

LEGISLATIVE COUNCIL BRIEF

JUDICIAL SERVICE PAY ADJUSTMENTS

INTRODUCTION

At the meeting of the Executive Council on 15 November 2016, the Council ADVISED and the Chief Executive (CE) ORDERED that –

- (a) on the 2016-17 annual adjustment, the pay for Judges and Judicial Officers¹ (JJOs) be increased by 4.85% with effect from 1 April 2016; and
- (b) on the 2015 Benchmark Study on the Earnings of Legal Practitioners in Hong Kong (2015 Benchmark Study), with effect from 1 September 2016,
 - (i) an upward adjustment of 4% be granted to the salaries of JJOs below the Court of First Instance of the High Court (CFI) level; and
 - (ii) an upward adjustment of 6% be granted to the salaries of Judges at the CFI level and above.

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.

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. “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 Mr Alfred Chan Wing-kin, Mrs Ayesha Macpherson Lau, Ms May Tan Siew-boi, Professor Wong Yuk-shan, Mr Dieter Yih and Mr Benjamin Yu.

The mechanism for judicial remuneration review (JRR) comprises two components, viz. a regular benchmark study and an annual salary review. For the 2016 JRR, the Judicial Committee submitted its report to the CE on 21 September 2016, recommending a 4.85% increase in the pay for JJOs for the 2016-17 annual salary review. The Judicial Committee also recommends, with effect from 1 September 2016, a 4% pay increase for JJOs below the CFI level and a 6% pay increase for Judges at the CFI level and above having regard to the findings of the 2015 Benchmark Study. In coming up with the recommendations, 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 35 below), the principle of judicial independence, the position of the Judiciary and the findings of the 2015 Benchmark Study. A copy of the Judicial Committee's report is at Annex A. Key deliberations of the Judicial Committee and our assessment are set out in the ensuing paragraphs.

A

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. The Judicial Committee notes that the Competition Tribunal has been established under the Competition Ordinance (Cap. 619) (the Ordinance) and came into operation on 14 December 2015 as a specialised court with primary jurisdiction to hear and adjudicate competition-related cases. Pursuant to section 135 of the Ordinance, all CFI Judges are, by virtue of his or her appointment as a CFI Judge, a member of the Tribunal.

4. While the caseloads of the Judiciary as a whole remained steady in the past few years, there were noticeable decreases in numbers of cases at the Obscene Articles Tribunal and the Coroner's Court in 2015. For the Obscene Articles Tribunal, the decrease was mainly attributable to the reduction in the number of articles referred by the Magistrates' Courts to the Tribunal for determination. As for the Coroner's Court, the number of death inquests handled depends on the decision of the Coroners after considering the investigation reports submitted by the Police. The investigation ordered and the death in custody cases both dropped in 2014 and 2015 which may have led to the drop of the total number of death inquests. The Judicial Committee recognises that caseload figures alone do not fully reflect the workload of JJOs, and the complexity of cases is also an important element. Despite the relatively steady caseload figures,

the Judiciary considers it important to point out that caseload figures must not be looked at exclusively. Increased complexity of cases not only means longer hearing times but considerably more time is required for the JJOs to conduct pre-hearing preparation and to write judgments. There are now many more lengthy trials. The high ratio of unrepresented litigants in civil cases also create great challenge, where there are unrepresented litigants, the JJOs are not properly assisted in dealing with complex legal issues. Hearings (and their preparation) take longer as a result. For the High Court, the Judiciary points out that in recent years, cases have become more complex since there are many complex trials involving Mainland undertakings, big money matrimonial disputes, complicated commercial crime and important public law cases; and new developments in the law resulting, for example, from the introduction of new legislation such as the Competition Ordinance have significant impacts on the already heavy workload.

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. The Judicial Committee trusts 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. We have no particular comment on the observations of the Judicial Committee in this regard.

(ii) *Recruitment and retention in the Judiciary*

6. As of 31 March 2016, against an establishment of 200³ judicial posts, 162 were filled substantively. This represents a net decrease of seven in the strength of JJOs as compared with 31 March 2015, arising mainly from retirement. On recruitment of JJOs, the Judicial Committee notes that up to 31 March 2016, a total of 81 judicial appointments were made in the nine open recruitment exercises conducted between 2011 and 2015.

7. The Judicial Committee notes that for the CFI level the Judiciary has been conducting recruitment exercises on a more regular basis since 2012. In the past three recruitment exercises conducted in 2012, 2013 and 2014, a total of 17 appointments had been made, with appointments of four CFI Judges made in the 2015-16 financial year, and

³ Excluding 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).

one CFI Judge made in May 2016. However, the number of eligible candidates found suitable for appointment was much smaller than the available vacancies. The Judicial Committee considers that the above presents clear evidence that there are persistent recruitment difficulties at the CFI level.

8. The Judicial Committee also notes that to address the recruitment difficulties at the CFI level and taking into account the long-term needs of the whole of the Judiciary, the Judiciary has decided to conduct reviews on two important areas, i.e. the conditions of service for JJOs and the statutory 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. Following the completion of the review on the conditions of service, the Judiciary has proposed improvements to certain fringe benefits of JJOs. As for the review on the statutory retirement ages of JJOs, the Judiciary has engaged a consultant who has started to collect views from stakeholders both within and outside the Judiciary and will make reference to practices in other overseas jurisdictions. We understand from the Judiciary that this study will be completed around the first quarter of 2017.

9. For the rank of District Judge and Permanent Magistrate, the Judicial Committee notes that all the vacancies could be filled as a consequence of the outcome of the last recruitments in 2012 and 2014 respectively. 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 increased from a total of 23 as at 31 March 2015 to 27 as at 31 March 2016.

10. We take note of the Judicial Committee's observation that there are recruitment difficulties at the CFI level. We recognise the recruitment difficulties faced by the Judiciary and the need to enhance the remuneration package. Judicial pay aside, the conditions of service for JJOs constitute an equally important factor in attracting quality candidates to join the Bench. The enhanced package for JJOs, which comprises not only the remuneration package, but also other factors such as conditions of service, 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., will maintain a reasonably attractive package to outside talents who wish to join the Bench.

(iii) *Retirement age and retirement benefits of JJOs*

11. The statutory normal retirement ages for JJOs are 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 3.1% of current strength) in 2016-17, increasing to six (or 3.7% of current strength) in 2017-18, and going up to 18 (or 11.1% of current strength) in 2018-19. 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 retain existing talents. As mentioned in paragraph 8 above, the Judiciary is conducting a review on the statutory retirement ages of JJOs. We will keep in view the results of the review.

(iv) *Benefits and allowances enjoyed by JJOs*

12. JJOs are entitled to a range of benefits and allowances in addition to salary. The 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 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 Allowance (NCA)⁵ were revised following similar revisions in the civil service; and the rates for two Extraneous Duties Allowances (Responsibility) (EDA(R)s) for Justice of Appeal of the Court of Appeal (JAs)⁶ in 2015-16 were revised based on the annual judicial pay adjustment of 4.41% for 2015-16.

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 NCA are two different types of housing allowance currently being 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 CFA, while the other is for JAs appointed as Vice Presidents of the Court of Appeal of the High Court.

13. The Judicial Committee notes that the Judiciary has put forth to the Government a set of proposals to enhance some of the existing conditions of service for JJOs. The Judicial Committee considers the proposals 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.

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

14. The Judiciary is unique in many aspects. A prominent feature is the prohibition against return to private practice. Specifically, the Chief Justice and Judges of the Court of Final Appeal (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. 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. On the other hand, judges enjoy security of tenure⁷ and high esteem, which may be seen as attractions for legal practitioners joining the Bench. These are long established arrangements and nothing was changed during the annual review in 2016.

(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 2015-16. 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 respective actions appeared to be the prevailing state of economy of the respective jurisdictions. 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.

⁷ 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.

- (vii) *Cost of living adjustment*
- (viii) *General economic situation in Hong Kong*
- (ix) *Budgetary situation of the Government*

16. The Judicial Committee takes note of the information provided by the Government in May 2016 on the cost of living adjustment, general economic situation in Hong Kong and the budgetary situation of the Government. The economy was then forecast to grow by 1 to 2% for 2016, while the rate of the underlying consumer price inflation (i.e. excluding one-off relief measures introduced by the Government) for 2016 was forecast to be 2%. The seasonally adjusted unemployment rate was at 3.4% in March to May 2016, as compared to 3.2% in the same period in 2015. The consolidated surplus of the Government for 2015-16 was \$14.4 billion and the fiscal reserves stood at \$842.9 billion as at end March 2016. The 2016-17 Budget forecasts a consolidated surplus of \$11.4 billion, equivalent to 0.5% of our Gross Domestic Product (GDP). Taking into account the actual growth outturn in the first half and various external challenges, and barring abrupt negative shocks from the external environment, the official GDP growth forecast for 2016 as a whole was maintained at 1 to 2% in August 2016. The forecast rate of underlying consumer price inflation for 2016 was slightly revised upward to 2.2%. Meanwhile, the seasonally adjusted unemployment rate stayed at 3.4% in July to September 2016.

- (x) *Private sector pay levels and trends*

17. The Judicial Committee notes that there was 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. Such being the case, with 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 gross Pay Trend Indicators (PTIs) from the annual Pay Trend Survey

(PTS)⁸, which reflects the overall private sector pay trend. As the gross PTIs already included 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 +4.85% (i.e. the relevant gross PTI at 5.28% less the consolidated cost of increments for JJOs at 0.43%). We agree with the assessment of the Judicial Committee.

(xi) *Public sector pay as a reference*

18. Public sector pay is only one of the factors for consideration under the balanced approach in determining judicial pay. In the 2016 JRR, the Judicial Committee made reference to the decision of the Chief Executive 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 of the Legislative Council (LegCo) on 16 July 2015, the salaries of senior civil servants remunerated on Master Pay Scale points 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

⁸ 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 Judicial Service Pay Scale (JSPS), currently at \$75,335.

2015 Benchmark Study. We agree with the Judicial Committee that public sector pay is just one of the factors for consideration under the balanced approach.

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

19. 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.

(i) Methodology

20. The 2015 Benchmark Study consisted of (i) a questionnaire survey on earnings of barristers and solicitors; and (ii) interviews with randomly selected barristers and solicitors on their perceptions on judicial service and remuneration. Key aspects of survey methodology of the 2010 Benchmark Study were adopted for the 2015 Benchmark Study for consistency and ensuring comparability of findings with previous studies. The upper quartile (P75) level of earnings of legal practitioners was compared to judicial pay⁹ at the three entry levels, i.e. Magistrate, District Judge and CFI Judge. Differential analysis between judicial pay at the three entry levels and legal sector earnings was worked out based on the professional status and the years of practice that the JJOs at the entry levels possessed prior to their appointment to such levels¹⁰. Using 31 March 2015 as the survey reference date, the Consultant conducted fieldwork in November 2015 and, after verification, a total of 731 target responses from 212 barristers and 519 solicitors in the questionnaire

⁹ Judicial pay consisted primarily of a base salary paid over 12 months and other fringe benefits, including housing benefits, retirement benefits, medical and dental benefits, leave passage and education allowances.

¹⁰ The following legal sector reference was adopted for comparison –

Magistrate	:	Junior Counsel/solicitors with 5 to 14 years of practice;
District Judge	:	Junior Counsel/solicitors with 15 to 24 years of practice; and
CFI Judge	:	Senior Counsel with 15 to 24 years of practice

survey were used for analysis. Apart from the questionnaire survey, telephone interviews with 18 barristers and 17 solicitors were also conducted to collect comments and information relating to the remuneration packages of legal practitioners and JJOs.

(ii) *Findings*

21. The differential between judicial pay and legal sector earnings (in HK\$ million) in the 2005, 2010 and 2015 studies are illustrated as follows –

Judicial Entry Rank	Legal Sector Reference (Years of Practice)	Differential ¹¹		
		2005 (Pilot Study)	2010	2015
Magistrate	Junior Counsel (5-14 years)	12%	7%	-16%
	Solicitors (5-14 years)	46%	13%	20%
District Judge	Junior Counsel (15-24 years)	8%	10%	-4%
	Solicitors (15-24 years)	8%	10%	-4%
CFI Judge	Senior Counsel (15-24 years)	-47%	-42%	-60%

22. From the findings of the survey, we note that the pay of CFI Judge has been consistently lower than legal sector earnings over the years, at a substantial extent by -47%, -42% and -60% in 2005, 2010 and 2015 respectively. As for District Judge, it is the first time that judicial pay is below legal sector earnings (-4% for both Junior Counsel and solicitors). For Magistrate, the pay differentials between judicial pay and legal sector earnings for Junior Counsel and solicitors are at -16% and 20% respectively whilst judicial pay was above legal sector earnings for both Junior Counsel and solicitors in 2005 and 2010. The Judicial Committee notes that a majority of Magistrates (about 70%) were Junior

¹¹ Based on the responses collected in the questionnaire survey, differentials between judicial pay and legal sector earnings are presented as a percentage:

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

Counsel before joining the Judiciary and considers the pay differential of -16% for Junior Counsel more relevant in interpreting the findings for Magistrates. As for interviews, the findings reveal that the perception and attitude of barrister and solicitor respondents towards judicial service and remuneration remain broadly the same as in previous studies. A majority of barrister interviewees express interest in joining the Bench in the later part of their career when financial security has been attained, while solicitor interviewees tend to be less interested. Most of the interviewees consider that judicial pay is not a deciding factor for considering judicial appointment.

(iii) *General Guidelines for Application of Findings*

23. 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 –

- (i) the findings demonstrate a clear trend of widening differential between judicial pay and earnings of legal practitioners; or
- (ii) the Judiciary encounters recruitment and retention difficulties; or
- (iii) 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. We agree with the general guidelines adopted by the Judicial Committee.

(iv) *Considerations and Analysis*

24. 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 23(i), 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.

25. 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%, 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 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.

26. As mentioned in paragraph 13 above, the Judicial Committee has considered and supported the package of proposals to enhance some of the conditions of service for JJOs. 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 points 45 or above and directorate officers have been increased by 3% with retrospective effect from 1 October 2014.

C. Judicial independence

27. Apart from considering the basket of factors and the 2015 Benchmark Study 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.

D. Position of the Judiciary

28. 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 of the Judicial Committee

29. On the 2016-17 annual adjustment, the Judicial Committee recommends that judicial salaries should be increased by 4.85% with effect from 1 April 2016. On the 2015 Benchmark Study, the Judicial Committee recommends that an upward adjustment of 4% should be granted to the salaries of JJOs below the CFI level (i.e. those remunerated on Judicial Service Pay Scale (JSPS) Points 1-15) and an upward adjustment of 6% should be granted to the salaries of Judges at the CFI level and above (i.e. those remunerated on JSPS Points 16 and above). The upward adjustments should take effect from 1 September 2016.

The Government's views

30. We consider that the Judicial Committee has thoroughly examined the basket of factors as approved by the Chief Executive in Council in May 2008 and the findings of the 2015 Benchmark Study. 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 recommendations. We therefore support its recommendation that judicial pay for 2016-17 should be increased by 4.85%. In the light of the findings of the 2015 Benchmark Study, we further support the Judicial Committee's recommendations that the salaries of JJOs below the CFI level should be adjusted upward by 4% and the salaries of Judges at the CFI level and above should be adjusted upward by 6% with effect from 1 September 2016. Judicial pay adjustments aside, we consider that there is a need to enhance the conditions of service to ensure that the overall judicial remuneration package is reasonably attractive for the Judiciary to recruit and retain the best possible talents to serve as JJOs. The set of proposals

on improvement to conditions put forth by the Judiciary, as supported by the Judicial Committee and approved by the Chief Executive in Council, will form the contents of a separate LegCo brief.

IMPLICATIONS OF THE PROPOSAL

31. The estimated financial implication for 2016-17 arising from a 4.85% increase in the pay for JJOs is \$17.7 million. For the 2015 Benchmark Study, the estimated 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 million¹². In line with established practice, the additional resources required for coping with judicial service pay rise will first be met from the envelope allocation of the Judiciary in the year effecting the judicial pay increase. The Judiciary will seek supplementary funding if the additional resources required cannot be met from the envelope allocation of the current year. 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

32. 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 recommendations to the CE, we have invited the Judiciary to give its response to the Judicial Committee's recommendations on the 2016-17 annual adjustment and the 2015 Benchmark Study to increase the pay for JJOs. The Judiciary has indicated its support for the Judicial Committee's recommendations. No public consultation outside the Judiciary has been conducted.

¹² The estimate was calculated by the Judiciary in around October 2016. For the pay adjustment arising from the annual review, the financial implication was calculated by multiplying the proposed judicial pay increase of 4.85% to the actual salaries and acting allowances for JJOs for the six months from April 2016 to September 2016 and their projected salaries and acting allowances for the six months from October 2016 to March 2017. For the pay adjustment arising from the findings of the 2015 Benchmark Study, the financial implication was calculated by multiplying the proposed judicial pay increase of 4% to the salaries of JJOs below the CFI level and 6% to the salaries of Judges at the CFI level and above for one month of September 2016 and their projected salaries and acting allowances for the six months from October 2016 to March 2017 after taking into account the proposed judicial pay increase of 4.85%

PUBLICITY

33. We have informed the Judiciary and the Judicial Committee of the Government's decision on both the annual pay adjustment for JJOs for 2016-17 and pay adjustments arising from the 2015 Benchmark Study. We will brief the Panel on Administration of Justice and Legal Services of the LegCo and seek the Finance Committee's approval on the judicial service pay adjustments. A press release has been issued and a spokesman will be made available to respond to enquiries. The Judicial Committee will separately release its Report on Judicial Remuneration Review 2016.

BACKGROUND

34. 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 commissioned a consultant in August 2015 to provide professional advice on the survey methodology and to conduct the fieldwork of the 2015 Benchmark Study.

35. 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

36. Enquiries on this brief should be addressed to Ms Jennifer Chan, 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
7 December 2016

STANDING COMMITTEE ON JUDICIAL SALARIES AND CONDITIONS OF SERVICE

Report on Judicial Remuneration Review 2016

September 2016

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Chapter 1

Introduction

1.1 This Report sets out the findings and recommendations of the Standing Committee on Judicial Salaries and Conditions of Service (the Judicial Committee) in the Judicial Remuneration Review (JRR) 2016. 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 2016

1.6 In 2016, apart from the annual review, the Judicial Committee has also completed the 2015 Benchmark Study on the Earnings of Legal Practitioners in Hong Kong (2015 Benchmark Study) and considered a package of proposals from the Government to enhance the conditions of service for JJOs. In all these exercises, the Judicial

Committee has taken into account the data, information and views provided by the Judiciary and the Government. The Judicial Committee then exercised its best judgment in analysing and balancing all relevant considerations in formulating its recommendations on how judicial remuneration should be adjusted.

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 made³.

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 was conducted in 2010, five years since the previous pilot study conducted in

³ The 2005 Report, paragraph 3.26.

2005. The Judicial Committee has revisited the timing for conducting benchmark studies and decided that another benchmark study should be conducted in 2015. The 2015 round of study has been completed and details are set out in Chapter 4.

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;
- (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

Annual Review

Annual Review

3.1 This is the eighth 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 Judicial Committee noted that the Competition Tribunal has been established under the Competition Ordinance (Cap. 619) as a specialised court with primary jurisdiction to hear and adjudicate competition-related cases. Pursuant to Section 135 of the Competition Ordinance, all Judges of the Court of First Instance of the High Court (CFI) are, by virtue of his or her appointment as a CFI Judge, a member of the Tribunal. As the Competition Tribunal came into operation on 14 December 2015, the levels of court and the respective judicial ranks have been updated accordingly 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. The caseloads in different

levels of court between 2013 and 2015 are shown in **Appendix E**. In 2015, there were noticeable decreases in the numbers of cases at the Obscene Articles Tribunal and the Coroner's Court. For the Obscene Articles Tribunal, the decrease 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. As for the Coroner's Court, the number of death inquests handled depends on the decision of the Coroners after considering the investigation reports submitted by the Police. The investigation ordered and the death in custody cases both dropped in 2014 and 2015 which may have led to the drop of the total number of death inquests.

3.4 Despite the relatively steady caseload figures, the Judiciary has pointed out that the caseload figures do not reflect fully the workload of JJOs and must not be looked at exclusively. They do not reflect the complexity of the cases, which directly affects the amount of time and efforts required of JJOs to deal with cases. It is also very difficult to devise quantifiable indicators in a meaningful way to reflect the increasing workload and heavier responsibilities of the JJOs beyond just dealing with cases. All the above are generally true for all levels of court but the pressure is particularly felt at the level of the High Court⁴.

3.5 Increased complexity in cases not only means longer hearing times but also considerably more time required of JJOs to conduct pre-hearing preparations and to write judgments. There are now many more lengthy trials. The high ratio of unrepresented litigants in civil cases also creates great challenges. Where there are unrepresented litigants, the JJOs are not properly assisted in dealing with complex legal issues. Hearings (and their preparation) take longer time as a result.

⁴ As advised by the Judiciary, for the High Court, 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, new developments in law resulting for example from the introduction of new legislation such as the Competition Ordinance (Cap. 619) have significant impacts on the already heavy workload.

3.6 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 maintains its 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. The Judicial Committee trusts 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

3.7 As of 31 March 2016, against the establishment of 200 judicial posts, 162 were filled substantively. This represents a net decrease of 7 in the strength of JJOs as compared with 31 March 2015, arising mainly from retirement. The establishment and strength of JJOs as at 31 March 2016 are in **Table 1** below –

Table 1: Establishment and strength of JJOs

Level of court	As at 31.3.2016*		Net change in strength over 31.3.2015
	Establishment	Strength	
CFA ⁵	4 (4)	4 (4)	0
High Court ⁶	59 (59)	41 (37)	+4
District Court ⁷	41 (41)	37 (42 [#])	-5
Magistrates' Courts and Specialised Tribunals/Court ⁷	96 (96)	80 (86)	-6
Total	200 (200)	162 (169)	-7

* Figures in brackets denote position as at 31.3.2015.

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.

⁵ 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).

⁶ 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.

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.

3.8 On recruitment of JJOs, the Judiciary advised that a total of nine open recruitment exercises for various judicial ranks were conducted between 2011 and 2015. Up to 31 March 2016, a total of 81 judicial appointments were made as a result of the recruitment exercises conducted between 2011 and 2015, with appointments of four CFI Judges made in the 2015-16 financial year. Appointment of one CFI Judge was also made in May 2016.

3.9 The Judicial Committee noted that for the CFI level the Judiciary has been conducting recruitment exercises on a more regular basis since 2012. In the past three recruitment exercises for CFI Judges conducted in 2012, 2013 and 2014, a total of 17 appointments had been made. However, the number of eligible candidates found suitable for appointment was much smaller than the available vacancies.

3.10 The Judicial Committee considered that the above presented clear evidence that there are persistent recruitment difficulties at the CFI level. The Judicial Committee also noted that to address the recruitment difficulties at the CFI level and taking into account the long-term needs of the whole of the Judiciary, the Judiciary has decided to conduct reviews on two important areas, i.e. the conditions of service for JJOs and the statutory 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. Following the completion of the review on the conditions of service, the Judiciary has proposed improvements to certain fringe benefits of JJOs (further details in paragraph 3.18 below). As for the review on the statutory retirement ages of JJOs, the Judiciary has engaged a consultant to conduct the review and will keep the Government posted of developments at an appropriate juncture.

3.11 For the rank of District Judge and Permanent Magistrate, the Judicial Committee noted that all the vacancies could be filled as a consequence of the outcome of the last recruitments in 2012 and 2014 respectively.

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 increased from a total of 23 as at 31 March 2015 to 27 as at 31 March 2016.

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.

3.14 Retirement is the main source of wastage among JJOs. The anticipated retirement will be five (or 3.1% of current strength) in 2016-17, increasing to six (or 3.7% of current strength) in 2017-18, and going up to 18 (or 11.1% of current strength) in 2018-19.

3.15 The retirement situation may pose challenges to 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 3.10 above, the Judicial Committee noted that the Judiciary is conducting a review on the 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 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 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 Allowance⁸, Home Financing Allowance and Non-accountable Cash Allowance⁹ were revised following similar revisions in the civil service; and
- (b) The rates of two Extraneous Duties Allowances (Responsibility) (EDA(R)) for JA¹⁰ in 2015-16 were revised based on the annual judicial pay adjustment of 4.41% for 2015-16.

3.18 Whilst there has been no major change to the fringe benefits and allowances for JJOs during the past year, following completion of the review as mentioned in paragraph 3.10, the Judiciary has put forth to the Government a set of proposals to enhance some of the existing conditions of service for JJOs. The Government invited the Judicial Committee's advice on the proposals in August 2016. The Judicial Committee considered the proposals 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. The Judicial Committee has tendered its advice to the Government, indicating support for the proposals. The Judicial Committee understands that the Government will submit the

⁸ 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.

⁹ The Home Financing Allowance and Non-accountable Cash Allowance are two different types of housing allowance offered to JJOs.

¹⁰ Both EDA(R)s are payable in recognition of the higher responsibilities taken up by JAs. One is for JAs sitting as NPJs of the CFA, while the other is for JAs appointed as Vice Presidents of the Court of Appeal of the High Court.

proposals to the Chief Executive-in-Council for consideration. Subject to the Chief Executive-in-Council's views, the Government will seek the necessary funding approval from the Legislature.

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 tenure¹¹ 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 review in 2016.

Overseas Remuneration Arrangements

3.20 The Judicial 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 systemic change to the judicial remuneration systems in these jurisdictions in 2015-16. 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.

¹¹ 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.

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. The Hong Kong economy slowed further in the first quarter of 2016 with Gross Domestic Product (GDP) expanding only meagrely by 0.8%¹² year-on-year in real terms over a year earlier, lower than the 1.9% growth in the fourth quarter of 2015 and also the slowest growth pace in four years. For 2016 as a whole, the Hong Kong economy is projected to grow modestly by 1% to 2%. 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
2015	Q1	+2.4%
	Q2	+3.1%
	Q3	+2.3%
	Q4	+1.9%
2016	Q1	+0.8%

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

3.22 The labour market remained largely stable in overall terms in the first quarter of 2016. The seasonally adjusted unemployment rate increased by 0.1 percentage point over the preceding quarter to 3.4% in the first quarter of 2016. The figure remained the same at 3.4% from March to May 2016¹³. As compared to 3.2% in the same period in 2015, the unemployment rate has edged up slightly 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 Index¹⁴, rose to 2.8%¹⁵ year-on-year in the first quarter of 2016, from 2.3% in the fourth quarter of 2015. For the

¹² The change in GDP in real terms for the second quarter of 2016 was 1.7% (preliminary figure).

¹³ The figure from May to July 2016 remained the same at 3.4%.

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

¹⁵ The corresponding figure for the second quarter of 2016 was 2.6%.

12-month period ended March 2016, headline inflation averaged at 2.7%¹⁶. Looking ahead, the upside risks to inflation should remain limited in the near term. Taking the latest developments into account, the forecast headline inflation for 2016 as a whole is 2.3%¹⁷.

Budgetary Situation of the Government

3.24 Based on the information from the Government, it had a consolidated surplus of \$14.4 billion in 2015-16 and the fiscal reserves stood at \$842.9 billion as at end March 2016. For 2016-17, a surplus of \$21.4 billion and a deficit of \$10 billion are estimated for the Operating Account and Capital Account respectively. This resulted in a surplus of \$11.4 billion in the Consolidated Account, equivalent to 0.5% of our GDP.

3.25 The annual staff cost of the Judiciary in 2016-17 is estimated at about \$1.2 billion, which is roughly 0.32% of the Government's total operating expenditure of about \$380 billion in the 2016-17 Estimates.

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

¹⁶ The underlying inflation netting out all Government's one-off relief measures for the 12-month period ended March 2016 averaged at 2.5%.

¹⁷ The forecast underlying inflation for 2016 is 2%.

Trend Survey (PTS)¹⁸, 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 three years of service for the first and second increments respectively¹⁹. 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 seven years based on information from the Judiciary are set out in **Table 3** below –

¹⁸ 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 \$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 start at JSPS 1, currently at \$75,335.

¹⁹ Pay points on JSPS 10-14 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.

Table 3 : CCOI for JJOs (2009-10 to 2015-16)

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%
2015-16	0.43%

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 +5.28% for the 12-month period from 2 April 2015 to 1 April 2016. As mentioned in paragraph 3.27 above, the CCOI for JJOs in 2015-16 was 0.43%. The private sector pay trend for JRR purpose (i.e. calculated by subtracting the CCOI for JJOs from the gross PTI) in 2016 is therefore +4.85%.

3.30 The Judicial Committee also made reference to other private sector pay indicators. In 2015, 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 associations²⁰. 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 movements 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.

Annual Civil Service Pay Adjustment

3.33 On annual civil service pay adjustment, the Judicial Committee has made reference to the decision of the Chief Executive-in-Council in respect of the annual civil service pay adjustment²¹ which was made in June 2016 that the pay for civil servants in the Upper Band and above should be increased by 4.19% with retrospective effect from 1 April 2016. The pay adjustment was approved by the Finance Committee of the Legislative Council on 28 June 2016.

²⁰ The 2005 Report, paragraph 3.14.

²¹ In arriving the decision, the Chief Executive-in-Council has taken into account the relevant factors (including the net PTIs derived from the 2016 PTS, the state of Hong Kong's economy, changes in the cost of living, the Government's fiscal position, the pay claims of the staff sides, civil service morale).

2013 Pay Level Survey

3.34 On the application of the findings of the 2013 PLS, the Judicial Committee noted that with the approval of the Finance Committee of the Legislative Council on 16 July 2015, the salaries of senior civil servants remunerated on Master Pay Scale points 45 or above and directorate officers have been increased by 3% with retrospective effect from 1 October 2014.

3.35 As mentioned in the Report on JRR 2015, the Judicial Committee noted that JJOs 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 levels of earnings of legal practitioners under the existing mechanism for the determination of judicial remuneration. The Judicial Committee considers it appropriate to examine the levels of judicial pay vis-à-vis the levels of earnings in the private sector in the context of the benchmark study as set out in Chapter 4.

The Judiciary's Position

3.36 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 4.85% (i.e. the relevant gross PTI at 5.28% less the CCOI for JJOs at 0.43%) for the annual adjustment for the judicial service in 2016-17.

Chapter 4

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

Background

4.1 As set out in Chapter 2, a benchmark study on the levels of earnings of legal practitioners should in principle be conducted every five years, in order to ascertain their levels of earnings, monitor such trends and review judicial salaries where appropriate. Following the completion of the 2005 pilot study and the 2010 Benchmark Study, the Judicial Committee has decided to conduct another benchmark study in 2015.

Conduct of the 2015 Benchmark Study

4.2 The Judicial Committee commissioned the Hay Group Limited (the Consultant) in August 2015 to provide professional advice on the survey methodology and to conduct the fieldwork of the 2015 Benchmark Study. The Judicial Committee accepted the Consultant's recommendation that the key aspects of the survey methodology of the 2010 Benchmark Study should be adopted for the 2015 Benchmark Study for consistency and ensuring comparability of findings with previous studies.

4.3 The 2015 Benchmark Study consisted of (i) a questionnaire survey on earnings of barristers and solicitors; and (ii) interviews with randomly selected barristers and solicitors on their perceptions on judicial service and remuneration.

4.4 Pursuant to the agreed methodology, the upper quartile (P75) level of earnings of legal practitioners were compared to judicial pay²² at the three entry levels, i.e. Magistrate, District Judge and CFI Judge. Differential analysis between judicial pay at the three entry levels and legal sector earnings was worked out based on the professional status and the years of practice that the JJOs at the entry levels possessed prior to their appointment to such levels. Consistent with the 2005 and 2010 studies, the following legal sector reference was adopted for comparison –

- **Magistrate:** Junior Counsel/solicitors with 5 to 14 years of practice;
- **District Judge:** Junior Counsel/solicitors with 15 to 24 years of practice;
- **CFI Judge:** Senior Counsel with 15 to 24 years of practice.

4.5 Apart from the questionnaire survey, interviews with legal practitioners were also conducted to collect comments and information relating to the remuneration packages of legal practitioners and JJOs.

4.6 Using 31 March 2015 as the survey reference date, the Consultant conducted fieldwork in November 2015 with the support and assistance from the Hong Kong Bar Association, the Law Society of Hong Kong as well as participating organisations and law firms. After verification, a total of 731 target responses from 212 barristers and 519 solicitors in the questionnaire survey were used for analysis. In addition, telephone interviews with 18 barristers and 17 solicitors were conducted. The Consultant's Survey Report is accessible at the Joint Secretariat's website at <http://www.jssc.gov.hk>.

²² Judicial pay consisted primarily of a base salary paid over 12 months and other fringe benefits, including housing benefits, retirement benefits, medical benefits, leave passage and education allowances.

Findings

Questionnaire Survey

4.7 Based on the responses collected in the questionnaire survey, differential between judicial pay and legal sector earnings was presented as a percentage:

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

4.8 The differentials between judicial pay and legal sector earnings (in HK\$ million) in the 2005, 2010 and 2015 studies are illustrated as follows –

Judicial Entry Rank	Average Annual Total Cost			Legal Sector Reference (Years of Practice)	Legal Sector Earnings					
	2005 (Pilot Study)*	2010	2015		2005 (Pilot Study)*		2010		2015	
					P75	Diff. ^	P75	Diff. ^	P75	Diff. ^
Magistrate	1.96	1.87	2.1	Junior Counsel (5-14 years)	1.75	12%	1.75	7%	2.5	-16%
				Solicitors (5-14 years)	1.35	46%	1.65	13%	1.75	20%
District Judge	2.69	2.75	3.37	Junior Counsel (15-24 years)	2.5	8%	2.5	10%	3.5	-4%
				Solicitors (15-24 years)	2.5	8%	2.5	10%	3.5	-4%
CFI Judge	3.98	4.34	5.39	Senior Counsel (15-24 years)	7.5	-47%	7.5	-42%	13.5	-60%

* Through the Pilot Study, the Judicial Committee confirmed the feasibility of a benchmark study and noted the then relativities between judicial salaries and earnings of private legal practitioners, which served as a reference point in monitoring the changes in their pay relativities over time. In the Pilot Study, there was a sampling of solicitors in the survey field.

^ Diff. denotes differential between judicial pay and legal sector earnings.

4.9 Based on the table in paragraph 4.8 above, the following changes in differentials between judicial pay and legal sector earnings for the three judicial entry ranks can be observed –

- (a) For CFI Judges, the pay differentials in 2005, 2010 and 2015 clearly indicated that judicial pay has been consistently lower than legal sector earnings over the years. The pay lag has also widened during the five-year period from 2010 to 2015, from -42% to -60%.

- (b) For District Judges, contrary to the previous two studies where judicial pay was ahead of legal sector earnings (with differentials recorded at 8% in 2005 and 10% in 2010), in 2015 the trend reversed with legal sector earnings being ahead of judicial pay by 4%.
- (c) For Magistrates, the two legal sector references pointed in the opposite directions in 2015: -16% for Junior Counsel (i.e. judicial pay was below legal sector earnings by 16%) and 20% for solicitors (i.e. judicial pay was above legal sector earnings by 20%). Previously in 2005 and 2010, judicial pay was above legal sector earnings for both Junior Counsel and solicitors. The Judicial Committee noted that a majority of Magistrates (about 70%) were Junior Counsel before joining the Judiciary. Hence, the pay differential of -16% for Junior Counsel would be more relevant in interpreting the findings for Magistrates.

Interviews

4.10 As for interviews, the findings revealed that the perception and attitude of barrister and solicitor respondents towards the judicial service and remuneration remained broadly the same as in previous studies. A majority of barrister interviewees expressed interest in joining the bench in the later part of their career when financial security had been attained, while solicitor interviewees tended to be less interested. Most of the interviewees considered that judicial pay was not a deciding factor for considering judicial appointment.

General Guidelines for Application of Findings

4.11 Consistent with the 2005 and 2010 studies, the Judicial Committee has endorsed the following general guidelines for the application of the findings –

- (a) The data collected from the 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.

- (b) There would be strong arguments for proposing adjustments to judicial pay if –
 - (i) the findings demonstrate a clear trend of widening differential between judicial pay and earnings of legal practitioners; or
 - (ii) if the Judiciary encounters recruitment and retention difficulties; or
 - (iii) if there are obvious changes in perception and attitude from survey respondents that remuneration has become an important factor in considering judicial appointment.
- (c) 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. At present, CFI Judges and District Judges are remunerated at JSPS Points 16 and 13 respectively, whereas Magistrates are remunerated on a pay scale of JSPS Points 7 to 10. 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.

Considerations and Analysis

4.12 Following the above general guidelines, and taking into account the data, information and views provided by the Judiciary, the Judicial Committee has made the following analysis –

- (a) First and foremost, 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.

- (b) Turning to the general guidelines, as mentioned in paragraph 4.11(b)(i) above, the Judicial Committee considers that there would be strong arguments for proposing adjustments to judicial pay if the findings of a 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 current round of study, the findings showed that judicial pay at all the three entry ranks were lagging 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. Hence for the first time since 2005, judicial pay at all the three entry ranks lagged behind legal sector earnings.

- (c) Another condition as outlined in paragraph 4.11(b)(ii) is that the Judiciary encounters recruitment and retention difficulties. On this, the Judicial Committee notes that the Judiciary is facing persistent recruitment difficulties at the CFI level (as mentioned in paragraphs 3.9 and 3.10 above). During the past few years the Judiciary has not been able to recruit sufficient judges at the CFI level. At

present, with a vacancy rate of 24%, nearly one in every four posts is not filled and this clearly is not satisfactory and requires positive action. The Judicial Committee notes that the Judiciary has put in conscious efforts in recent years in a bid to improve the situation, such as conducting recruitment exercises at more frequent intervals. However, such efforts have proven to be insufficient.

- (d) The Judicial Committee 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. On this, 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 this level and above, on top of any across-the-board pay rise to all JJOs.
- (e) As regards the magnitude of any pay increase to be proposed, the Judicial Committee is acutely aware of the need to balance amongst some conflicting factors. On the one hand, with the 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 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. In any case, notwithstanding the figures as revealed by the 2015 Benchmark Study, it must be duly recognised that it is never the policy intention to “align” judicial pay with legal sector earnings.

- (f) In parallel, as mentioned in paragraph 3.18, the Judicial Committee has considered and supported the package of proposals to enhance some of the conditions of service for JJOs. 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 these proposed enhancements to the total remuneration package of JJOs should also be borne in mind.
- (g) As a reference, the Judicial Committee notes that following the 2013 PLS, the salaries of senior civil servants remunerated on Master Pay Scale points 45 or above and directorate officers have been increased by 3% with retrospective effect from 1 October 2014.
- (h) In the course of the 2015 Benchmark Study, the Judicial Committee has invited the Judiciary to put forth its views as well as any data or information which will facilitate the Judicial Committee’s deliberations. 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

4.13 Having considered and balanced among all relevant factors, the Judicial Committee recommends that –

- (a) an upward adjustment of 4% should be granted to the salaries of JJOs below the CFI level (i.e. those remunerated on JSPS Points 1-15); and
- (b) an upward adjustment of 6% should be granted to the salaries of Judges at the CFI level and above (i.e. those remunerated on JSPS Points 16 and above)

with effect from the first day of the month this report is submitted.

4.14 The Judicial Committee believes that the above proposed adjustments to judicial salary, together with the proposed enhancements to some of the fringe benefits and allowances for JJOs on which the Judicial Committee has indicated support, should constitute a reasonable package of enhancements to judicial remuneration to help the Judiciary attract and retain the best among the legal profession to serve as JJOs. This will in turn contribute towards maintaining an independent and effective judicial system which upholds the rule of law and commands confidence within and outside Hong Kong.

Chapter 5

Conclusion and Recommendations

5.1 During the year covered by this report, the Judicial Committee has completed the following tasks –

- (a) undertaking and formulating its recommendation in respect of the 2016-17 annual adjustment;
- (b) undertaking and completing the 2015 Benchmark Study, and formulating its recommendations on how the findings should be applied; and
- (c) at the invitation of the Government, putting forth its views on the package of proposals for enhancing some of the conditions of service for JJOs.

5.2 On the 2016-17 annual adjustment, the Judicial Committee **recommends** that judicial salaries should be increased by 4.85% with effect from 1 April 2016.

5.3 On the 2015 Benchmark Study, the Judicial Committee **recommends** that –

- (a) an upward adjustment of 4% should be granted to the salaries of JJOs below the CFI level (i.e. those remunerated on JSPS Points 1-15); and
- (b) an upward adjustment of 6% should be granted to the salaries of Judges at the CFI level and above (i.e. those remunerated on JSPS Points 16 and above)

with effect from the first day of the month this report is submitted.

5.4 On the proposals to enhance some of the conditions of service for JJOs, the Judicial Committee considers the proposed enhancements 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.

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 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 completing the various tasks during the year.

We would also like to record our thanks to all parties who have contributed to the conduct of the 2015 Benchmark Study, in particular the Hong Kong Bar Association, the Law Society of Hong Kong as well as all participating barristers, solicitors and organisations.

We would like to record our appreciations of the Hon Chow Chung-kong, GBS, JP and Mr Lester Garson Huang, 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 2016

Chairman

The Hon Bernard Chan, GBS, JP

Members

Mr Alfred Chan Wing-kin, BBS

Mrs Ayesha Macpherson Lau, JP

Ms May Tan Siew-boi

Professor Wong Yuk-shan, BBS, JP

Mr Dieter Yih, JP

Mr Benjamin Yu, SC, SBS, JP

Judicial Service Pay Scale
(with effect from 1 April 2015)

Judicial Service Pay Scale (JSPS)		Rank
Point	\$	
19	306,150	✧ Chief Justice, Court of Final Appeal
18	297,650	✧ Permanent Judge, Court of Final Appeal ✧ Chief Judge of the High Court
17	268,350	✧ Justice of Appeal of the Court of Appeal of the High Court
16	255,750	✧ Judge of the Court of First Instance of the High Court
15	211,400	✧ Registrar, High Court ✧ Chief Judge of the District Court
14	(204,500)	✧ Senior Deputy Registrar, High Court ✧ Principal Family Court Judge, District Court
	(198,550)	
	192,750	
13	(191,500)	✧ Deputy Registrar, High Court ✧ Judge of the District Court ✧ Chief Magistrate
	(186,050)	
	180,650	
12	(164,950)	✧ Assistant Registrar, High Court ✧ Member, Lands Tribunal
	(160,200)	
	155,400	
11	(151,750)	✧ Registrar, District Court ✧ Principal Adjudicator, Small Claims Tribunal ✧ Principal Magistrate ✧ Principal Presiding Officer, Labour Tribunal
	(147,550)	
	143,150	
10	(138,900)	✧ Adjudicator, Small Claims Tribunal ✧ Coroner ✧ Deputy Registrar, District Court ✧ Presiding Officer, Labour Tribunal
	(134,800)	
	130,950	
10	(138,900)	✧ Magistrate
	(134,800)	
	130,950	
9	121,580	
8	118,735	
7	115,905	

Judicial Service Pay Scale (JSPS)		Rank
Point	\$	
6	89,010	◇ Special Magistrate
5	84,885	
4	80,945	
3	79,055	
2	77,180	
1	75,335	

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
Competition Tribunal [#]		
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

* There is at present no post in the rank of Assistant Registrar, High Court.

[#] The Competition Tribunal is established under the Competition Ordinance (Cap. 619) as a specialised court with primary jurisdiction to hear and adjudicate competition-related cases. It came into operation on 14 December 2015.

Level of Court	Rank	Pay Scale (JSPS)
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

Caseloads in Different Levels of Court between 2013 and 2015

No. of Cases Level of Court	2013	2014	2015
Court of Final Appeal			
– application for leave to appeal	113	141	127
– appeals	31	23	31
– miscellaneous proceedings	3	1	0
Total	147	165	158
Court of Appeal of the High Court			
– criminal appeals	453	452	442
– civil appeals	281	262	279
Total	734	714	721
Court of First Instance of the High Court			
– criminal jurisdiction			
• criminal cases	571	545	503
• confidential miscellaneous proceedings	326	346	402
• appeals from Magistrates' Courts	809	771	777
– civil jurisdiction	18 573	19 367	19 885
Sub-total	20 279	21 029	21 567
– probate cases	16 967	17 931	19 127
Total	37 246	38 960	40 694
District Court			
– criminal cases	1 190	1 079	1 118
– civil cases	20 636	20 639	20 346
– family cases ^{NOTE}	23 392	22 416	21 834
Total	45 218	44 134	43 298
Magistrates' Courts	319 702	322 964	317 006
Lands Tribunal	5 035	4 733	4 740
Labour Tribunal	4 154	4 039	4 006
Small Claims Tribunal	48 982	50 083	49 775
Obscene Articles Tribunal	42 129	12 143	4 278
Coroner's Court	156	146	93

^{NOTE} It is previously named as divorce jurisdiction. The amendment aims to refine the description and there is no change to the type of cases included in this group.

