

立法會
Legislative Council

LC Paper No. CB(4) 61/12-13(01)

Ref : CB4/PL/AJLS

Panel on Administration of Justice and Legal Services

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 30 October 2012**

Judicial Service Pay Adjustment

Purpose

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

Background

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

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

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

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

6. In coming up with the recommendations, the Judicial Committee would take into account the basket of factors approved by the CE-in Council in May 2008, the principle of judicial independence and the position of the Judiciary. The basket of factors include the responsibility, working conditions and workload of judges vis-à-vis those of lawyers in private practice; recruitment and retention in the Judiciary; retirement age and retirement benefits of the Judges and Judicial Officers ("JJOs"); unique features of the judicial service; prohibition against return to private practice in Hong Kong; benefits and allowances enjoyed by JJOs; cost of living adjustment; general economic situation in Hong Kong; budgetary situation of the Government; overseas remuneration arrangements; private sector pay levels and trends; and public sector pay as a reference.

7. The pay increase for JJOs in 2011-2012 was the first time that judicial pay was increased under the new mechanism for determining judicial remuneration since it was approved by the CE-in-Council in May 2008. In conducting its 2011 judicial remuneration review ("JRR"), the Judicial Committee had also taken into account the principle of judicial independence and the position of the Judiciary. In particular, both the Judiciary and the Judicial Committee agreed in

¹ The Standing Judicial Committee on Judicial Salaries and Conditions of Service ("the Judicial Committee") is an independent advisory body appointed by the Chief Executive to advise and make recommendations on matters concerning the salary and conditions of service of Judges and Judicial Officers ("JJOs"). It was first established in December 1987 in recognition of the independent status of the Judiciary and the need for the pay and conditions of services of JJOs to be dealt with separately from those of the civil service.

² The Judicial Committee has decided that a benchmark study should in principle be conducted every five years, with its frequency subject to periodic review. The most recent benchmark study was conducted in 2010.

principle that the cumulative effect of the private sector pay trends in 2009, 2010 and 2011 should be taken into account in determining judicial pay adjustment for 2011-2012; and had based their respective calculations on the same set of data. Having considered all relevant factors, the Judicial Committee submitted its report to the CE recommending that judicial salaries should be increased by 4.22% in 2011-2012. At the meeting of the Executive Council held on 20 September 2011, the CE-in-Council approved that the pay for JJOs for 2011-2012 should be increased by 4.22% with effect from 1 April 2011.

Past discussions

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

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

10. Members in general supported the Administration to seek approval from the Finance Committee ("FC") on the proposed judicial pay increase, i.e. 4.22%, for 2011-2012. The proposed pay adjustment was approved by FC at its meeting held on 18 November 2011.

Latest position

11. For the 2012 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 2012-2013. As in the case of the 2011-2012 judicial service pay adjustment, the Administration intends to seek the views of the Panel prior to seeking funding support from FC.

12. The Panel will discuss the 2012-2013 judicial service pay adjustment for JJOs at its meeting on 30 October 2012.

Council Business Division 4
Legislative Council Secretariat
25 October 2012