) in 2014-15. The Judiciary considers that the current level of establishment can be regarded as generally sufficient to cater for its operational needs, having regard to its prevailing workload. Moreover, since the current Chief Justice of the Court of Final Appeal, who is the head of the Judiciary, assumed office on 1 September 2010, he has been taking a series of actions to improve the planning of judicial manpower intake and succession at various levels of court, including elevating suitable judges to the appellate court and conducting open recruitment exercises for judicial vacancies (paragraph 4 above refers).

7. The Judicial Committee hopes that the Judiciary will continue to keep its judicial manpower situation under review and take appropriate action where necessary. The Judicial Committee considers that the Judiciary should continue to attract new blood and to groom and retain existing talents.

8. Given the Judiciary's assessment and the positive outcome of the recruitment exercises, we are cautiously optimistic about the judicial manpower situation. We also consider that the success of the recruitment exercises is an indication that the total package for JJOs (comprising not only the remuneration package, but also other factors such as the high esteem of the Judiciary, individual's commitment to

investigated only for inability to discharge his or her duties, or for misbehaviour, by a tribunal appointed by the CE and consisting of not fewer than five local judges and may be removed by the CE on the recommendation of the tribunal and in accordance with the procedures prescribed in the Basic Law. In addition, Article 90 of the Basic Law stipulates that in the case of the removal of Judges of the Court of Final Appeal and the Chief Judge of the High Court, the CE shall obtain the endorsement of the Legislative Council.

serve the public and the opportunity to move to the next level of one's career, etc.) remains attractive to outside talents who wish to join the bench.

(iv) Unique features of the judicial service

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

9. 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.

(vi) Benefits and allowances enjoyed by JJOs

10. 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 has been 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 CE agreed to provide the Judiciary with five days of full-paid paternity leave on essentially the same terms and conditions as applicable to other government employees with effect from 3 May 2012. 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. 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 2012-13.

⁴ Leave Passage Allowance is an allowance to reimburse eligible officers (and their eligible family members, where applicable) their travel-related expenses. The rates for JJOs were adjusted upwards by 9.7% with effect from 1 April 2012.

⁵ Home Financing Allowance and Non-accountable Cash Allowance are two different types of housing allowance offered to JJOs. The rates for JJOs were both adjusted upwards by 5.3% with effect from 1 April 2012.

(vii) *Cost of living adjustment*

(viii) *General economic situation in Hong Kong*

(ix) *Budgetary position of the Government*

11. The Judicial Committee takes note of the information provided by the Administration in May and June 2012 respectively on the cost of living adjustment, general economic situation in Hong Kong and the Government's fiscal position. In this connection, the economy was forecast to grow by 1-3% in 2012 according to the forecast in May 2012, while the rate of the underlying consumer price inflation (i.e. excluding one-off relief measures introduced by the Government) in 2012 was forecast to be 4%. The seasonally adjusted unemployment rate was 3.2% in March to May 2012, as compared to 3.6% in the same period in 2011. The consolidated surplus of the Government for 2011-12 was \$73.7 billion and the fiscal reserves stood at \$669.1 billion at end March 2012. The 2012-13 budget forecast a consolidated deficit of \$3.4 billion, equivalent to 0.2% of our Gross Domestic Product (GDP). Since the submission of the Judicial Committee's report in July 2012, the official GDP forecast and the underlying consumer price inflation forecast for 2012 have been revised to 1-2% and 4.3% respectively. The seasonally adjusted unemployment rate stayed at 3.2% in May to July 2012.

(x) *Overseas remuneration arrangements*

12. The Judicial Committee notes that there is no change to the judicial remuneration system of six overseas common law jurisdictions (namely, Australia, Canada, New Zealand, Singapore, the United Kingdom and the United States) in the past year. The six jurisdictions have taken different, but generally prudent, actions in their latest annual salary reviews for judges. Such actions include pay freeze, deferral of pay adjustment, or a pay rise at lower rates as compared to the previous year. A key consideration behind their actions appeared to be their prevailing state of economy.

13. 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.

(xi) Public sector pay as a reference

14. 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 2012 JRR, the Judicial Committee has made reference to the decision of the Chief Executive in Council in June 2012 and the approval of the Finance Committee of the Legislative Council (LegCo) on 13 July 2012 to increase the pay for civil servants in the directorate and upper salary band by 5.26% with effect from 1 April 2012. We agree with the Judicial Committee that public sector pay is just one of the factors for consideration under the balanced approach.

(xii) Private sector pay levels and trends

15. The Judicial Committee notes that there is no comprehensive or representative pay trend survey on the legal sector. It also considers that direct comparison between judicial pay and legal sector pay is inappropriate having regard to the uniqueness of judicial work. The Judicial Committee takes the view that a benchmark study on the level of earnings of legal practitioners should be conducted on a regular basis to check whether judicial pay was kept broadly in line with the movements of legal sector earnings over time. In September 2010, the Judicial Committee commissioned a consultant to conduct the 2010 Benchmark Study on Earnings of Legal Practitioners in Hong Kong. The 2010 Study concludes that no clear trends in differentials between judicial pay and legal sector earnings could be established. The Study also reaffirms that remuneration is not an important factor in considering judicial appointment. The Judicial Committee has decided that a benchmark study should in principle be conducted every five years, with its frequency subject to periodic review.

16. 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)⁶, which reflects the overall

⁶ The annual PTS measures the year-on-year average pay movements of full-time employees in the private sector over a 12-month period from 2 April of the previous year to 1 April of the current year. PTIs derived from the PTS are grouped into three salary bands, reflecting the average pay movements of private sector employees in three salary ranges. Using the 2012 PTS as an example, the ranges of the three salary bands are as follows –

(i) Lower Band covering employees in the salary range below \$16,855 per month;

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 increment for JJOs is +5.66% in 2012 (i.e. the relevant gross PTI at 6.01% less the cost of increment for JJOs at 0.35%). We agree with the assessment of the Judicial Committee.

B. Judicial Independence

17. Apart from considering the basket of factors as 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.

C. Position of the Judiciary

18. The Judiciary sought a pay increase of 5.66% (i.e. as indicated from the gross PTI less the cost of increment for JJOs referred to in paragraph 16 above) for the judicial service in 2012-13. 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

19. Having considered the above factors, the Judicial Committee recommends that judicial pay for 2012-13 should be increased by 5.66%.

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

In the absence of a comprehensive or representative pay trend survey on the legal sector, the PTI for the Upper Band in the PTS is considered as a suitable reference for comparison with judicial salaries, which start at Point 1 of the Judicial Service Pay Scale, currently at \$62,005 in dollar terms.

The Administration's views

20. 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 also taken into account the principle of judicial independence and 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 2012-13 should be increased by 5.66%.

IMPLICATIONS OF THE PROPOSAL

21. The estimated financial implication for 2012-13⁷ arising from a 5.66% increase in the pay for JJOs is \$16.143 million. 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, productivity, environmental or sustainability implications.

PUBLIC CONSULTATION

22. The Judicial Committee has invited both the Judiciary and the Administration 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 2012-13 by 5.66%. The Judiciary has indicated its support for the Judicial Committee's recommendation. No public consultation outside the Judiciary has been conducted.

⁷ The estimate was calculated by the Judiciary in around mid July 2012 by multiplying the proposed judicial pay increase of 5.66% to the actual salaries and acting allowances for judges and judicial officers for the four months from April to July 2012 and their projected salaries and acting allowances for the eight months from August 2012 to March 2013.

PUBLICITY

23. We have informed the Judiciary and the Judicial Committee of the Administration's decision on the 2012-13 judicial service pay adjustment. We will also issue a press release and a spokesman will be made available to respond to enquiries. We will also brief the LegCo Panel on Administration of Justice and Legal Services in October/November 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

24. 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.

25. With respect to the benchmark study, the Judicial Committee has decided that this should in principle be conducted every five years with its frequency subject to periodic review. The most recent benchmark study was conducted in 2010. 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) unique features of the judicial service, such as the security of tenure, the prestigious status and high esteem of the judicial offices;
- (d) retirement age and retirement benefits of JJOs;

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

ENQUIRIES

26. Enquiries on this brief should be addressed to Miss Agnes Wong, Deputy Director of Administration, at 2810 3008 or Mr Howard Lee, Assistant Director of Administration, at 2810 3946.

Administration Wing
Chief Secretary for Administration's Office
18 September 2012

STANDING COMMITTEE ON JUDICIAL SALARIES AND CONDITIONS OF SERVICE

Report on Judicial Remuneration Review 2012

July 2012

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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) 2012. 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; 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 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 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 rendering advice to the Chief Executive on matters concerning judicial remuneration.

Judicial Remuneration Review 2012

1.6 In conducting the Review in 2012, the Committee invited the Judiciary and the Administration to provide relevant data and views pertaining to the basket of factors. The Committee then 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 5.66% in 2012-13.

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 The Judicial Committee takes the view that a benchmark study on the level of earnings of legal practitioners should be conducted on a regular basis, in order to ascertain their earnings levels, monitor such trends and review judicial salaries where appropriate. The Committee has decided 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 Practitioners in Hong Kong” (the 2010 Study) was conducted in 2010³, five years since the previous pilot study conducted in 2005, with the assistance of a professional consultant. Having completed the 2010 Study, the 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. Accordingly, the Committee will revisit the timing for the next benchmark study in 2015.

2.3 The Committee reaffirmed its recommendation in the 2005 Report that the information or data collected in the benchmark study should be analysed and compared with judicial remuneration in Hong

³ 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.

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.

Annual Review

2.4 The 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 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 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 Committee adopts a balanced approach in reviewing judicial remuneration by taking into account a basket of factors. The basket of factors include 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;

⁴ The 2005 Report, paragraph 3.26.

- (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 Committee also agrees to take into account the following factors suggested by the Administration –

- (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 2012 – Annual Review

The Annual Review

3.1 This is the fourth 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 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 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 remained the same as set out in **Appendix D**.

3.3 As regards workload, the total caseloads of the Judiciary as a whole remained steady in the past few years. In 2011, there was a noticeable reduction in the number of cases at the Obscene Articles Tribunal, which was mainly attributable to the reduction in the number of articles referred for determination. Overall caseload recorded a slight decrease from that of 2010. Details are shown in **Appendix E**.

3.4 Despite a drop in overall caseload, the Judiciary has pointed out that there has been an increasing number of complex cases that generally take longer time to conclude. Indeed, the Committee has all along recognised that caseload figures alone did not fully reflect workload, and the complexity of cases was also an important element. The Judicial Committee maintains 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.

Recruitment and Retention

3.5 Further to the successful completion of the open recruitment exercises of JJOs for various levels of court in 2010-11, which had enhanced the substantive judicial manpower position, the Committee noted that the Judiciary launched a new round of open recruitment exercises commencing June 2011. Meanwhile, as of 31 March 2012, against the establishment of 189 judicial posts, 144 were filled substantively, representing a net decrease of 11 from 31 March 2011, arising mainly from retirement. The establishment and strength of JJOs as at 31 March 2012 are in **Table 1** below –

Table 1: Establishment and strength of JJOs

Levels of Court	As at 31.3.2012		Net change in strength over 31.3.2011
	Establishment	Strength	
Court of Final Appeal ⁵	4	4 (4)*	0
High Court ⁶	53	37 (43)	-6
District Court ⁷	39	32 (34)	-2
Magistrates' Courts and Specialised Tribunals/Court ⁷	93	71 (74)	-3
Total	189	144 (155)	-11

* Figures in brackets denote position as at 31.3.2011.

⁵ The figures exclude one Permanent Judge post created for Non-Permanent Judge (NPJ) of the Court of Final Appeal (CFA). In practice, an NPJ is invited to sit in the CFA as required in accordance with the Hong Kong CFA Ordinance, Cap. 484.

⁶ For Senior Deputy Registrar and Deputy Registrar vacancies in the Masters' Office of the High Court, the functions are now carried out by some District Judges and some Magistrates who are appointed as temporary Deputy Registrars.

⁷ 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.

3.6 The Judiciary considers that the current level of establishment can be regarded as generally sufficient to cater for its operational needs, having regard to its prevailing workload. To cope with the increasing workload in the Lands Tribunal, particularly arising from compulsory sale cases since 2010, with the Committee's support and subject to the approval from the Finance Committee of Legislative Council, two new judicial posts, namely one Judge of the District Court (District Judge) and one Member, Lands Tribunal would be formally created in 2012.

3.7 Arising from the retirement and elevation of a number of JJOs at different levels of court, as well as the creation of new posts, the Committee considers that the Judiciary should, as a matter of priority, take measures to fill all vacancies substantively by quality candidates. As mentioned in paragraph 3.5 above, in June 2011, the Judiciary launched a new round of open recruitment exercises to recruit Judges of the Court of First Instance of the High Court, District Judges, Permanent Magistrates and Special Magistrates. The recruitment of Special Magistrates has been successfully completed, with the appointment of five Special Magistrates in May 2012, filling all the vacancies at this level. The other exercises are still ongoing, and are expected to complete in 2012-13. According to the Judiciary, it has not encountered any undue recruitment and retention problem in recent years.

3.8 Meanwhile, the Judiciary has continued to engage temporary judicial resources to help relieve workload, including internal/external deputy and temporary or acting JJOs. In the past year, the number of external deputy/temporary JJOs increased from a total of 27 as at 31 March 2011 to 39 as at 31 March 2012.

Retirement

3.9 The statutory normal retirement age for JJOs is 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.

3.10 Retirement is the main source of wastage among JJOs. The anticipated retirement will be 4 (or 2.8% of current strength) in 2012-13, increasing to 16 (or 11.1% of current strength) in 2013-14, and going down to 7 (or 4.9% of current strength) in 2014-15.

3.11 To address the situation, the Committee considers that the Judiciary should continue to attract new blood and to groom and retain existing talent. While the recruitment exercises for JJOs are underway, and the Judiciary has indicated that it has not encountered any undue recruitment and retention problem in recent years, the Committee has noted with concern the vacancy and retirement situation in the Judiciary. The Committee hopes that the Judiciary will continue to keep its judicial manpower situation under review and take appropriate action where necessary.

Benefits and Allowances

3.12 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.

3.13 With the Committee's support, the proposal to provide JJOs with five days of full-pay paternity leave⁸ on essentially the same terms and conditions as applicable to other government employees⁹ was

⁸ Paternity leave generally refers to leave taken by a father/father-to-be from his work around the time of the birth of his child. It is a family-friendly measure which enables a working father/father-to-be to have some time off to take care of the newborn and his wife before/after her confinement.

⁹ Specifically, paternity leave is provided to eligible JJOs on the occasion of each childbirth within marriage; all substantive male JJOs with not less than 40 weeks' continuous Government

agreed by the Chief Executive and took effect from 3 May 2012. There are no further changes to the benefits for JJOs.

3.14 The Committee noted that there was no change to the package of existing fringe benefits and allowances for JJOs in the past year, except that the rates of Leave Passage Allowance¹⁰, Home Financing Allowance and Non-accountable Cash Allowance¹¹ were revised following similar revisions in the civil service.

3.15 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 Committee will continue to keep the situation under review.

Unique Features of the Judicial Service

Prohibition against Return to Private Practice

3.16 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 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. On the other hand, judges enjoy security of

service immediately before the expected or actual date of childbirth should be eligible; the Chief Justice should have discretion to grant paternity leave to eligible JJOs on the occasion of childbirth outside of marriage on a case-by-case basis; paternity leave should be provided irrespective of the number or place of childbirth to eligible JJOs; paternity leave should be taken during the period from four weeks before the expected date of childbirth to eight weeks after the actual date of childbirth; and any untaken paternity leave should not be allowed to be carried forward to a future childbirth.

¹⁰ 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 and car hire and related expenses.

¹¹ Both Home Financing Allowance and Non-accountable Cash Allowance are two different types of housing allowance offered to JJOs.

tenure¹² and high esteem, which may be seen as attractions for legal practitioners joining the bench. The Committee noted that these were all long established arrangements and nothing was changed during the annual salary review in 2012.

Cost of Increments for JJOs

3.17 JJOs are remunerated on the JSPS as set out in **Appendix C**. Save for the Special Magistrate and 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 or five years of service. 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 three years based on information from the Judiciary is set out in **Table 2** below –

Table 2 : Consolidated Cost of Increments for JJOs (2009-10 to 2011-12)

Year	CCOI for JJOs
2009-10	0.34%
2010-11	0.16%
2011-12	0.35%

3.18 The Judicial Committee considered that adopting a CCOI for all JJOs would avoid over-complicating the system, and would also be similar to the established practice adopted for the calculation of cost of increments for the civil service. Moreover, it would help maintain the established internal relativities of judicial pay at various ranks. The Judiciary also agreed to this arrangement.

¹² 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 and reported to the Standing Committee of the National People's Congress for the record.

Overseas Remuneration Arrangements

3.19 The Committee continued to keep track of major development, if any, on judicial remuneration in six overseas common law jurisdictions, namely, Australia, Canada, New Zealand, Singapore, the United Kingdom and the United States. There was no change to the judicial remuneration systems in these jurisdictions in the past year. The jurisdictions took different, but generally prudent, actions in their latest annual salary reviews for judges. Some jurisdictions continued the pay freeze and deferral of pay adjustment for judges. For those granting pay rises, they were generally at lower rates as compared to the previous year. A key consideration behind their respective action appeared to be the prevailing state of economy of the respective jurisdiction.

General Economic Situation and Cost of Living Adjustments in Hong Kong

3.20 The Administration has provided detailed information on Hong Kong's economic and fiscal indicators for the Committee's reference. The overall growth rate for Hong Kong's Gross Domestic Product (GDP) in real terms in 2011 was 5%. The Hong Kong economy slowed visibly to a meagre growth of 0.4% in the first quarter of 2012. Downside risks in the external environment remain notable. Barring any abrupt deterioration of the eurozone debt situation, the economy is poised to regain momentum in the coming quarters and attain a 1-3% growth for 2012 as a whole. The year-on-year changes in GDP in real terms are shown in **Table 3** below –

Table 3 : Changes in Gross Domestic Product in real terms

Year	Quarter	GDP year-on-year % change
2011	Q1	+7.6%
	Q2	+5.4%
	Q3	+4.4%
	Q4	+3.0%
2012	Q1	+0.4%*

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

* Preliminary figure

3.21 Hong Kong's labour market conditions held firm in the first quarter of 2012, with a seasonally adjusted unemployment rate of 3.4%. The figure dropped to 3.2% in March to May 2012, as compared to 3.6% in the same period in 2011.

3.22 On changes in cost of living, the underlying¹³ Composite Consumer Price Index¹⁴ in May 2012 was 5.1%. With both imported inflation and domestic cost pressures easing back progressively in tandem with a slowing global and local economy, the forecast rate of the underlying consumer price inflation in 2012 as a whole is 4%.

Budgetary Situation of the Government

3.23 Based on the information from the Administration, the Government had a consolidated surplus of \$73.7 billion in 2011-12 and the fiscal reserves stood at \$669.1 billion as at end March 2012. For 2012-13, deficits of \$2.5 billion and \$0.9 billion are estimated for the Operating Account and Capital Account respectively, which will result in a deficit of \$3.4 billion in the Consolidated Account, equivalent to 0.2% of our GDP.

3.24 The annual staff cost of the Judiciary in 2012-13 is estimated at about \$887 million, which is roughly 0.28% of the Government's total operating expenditure of \$315 billion in the 2012-13 Estimates.

Private Sector Pay Levels and Trends

3.25 The 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

¹³ Underlying rates net out the effects of all one-off relief measures implemented by the Government.

¹⁴ Composite Consumer Price Index reflects the impact of consumer price change on the household sector as a whole.

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 Committee continued to make reference to the gross Pay Trend Indicators (PTIs) from the annual Pay Trend Survey (PTS)¹⁵, 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. However, taking into account the uniqueness of the Judiciary, direct comparison using the gross PTIs would not be appropriate. As mentioned in paragraph 3.17 above, some JJOs have incremental creeps at certain intervals. The gross PTIs already included merit and in-scale increment in the private sector. In order to have a fair and suitable comparison with the private sector, the CCOI for JJOs should be subtracted from the relevant gross PTI to reflect the private sector pay trend suitable for comparison in the context of the JRR.

3.26 The gross PTI of employees in the highest salary range as reflected from the PTS was +6.01% in 2012. As mentioned in paragraph 3.17 above, the CCOI for JJOs in 2011-12 was 0.35%. The private sector pay trends for JRR purpose (i.e. calculated by subtracting the CCOI for JJOs from the gross PTI) in 2012 is therefore +5.66%.

3.27 The Committee also made reference to other private sector pay indicators. In 2011, private sector remuneration generally sustained the uptrend last year.

¹⁵ The annual PTS measures the year-on-year average pay movements of full-time employees in the private sector over a twelve-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 bands, reflecting the average pay movements of private sector employees in three salary ranges, i.e. –

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

In the absence of a comprehensive or representative pay trend survey on the legal sector, the PTI for the Upper Band in the PTS is considered as a suitable reference for comparison with judicial salaries, which start at JSPS 1, currently at \$62,005 in dollar terms.

Public Sector Pay as a Reference

3.28 Historically, there was an informal linkage between judicial salaries and senior civil service salaries before the implementation of the new 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 had 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 Administration has established with the civil service unions and staff associations¹⁶. Public sector pay is hence one of the factors under the balanced approach for determining judicial remuneration.

3.29 In the context of the 2012 annual review, the Committee has made reference to the decision of the Chief Executive-in-Council in June 2012 that the pay for civil servants in the Upper Band and above should be increased by 5.26% with retrospective effect from 1 April 2012, subject to the approval from the Finance Committee of the Legislative Council.

The Judiciary's Position

3.30 The Judiciary sought a pay increase of 5.66% (i.e. the relevant gross PTI at 6.01% less the CCOI for JJOs at 0.35%) for the judicial service in 2012-13. The Judiciary reiterated its position that, in any case, there should not be any reduction in judicial pay as a matter of principle.

¹⁶ The 2005 Report, paragraph 3.14.

Chapter 4

Conclusion and Recommendation

4.1 The Committee noted that the information pertaining to the Judiciary had remained more or less unchanged. Further to the successful completion of the last round of open recruitment exercises in 2010-11, which had improved the substantive manpower position at various levels of court, the Judiciary launched a new round of open recruitment exercises commencing June 2011. Most of these exercises are still ongoing and are expected to complete in 2012-13. According to the Judiciary, it had not encountered any undue recruitment and retention problem in recent years. The Committee would keep in view the situation in the next JRR.

4.2 The 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 state of economy.

4.3 In Hong Kong, the economy slowed visibly to a meagre growth in the first quarter of 2012. Though downside risks in the external environment remain notable, barring any abrupt deterioration of the eurozone debt situation, the economy is poised to regain momentum for a growth of 1-3% for 2012.

4.4 As regards private sector pay trend, by subtracting the annual CCOI for JJOs from the relevant gross PTI in 2012, the private sector pay trend suitable for comparison in the JRR context is 5.66%.

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 Band and above will be increased by 5.26% in 2012-13.

4.6 The Judiciary indicated its position as set out in paragraph 3.30.

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 5.66% in 2012-13.

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. 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 Administration 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 also like to record our appreciation of Ms Jacqueline Pamela Leong, SC, for her contribution as a Member of the Committee in 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

Chairman

Mr Bernard Chan, GBS, JP

Members

Professor Chan Yuk-shee, SBS, JP

Sir C K Chow

Mr Lester Garson Huang, JP

Mr Brian David Li Man-bun, JP

Mrs Ayesha Macpherson Lau

Mr Benjamin Yu, SC, SBS, JP (since 1 January 2012)

Judicial Service Pay Scale
(with effect from 1 April 2011)

Judicial Service Pay Scale (JSPS)		Rank
Point	\$	
19	251,950	✧ Chief Justice, Court of Final Appeal
18	245,000	✧ Permanent Judge, Court of Final Appeal ✧ Chief Judge of the High Court
17	220,850	✧ Justice of Appeal of the Court of Appeal of the High Court
16	210,500	✧ Judge of the Court of First Instance of the High Court
15	173,950	✧ Registrar, High Court ✧ Chief Judge of the District Court
14	(168,300)	✧ Senior Deputy Registrar, High Court ✧ Principal Family Court Judge, District Court
	(163,400)	
	158,600	
13	(157,600)	✧ Deputy Registrar, High Court ✧ Judge of the District Court ✧ Chief Magistrate
	(153,150)	
	148,700	
12	(135,800)	✧ Assistant Registrar, High Court ✧ Member, Lands Tribunal
	(131,850)	
	127,900	
11	(124,950)	✧ Registrar, District Court ✧ Principal Adjudicator, Small Claims Tribunal ✧ Principal Magistrate ✧ Principal Presiding Officer, Labour Tribunal
	(121,450)	
	117,850	
10	(114,350)	✧ Adjudicator, Small Claims Tribunal ✧ Coroner ✧ Deputy Registrar, District Court ✧ Presiding Officer, Labour Tribunal
	(110,900)	
	107,750	
10	(114,350)	✧ Magistrate
	(110,900)	
	107,750	
9	100,065	
8	97,725	
7	95,395	

Judicial Service Pay Scale (JSPS)		Rank
Point	\$	
6	73,260	◇ Special Magistrate
5	69,865	
4	66,625	
3	65,065	
2	63,525	
1	62,005	

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 2009 and 2011

No. of Cases Level of Court	2009	2010	2011
Court of Final Appeal			
– application for leave to appeal	136	148	122
– appeals	33	31	33
– miscellaneous proceedings	2	2	0
Court of Appeal of the High Court			
– criminal appeals	486	498	556
– civil appeals	285	284	291
Court of First Instance of the High Court			
– criminal jurisdiction			
• criminal cases	425	444	482
• confidential miscellaneous proceedings	64	96	100
• appeals from Magistrates' Courts	1 043	980	897
– civil jurisdiction	26 564	16 581	15 966
– probate cases	14 676	14 350	16 319
District Court			
– criminal cases	1 449	1 404	1 396
– civil cases	27 329	23 260	22 394
– divorce jurisdiction	19 616	21 218	22 989
Magistrates' Courts	327 439	318 551	306 966
Lands Tribunal	5 046	5 310	5 170
Labour Tribunal	7 758	4 670	4 190
Small Claims Tribunal	59 797	57 837	50 962
Obscene Articles Tribunal	13 507	38 348	27 896
Coroner's Court	182	190	177
Total	505 837	504 202	476 906