

**For discussion on  
18 July 2018**

**Legislative Council  
Panel on Administration of Justice and Legal Services**

**Review on the Statutory Retirement Ages  
for Judges and Judicial Officers**

**PURPOSE**

This paper seeks Members' views on the proposals to extend the statutory retirement ages for Judges and Judicial Officers<sup>1</sup> (JJOs).

**BACKGROUND**

2. Based on historical and current trends, it is clear that the best legal practitioners for the Judiciary to recruit are those who are highly successful in private practice. Given the significant drop in earnings and the fact that for District Court level judges and above, there can be no return to private practice as a barrister or solicitor after judicial appointment, the timing as to when to join the Judiciary becomes a critical factor for many practitioners. It is the Chief Justice's (CJ) firm belief that an extension of the statutory retirement ages for JJOs will encourage recruitment of the best legal talents to the Judiciary. Equally important as recruitment is retaining for as long as practicable the benefit of the experience and skills of serving judges. The present statutory retirement ages for JJOs are well below what may be regarded by most people as reasonable these days. With the above considerations in mind, CJ set up an internal Working Group in June 2014 chaired by a Permanent Judge (PJ) of the Court of Final Appeal (CFA) to conduct a review of the statutory retirement ages for JJOs. The Judiciary has also engaged a Consultant to carry out a consultancy study.

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<sup>1</sup> "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. Special Magistrates are not included in the review as they would be gradually phased out.

3. The objective of the consultancy study is to conduct a comprehensive study on all relevant matters relating to the statutory retirement ages for JJOs at all levels of court; and based on the findings and results, to conduct analysis and make recommendations on whether and what changes should be recommended, as well as to assess the possible implications. For the purpose of gauging views from relevant stakeholders from within and outside the Judiciary, including serving JJOs and JJOs retired in the past three years, Deputy JJOs and Recorders sat in the past three years, barristers and solicitors in private practice and government lawyers in various government departments, the Consultant has conducted questionnaire survey, focus group discussions and interviews. The Consultant has also researched into the retirement policies and practices adopted by other common law jurisdictions, including the United Kingdom (the UK), Australia, New Zealand and Singapore. An executive summary of the consultancy study report, as accepted by the Judiciary, is at **Annex**.

## **THE PROPOSALS**

4. The Government supports the Judiciary's proposals to extend the statutory retirement ages for JJOs and related arrangements, as set out below –

### **(A) Statutory retirement ages**

- (a) to extend the statutory retirement ages for Judges of CFA, the Court of Appeal (CA) and the Court of First Instance (CFI) of the High Court from 65 to 70;
- (b) to maintain the statutory retirement ages for Registrar/Senior Deputy Registrar/Deputy Registrar (R/SDR/DR) for the High Court and District Judge at 65;
- (c) to extend the statutory retirement ages for Member of the Lands Tribunal (M/LT), Magistrate and other Judicial Officers at the magistrate level from 60 to 65;
- (d) to retain a two-tier retirement age system, i.e., Judges at the CFI level and above will have a higher retirement age at 70 while JJOs below the CFI level will have a lower retirement age at 65;

- (e) to retain the existing provisions in principle that persons who have attained the statutory retirement ages may be appointed to be Judges of the CFA and the High Court;

**(B) Early retirement ages**

- (f) to raise the statutory early retirement age of Judges of the CFA, the CA and the CFI of the High Court from 60 to 65 correspondingly;
- (g) to introduce a new statutory discretionary early retirement age of 60 for Judges of the CFA, the CA and the CFI of the High Court upon approval of CJ;
- (h) to maintain the statutory early retirement age of R/SDR/DR of the High Court and District Judge at 60;
- (i) to introduce a statutory early retirement age for M/LT, Magistrate and other Judicial Officers at the magistrate level at 60;

**(C) Discretionary extension arrangements**

- (j) to maintain the existing discretionary extension arrangements beyond the statutory retirement ages for JJOs at all levels of court (i.e., two periods of three years for CFA Judges, and five years in aggregate for other JJOs);
- (k) to provide for discretionary extension of term of office for District Judges with an extension period of not exceeding five years in aggregate<sup>2</sup>;

**(D) Transitional arrangements**

- (l) to put in place transitional arrangements to allow serving JJOs to choose whether to transfer to the new retirement ages or to remain under the existing retirement ages. In gist, a serving JJO can exercise the option of joining the new retirement age arrangement during an option period of two years, or until his existing statutory retirement age/expiry of extension of service,

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<sup>2</sup> District Judges (appointed on or after 1 January 1987) is the only group of JJOs not covered under the existing discretionary extension arrangement.

whichever is the earliest. For a JJO who has served a notice of retirement or a notice of resignation as at the implementation date, he will only be eligible for exercising the option if he has successfully applied to CJ for approval to withdraw the notice. Specific transitional arrangements are proposed in light of the special circumstances of the CFA<sup>3</sup>; and

**(E) Pension-related matters**

- (m) to maintain the existing pension-related arrangements<sup>4</sup>.

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<sup>3</sup> Under section 14(2)(a) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484), the retirement age for CJ and PJs of the CFA may be extended by no more than two periods of three years. In other words, the term of office of Judges of the CFA currently may be extended until he or she reaches the age of 71. To give effect to the proposed option to transfer to the new retirement age and the proposed discretionary extension arrangement, it is proposed that section 14(2)(a) be suitably amended to allow the existing discretionary extension arrangement to be applicable to CJ or a PJ who is already over 70 when he exercises the option.

<sup>4</sup> The existing pension benefits are –

- (a) a JJO's pensionable service shall be deemed to be increased by one month for each completed month of pensionable service in a judicial office that is both after age 50 and after 1 July 1987 in accordance with section 25 of the Pension Benefits (Judicial Officers) Ordinance (Cap. 401);
- (b) upon attaining maximum pension status, a JJO may retire from the pensionable service and be immediately re-employed without a break in service at the same rank on gratuity bearing agreement terms until reaching the statutory retirement age or expiry of extension of service; and
- (c) the factor for the computation of an annual pension on retirement is 1/675 of a JJO's highest pensionable emoluments for each month of his pensionable service in accordance with section 4 of the Pensions Benefits (Judicial Officers) Regulations (Cap. 401A).

5. The following is a summary table setting out the existing and recommended statutory retirement ages, discretionary extension years, early retirement ages and maximum retirement ages –

Court Level	Statutory Retirement Age		Discretionary Extension Year		Early Retirement Age			Maximum Retirement Age	
	E	R	E	R	E	R		E	R
						D	S		
CFA	65	70	6(3+3)	6(3+3)	60	60*	65	71	76
CA	65	70	5	5	60	60*	65	70	75
CFI	65	70	5	5	60	60*	65	70	75
High Court - R/SDR/DR	65	65	5	5	60	60		70	70
District Court (DC) - District Judge	65	65	Nil	5	60	60		65	70
DC - M/LT	60	65	5	5	Nil	60		65	70
Magistrates' Courts	60	65	5	5	Nil	60		65	70

E – Existing

R – Recommended

D – Discretionary

S – Statutory

Note 1: Figures in shade denote changes to the existing arrangements.

Note 2: Asterisked figures denote discretionary retirement between the ages of 60 and 65 to be approved by CJ.

## JUSTIFICATIONS

6. The Government considers the Judiciary's proposals reasonable and essential to enable the Judiciary to sustain their manpower across different levels of court, which is crucial to the efficient and effective operation of the Judiciary. Our considerations are set out in the ensuing paragraphs.

### (A) *Statutory retirement ages*

7. The Government supports the Judiciary's proposals as set out in paragraphs 4(a) to (e) above. The Government shares the Judiciary's view that there is a need to extend the statutory retirement ages for Judges at the CFI level and above from 65 to 70 in light of the persistent recruitment difficulties at the CFI of the High Court level. This will enable the retention of experienced senior Judges, and attract experienced

and quality private practitioners to join the Bench. The Government also agrees with the Judiciary that the retirement age for JJOs below the CFI level be set at 65 to avoid creating career blockages as well as to facilitate the injection of new blood. In essence, the Government echoes what CJ said at the Opening of the Legal Year 2018 that “*extending the retirement age of judges will be of considerable tangible benefit to the community. Not only would judges be able to give the benefit of their experience and skills beyond the present low retirement ages, this will encourage recruitment of the most able persons to join the Judiciary.*”

8. It is noted that most of the overseas jurisdictions under research have retirement ages higher than those in Hong Kong<sup>5</sup>. Although some of these overseas jurisdictions have a uniform retirement age for Judges at all levels of court, a two-tier retirement age system is considered more suitable to the circumstances of the Judiciary in Hong Kong and should accordingly be retained.

(B) *Early retirement ages*

9. In accordance with section 7(1)(b)(ii) of the Pensions Benefits (Judicial Officers) Ordinance (Cap. 401), the following JJOs who are appointed on or after 1 July 1987 may retire early on or after attaining the age of 60 years –

- (a) CJ and a PJ of the CFA;
- (b) a Judge of the High Court;
- (c) the R/SDR/DR of the High Court; and
- (d) a District Judge.

10. Given that Hong Kong is a small jurisdiction with a limited number of Judges at the CFI level and above, it is likely that the Judiciary will encounter great difficulties in judicial manpower planning and deployment if, on the assumptions that retirement ages for JJOs are extended as recommended, Judges at the CFI level and above may still be able to retire at the existing statutory early retirement age of 60. This

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<sup>5</sup> The UK and New Zealand have a uniform retirement age of 70; Singapore has a uniform retirement age of 65; and in Australia, the retirement age is 70 for the High Court, the Federal Court and the Federal Circuit Court, and 65 for the Family Court at federal court hierarchy.

would mean a Judge may retire any time within a long period of ten years (i.e., between the ages of 60 and 70). The Government agrees with the Judiciary that this is not conducive to manpower planning and considers it reasonable to maintain the existing five-year interval between the early retirement age and the statutory retirement age.

11. The Judiciary further recommends that CJ be provided with the discretionary power to approve early retirement for these senior Judges between the ages of 60 and 65 on exceptional grounds, such as health or family reasons, as some respondents of the consultancy study expressed concerns that Judges may need to retire earlier than 65 owing to health and personal issues. The Government considers it acceptable to introduce a discretionary arrangement so as to cater for the specific needs of individual Judges. As for JJOs below the CFI level, the Judiciary recommends that the five-year interval between the early retirement age and the statutory retirement age be applied.

(C) *Discretionary extension arrangements*

12. The existing legislative provisions provide for extension of terms of office for JJOs (except for District Judges appointed on or after 1 January 1987). The existing arrangements are –

- (a) the term of office of CJ and a PJ of the CFA may be extended for not more than two periods of three years; and
- (b) the term of office of a Judge of the High Court; the R/SDR/DR of the High Court; a District Judge who was appointed before 1 January 1987<sup>6</sup>; a M/LT; a Magistrate; and other Judicial Officers at the magistrate level may be extended for a specified period or periods not exceeding five years in aggregate.

13. According to the prevailing Judiciary policy, extension of terms of office of JJOs beyond the statutory retirement ages is not automatic and will only be granted on a discretionary basis. The mechanism allows flexibility in retaining JJOs beyond their statutory retirement ages in light of operational needs. The Government agrees with the Judiciary's recommendation to maintain the existing discretionary extension arrangements beyond the statutory retirement ages for JJOs at all levels of court, i.e., two periods of three years for CFA Judges, and

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<sup>6</sup> There is no serving District Judge who was appointed before 1 January 1987.

five years in aggregate for other JJOs. The Government also agrees with the Judiciary's proposal to provide for discretionary extension of term of office for all District Judges with an extension period of not exceeding five years in aggregate for parity's sake.

*(D) Transitional arrangements*

14. To facilitate a smooth implementation, the Judiciary recommends putting in place transitional arrangements<sup>7</sup> to allow serving JJOs to choose whether to transfer to the new retirement ages or to remain under the existing retirement ages. The Government also notes that the Judiciary has considered the special circumstances of CFA Judges and proposed specific transitional arrangements to cater for them. The Government has no particular comment on these proposals and trusts that the Judiciary has taken into account the views of JJOs and stakeholders in devising the proposed transitional arrangements.

*(E) Pension-related matters*

15. According to the Judiciary, the availability of pension is one of the important factors in attracting private practitioners to join the Bench. The Judiciary takes the view that any proposed changes to the retirement ages for JJOs should not undermine the existing pension benefits to which they are entitled. The Judiciary considers it essential to maintain the existing arrangements on JJOs' pension benefits.

16. On deferred pensions, at present, where a JJO appointed on or after 1 July 1987 resigns from the service before the age of 60, subject to the completion of a qualifying service of not less than ten years and with the approval of CJ, he will be eligible for a deferred pension when he attains the age of 60. Upon the implementation of the proposed retirement ages as recommended, the Judiciary proposes that the ages for resigned Judges at the CFI level and above to be eligible for deferred pensions be correspondingly adjusted to 65; and that for resigned JJOs below the CFI level be maintained at 60, i.e., five years before the applicable statutory retirement ages of respective groups of JJOs. The Judiciary also recommends that the existing arrangement that the deferred pension payment will be subject to the JJO's completion of a qualifying service of not less than ten years and the approval of CJ be maintained. The Government has no particular comment in this respect.

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<sup>7</sup> Paragraph 4(l) refers.



## **FINANCIAL IMPLICATIONS**

17. The Consultant has worked out two scenarios to assess the financial implications of the above recommendations. Assuming all JJOs leave the Judiciary upon reaching the new statutory retirement ages, the financial implication will range from a decrease of \$101.48 million (-1.62%) if all JJOs opt for 0% lump sum pension gratuity to an increase of \$206.22 million (+4.39%) if all JJOs opt for 50% lump sum pension gratuity. Assuming all JJOs leave the Judiciary after serving the maximum period of discretionary extension of service upon reaching the new statutory retirement ages, the financial implication will range from an increase of \$35.20 million (+0.53%) if all JJOs opt for 0% lump sum pension gratuity to an increase of \$288.56 million (+5.57%) if all JJOs opt for 50% lump sum pension gratuity.

## **CONSULTATION**

18. In the course of the consultancy study, the Consultant gauged views from relevant stakeholders from within and outside the Judiciary<sup>8</sup>. The Government has consulted the Standing Committee on Judicial Salaries and Conditions of Service (Judicial Committee) on the Judiciary's proposals. The Judicial Committee renders full support for the proposals. In view of the limited pool of potential candidates, particularly for appointment to the CFI and above, the Judicial Committee considers that the Judiciary's proposals are pragmatic and should be instrumental in attracting talents to join the Bench, including

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<sup>8</sup> A questionnaire survey was conducted from March to May 2016. The target respondents covered all 164 serving JJOs at the material time. Apart from serving JJOs, other stakeholder groups who may be affected by changes of JJOs' statutory retirement ages, if any, were also invited to participate in the questionnaire survey, including 21 JJOs retired in the past three years, 117 Deputy JJOs/Recorders sat in the past three years, 1 421 barristers and 8 677 solicitors in private practice, and 565 government lawyers.

After completing the questionnaire survey, the Consultant conducted eight sessions of focus group discussion in September 2016 with 32 serving JJOs, seven Deputy JJOs/Recorders, eight barristers, four solicitors and 15 government lawyers. Three face-to-face interviews were also conducted with interviewees nominated by the Hong Kong Bar Association, the Law Society of Hong Kong and the Department of Justice.

those who are at a later stage of their career in private practice. The Judicial Committee also considers that the proposals will at the same time help retain experienced JJOs, thereby strengthening manpower support for the Judiciary. The Judicial Committee hopes that the proposals can be implemented as soon as practicable. The Judiciary will also consult stakeholders such as the Hong Kong Bar Association and the Law Society of Hong Kong on the proposals.

## **WAY FORWARD**

19. Implementation of the Judiciary's proposals requires legislative amendments<sup>9</sup>. Subject to Members' views and support, the Government hopes to complete the legislative process within the 2018-2019 session as far as possible.

## **ADVICE SOUGHT**

20. Members are invited to note and comment on the proposals and way forward set out in the paper.

**Administration Wing, Chief Secretary for Administration's Office**  
**Judiciary Administration**  
**July 2018**

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<sup>9</sup> An initial trawl indicates that legislative amendments to High Court Ordinance (Cap. 4), Pensions Ordinance (Cap. 89), District Court Ordinance (Cap. 336), Pensions Benefits (Judicial Officers) Ordinance (Cap. 401) and Hong Kong Court of Final Appeal Ordinance (Cap. 484) will be required.

## Executive Summary

### **I. Introduction**

1. Judges and Judicial Officers (“JJOs”) at different levels of court have different retiring ages as prescribed under different Ordinances. Notwithstanding that JJOs are normally required to vacate their judicial offices upon attaining their prescribed retiring ages, the existing legislative provisions provide for extension of term of office<sup>1</sup> for JJOs beyond their statutory retiring ages except for a District Judge who was appointed to be such Judge on or after 1 January 1987<sup>2</sup>.
2. In late 2015, Hay Group Limited (“Hay Group”) was commissioned by the Judiciary of Hong Kong to conduct the Consultancy Study for Reviewing the Statutory Retiring Ages of Judges and Judicial Officers (“Consultancy Study”).
3. The objective is to conduct a comprehensive study on all relevant matters relating to the statutory retirement ages of JJOs at all levels of court<sup>3</sup>, and, based on the findings and results, to conduct analysis and to make recommendations on whether and what changes should be recommended for the JJOs’ statutory retirement ages, and to assess the possible implications and identify any related issues arising from different scenarios of JJOs’ retiring ages at all levels of court.

### **II. Data Collection Methodology**

4. For the purpose of gauging views from relevant stakeholders within and outside the Judiciary, Hay Group had conducted questionnaire survey, focus group discussions and interviews at different stages, with focus on the perspectives and preferences of different stakeholders and the operational needs of different levels of court. Hay Group had also researched into the retirement policies and practices of JJOs adopted by other common law jurisdictions. Views and findings were consolidated, analysed and compared to give insights on what changes should be recommended for JJOs’ statutory retiring ages, having regard to the individual circumstances of different levels of court.

#### *Questionnaire Survey*

5. The questionnaire survey was conducted from March to May 2016. The target respondents covered all 164 serving JJOs at the material time. With their knowledge and experience of the judicial system and operation, they offered constructive views on the current statutory retiring ages and suggestions on possible changes. Apart from serving JJOs, other stakeholder groups who may be affected by changes of JJOs’ statutory retiring ages, if any, were also invited to participate in the questionnaire survey, including 21 JJOs retired in the past three years, 117 Deputy JJOs/Recorders sat in the past three years, 1 421 Barristers and 8 677 Solicitors in private practice, and 565 Government Lawyers.

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<sup>1</sup> Extension of term of office of JJOs beyond the statutory retiring age is not automatic and will only be granted on a discretionary basis according to the prevailing policy.

<sup>2</sup> There is no serving District Judge who is appointed before 1 January 1987.

<sup>3</sup> Special Magistrates are not included in this Consultancy Study as the Judiciary has decided that they would be gradually phased out.

6. Respondents were invited to give their views on the current statutory retiring ages, discretionary extension arrangement, early retirement arrangement, factors attracting them to join the bench, and suggestions on possible changes. A total of 833 responses were received and 683 responses were accepted for the subsequent analysis. The distribution breakdown of these respondents on whether they supported to maintain, extend or lower the existing retiring ages at various levels of court is shown below.

Court Level	Views on Existing Retiring Ages		
	Maintain	Extend	Lower/ No Views
Court of Final Appeal	24%	<b>69%</b>	7%
High Court (Court of Appeal)	31%	<b>62%</b>	7%
High Court (Court of First Instance)	40%	<b>53%</b>	7%
High Court (Registrar/Senior Deputy Registrar)	<b>47%</b>	42%	11%
District Court (District Judge)	<b>52%</b>	38%	10%
District Court (Member, Lands Tribunal)	23%	<b>69%</b>	8%
Magistrates' Courts	29%	<b>64%</b>	7%

### *Focus Group Discussions and Interviews*

7. After completing the questionnaire survey, Hay Group conducted eight sessions of focus group discussion in September 2016 with 32 serving JJOs, seven Deputy JJOs/Recorders, eight Barristers, four Solicitors and 15 Government Lawyers. Three face-to-face interviews were also conducted with interviewees nominated by the Hong Kong Bar Association, the Law Society of Hong Kong and the Department of Justice. The purpose was to gather qualitative information and views from participants to supplement the data collected from the questionnaire survey conducted earlier.

### *Overseas Research*

8. In parallel, overseas research had been conducted on the retirement policies and practices of JJOs adopted by other common law jurisdictions, namely the United Kingdom (“UK”), Australia, New Zealand and Singapore, so as to make comparison with JJOs’ retiring policies and practices in Hong Kong.

## **III. Recommendations**

9. Hay Group examined in detail the findings and views collected from the questionnaire survey, focus group discussions and interviews. Reference had also been made to the overseas practices. Having regard to the overall long-term development needs of the Judiciary, Hay Group has made a total of 13 recommendations, covering the following aspects:
- statutory retiring ages (Recommendations 1 – 5);
  - early retirement ages (Recommendations 6 – 9);
  - discretionary extension arrangement (Recommendations 10 – 11);
  - transitional arrangement (Recommendation 12); and
  - pension benefits (Recommendation 13).

### *Statutory Retiring Ages*

**Recommendation 1 - To extend the statutory retiring ages of Judges of the Court of Final Appeal (“CFA”), the Court of Appeal (“CA”) and the Court of First Instance (“CFI”) of the High Court from the existing retiring age of 65 to 70.**

10. By and large, views collected from various stakeholders were supportive of extending the statutory retiring ages of Judges at the High Court level and above. The key considerations were to retain the most senior and experienced Judges and to provide a sufficiently lengthy tenure for them to serve at the Judiciary, particularly for those joining at the later stage of their professional career. Moreover, the current statutory retiring age of 65 was considered by many as early, having regard to the practices in overseas jurisdictions. For instance, the retiring age of Judges in UK, New Zealand, and the High Court and Federal Court of Australia is all 70.
11. About the concern on possible career blockage as a result of an extension, it is considered that it would unlikely occur at these higher levels of court as the pool of potential and suitable candidates is very limited. Instead, an extension would help address the persistent recruitment difficulties at the CFI level by attracting more quality and experienced private practitioners to join the bench at the later stage of their career life, and also allowing them a longer tenure to develop further in their judicial career with a view to reaching a higher level, and to earn a reasonable sum of pension at the same time.
12. Taking all relevant factors into consideration, Hay Group recommends extending the statutory retiring ages of Judges at the CFA, the CA and the CFI of the High Court from the existing retiring age of 65 to 70. The extension will facilitate the retention of senior Judges whose judicial experience and expertise are much in demand as well as to attract more mature and qualified lawyers to join the bench. It will also bring the retirement age of these Judges more in line with the norm of those in other overseas jurisdictions.

**Recommendation 2 - To maintain the statutory retiring ages of Registrar/Senior Deputy Registrar/Deputy Registrar (“R/SDR/DR”) of the High Court and District Judge at the existing retiring age of 65.**

13. According to the survey results, more respondents preferred maintaining the existing retiring age than favoured an extension for R/SDR/DR of the High Court and District Judges who are of similar levels. Moreover, with a lower minimum professional experience requirement for appointment as District Judges when comparing with the CFI Judges, there is a much wider pool of potential candidates from private practitioners. In fact, Hay Group notes from the Judiciary that there are no recruitment difficulties at the rank of District Judges since almost all the vacancies could be filled as a consequence of the previous recruitment exercises. Unlike the judicial positions at the higher court levels, any extension of retiring age at the District Judge level may give rise to career blockage given that these appointees joining the Judiciary normally at a relatively young age. There may be adverse impacts on the promotion prospect of JJOs at lower levels and in the injection of new blood to the judicial service. Therefore, for R/SDR/DR of the High Court and District Judges, Hay Group recommends maintaining their statutory retiring ages at the existing retiring age of 65.

**Recommendation 3 - To extend the statutory retiring ages of Member of the Lands Tribunal (“M/LT”), Magistrate and other Judicial Officers at the magisterial level from the existing retiring age of 60 to 65.**

14. For M/LT, Magistrate and other Judicial Officers at the magisterial level, there was a great majority of respondents supporting an extension at these judicial levels. In view of the longer lifespan in general, the existing retiring age of 60 is considered too early when compared to JJOs in overseas jurisdictions as well as civil servants in Hong Kong whose retirement age of new recruits has been raised from 60 to 65 with effect from June 2015. Extending the retiring age will also have the advantage of attracting more mature legal practitioners to join at the magisterial level which will in turn enlarge the pool of potential candidates. Hay Group recommends extending the statutory retiring ages from the existing retiring age of 60 to 65 for M/LT, Magistrate and other Judicial Officers at the magisterial level.

**Recommendation 4 - To retain a two-tier retiring age system, i.e. Judges at the CFI of the High Court level and above will have a higher retiring age at 70 while JJOs below the CFI level will have a lower retiring age at 65.**

15. In view of the scarcity of suitable and experienced expertise at the CFI level and above, a higher retiring age is considered justified to engage the serving talents for a longer period and to attract the potential candidates by providing a longer tenure. Keeping a different and lower retiring age for JJOs below the CFI level aims at avoiding creation of career blockage and facilitating more new talents to join at the entry ranks. Hay Group believes that the retention of a two-tier retiring age system will be in the best interest of the Judiciary.

**Recommendation 5 - To retain the existing provisions that persons who have attained the statutory retiring ages may be appointed to be Judges of the CFA and the High Court.**

16. As a related matter, Section 14(2)(b) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) stipulates that a person who has attained the age of 65 years may be appointed to be a Judge of the CFA. Section 11A(3)(a) of the High Court Ordinance (Cap. 4) stipulates that a person may be appointed to be a Judge of the High Court (whatever his age and whether or not he has previously held office as such). Due to the limited pool of suitable candidates at these higher levels of court, Hay Group recommends to retain these provisions to allow flexibility in the appointment of these senior Judges. It is therefore recommended that:
- (a) pursuant to Recommendation 1 above to extend the retiring age of a Judge of the CFA to 70, a person who has attained the age of 70 years may be appointed to be a Judge of the CFA; and
  - (b) the existing provision that a person may be appointed to be a Judge of the High Court (whatever his age and whether or not he has previously held office as such) be remain unchanged.

*Early Retirement Ages*

**Recommendation 6** - To raise the statutory early retirement age of Judges of the CFA, the CA and the CFI of the High Court from the existing early retirement age of 60 to 65 correspondingly (i.e. the Judges concerned may retire early between the ages of 65 and 70). Save for the circumstance mentioned in Recommendation 7, a Judge who resigns from the judicial service before the age of 65 will be eligible for a deferred pension when he reaches the age of 65.

**Recommendation 7** - To introduce a new statutory discretionary early retirement age of 60 for Judges of the CFA, the CA and the CFI of the High Court. It is recommended that the Chief Justice be provided with the discretionary power to approve these Judges to retire early between the ages of 60 and 65 on exceptional grounds.

17. Although most of the stakeholder respondents have a strong view to maintain the early retirement age at 60, it is noted that such view reflected their own preferences from their personal perspectives rather than from the institutional perspective. It is not surprising to note that from the perspectives of the JJOs (or practitioners who may be interested in joining the Judiciary), they would welcome the greatest flexibility. Having regard to the operational needs of the Judiciary and the fact that Hong Kong is a small jurisdiction with a small number of Judges at the CFI level and above, Hay Group considers that keeping the early retirement age at 60 will impose great difficulty on the Judiciary in manpower planning and deployment since Judges may exercise their choice to retire any time within a long period of ten years. On balance, it is considered that maintaining the existing five-year interval between the early retirement age and the normal retiring age is reasonable and appropriate, and is conducive to the smooth operation and healthy development of the judicial service at the High Court level and above.
18. Nevertheless, noting the concerns expressed by some respondents that some Judges may need to retire earlier than 65 (e.g. due to health reasons), Hay Group recommends that a new statutory discretionary early retirement age at 60 years be introduced. The Chief Justice will be provided with the discretionary power to approve a Judge at the High Court level and above to retire early between the ages of 60 and 65 on exceptional grounds. Except for the circumstance that special approval has been given by the Chief Justice for a Judge aged between 60 and 65 years to retire early, a Judge who resigns from the judicial service before the age of 65 will be eligible for a deferred pension when he reaches the age of 65.

**Recommendation 8** - To maintain the statutory early retirement age of R/SDR/DR of the High Court and District Judge at the existing early retirement age of 60 (i.e. the JJOs concerned may retire early between the ages of 60 and 65). A JJO who resigns from the judicial service before the age of 60 will be eligible for a deferred pension when he reaches the age of 60.

**Recommendation 9 - To introduce a statutory early retirement age for M/LT, Magistrate and other Judicial Officers at the magisterial level at the age of 60 (i.e. the JJOs concerned may retire early between the ages of 60 and 65). A JJO who resigns from the judicial service before the age of 60 will be eligible for a deferred pension when he reaches the age of 60.**

19. For JJOs whose retiring age is retained at or extended to 65 years, Hay Group recommends that the early retirement age be retained or set at 60 years (i.e. the JJOs concerned may retire early between the ages of 60 and 65). Under this proposal, the existing early retirement arrangement for R/SDR/DR of the High Court and District Judges will remain unchanged while M/LT, Magistrates and other Judicial Officers at the magisterial level may retire early at the age of 60. A JJO below the level of CFI Judge who resigns from the judicial service before the age of 60 will be eligible for a deferred pension when he reaches the age of 60.

#### *Discretionary Extension Arrangement*

**Recommendation 10 - To provide for discretionary extension of term of office for District Judges with an extension period of not exceeding five years in aggregate.**

**Recommendation 11 - To maintain the existing discretionary extension arrangements beyond the statutory retiring ages for JJOs at all other levels of court, i.e. two periods of three years for CFA Judges and five years in aggregate for other JJOs.**

20. Discretionary extension arrangement is a mechanism through which the Judiciary may flexibly retain JJOs beyond their statutory retiring ages in the light of operational needs, manpower planning and recruitment situation. Stakeholders generally supported maintaining the existing arrangement, except that similar arrangement should also be provided to District Judges (appointed on or after 1 January 1987) who currently is the only group of JJOs not covered under the mechanism. Hay Group recommends that for fairness, while the statutory retiring age of District Judges should be maintained at 65 years, they should be included in the discretionary extension system with an extension period of not exceeding five years in aggregate, which is the same as the existing arrangement in the High Court and Magistrates' Courts. The proposed arrangement will provide flexibility for the Judiciary to engage District Judges to work until 70 years of age, if the circumstances warrant.
21. In line with the wide support from stakeholders, Hay Group also recommends that the discretionary extension arrangements for JJOs at all other levels of court should be maintained, i.e. two periods of three years for CFA Judges and five years in aggregate for other JJOs. Upon the implementation of the recommendations, Judges at the CFA may be engaged by the Judiciary to work until 76 years, save for a person appointed under Section 14(2)(b) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484). Judges at the CA and CFI of the High Court may be engaged to work until 75 years, save for a person appointed under Section 11A(3)(a) of the High Court Ordinance (Cap. 4). For JJOs below the CFI of the High Court level, they may be engaged to work until 70 years.



### *Transitional Arrangement*

**Recommendation 12 - To put in place a transitional arrangement for serving JJOs to choose whether to transfer to the new retiring ages or to remain under the existing retiring ages.**

22. According to the survey results, many respondents supported that the new retiring ages should be applicable to new recruits as well as serving JJOs. While the new retiring ages will be applicable to new appointees, Hay Group recommends that a transitional arrangement should be put in place for serving JJOs to exercise an option on whether to transfer to the new retiring ages or to remain under the existing retiring ages.
23. In order to facilitate a smooth transition and maintain morale, Hay Group recommends that as at the implementation date of the new retiring ages, a JJO will be eligible for exercising the option to join the new retiring age arrangement during an option period of two years, or until his existing statutory retiring age, or until expiry of his current extension of service, whichever is the earlier.
24. However, for a JJO who has served a notice of retirement<sup>4</sup>, or a notice of early retirement, or a notice of resignation as at the implementation date, he will only be eligible for exercising the option within the timeframe specified in paragraph 23 above if he has successfully applied to the Chief Justice for approval to withdraw the notice.

### *Pension Benefits*

**Recommendation 13 – To maintain the existing pension-related arrangements.**

25. Quite a number of stakeholders expressed in the focus group discussions that pension is one of the important factors attracting private practitioners to join the judicial service. Any proposed changes to the retiring ages of JJOs should not undermine the existing pension benefits they are entitled to. On this basis, Hay Group recommends that the following pension-related arrangements should remain unchanged:
  - (a) A JJO's pensionable service shall be deemed to be increased by one month for each completed month of pensionable service in a judicial office that is both after age 50 and after 1 July 1987.
  - (b) The existing practice that a JJO who has attained maximum pension status may retire from the pensionable service and be immediately re-employed at the same rank on gratuity bearing agreement terms until reaching the statutory retiring age or expiry of extension of service.
  - (c) The factor for the computation of an annual pension on retirement is 1/675 of a JJO's highest pensionable emoluments for each month of his pensionable service.

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<sup>4</sup> Section 7(3) of the Pension Benefits (Judicial Officers) Ordinance (Cap. 401) stipulates that a JJO should notify the Chief Justice of his intention to retire before retirement shall take place. The Chief Justice has specified a notice period of twelve calendar months before retirement.

#### IV. Financial Implication

26. As part of the Consultancy Study, Hay Group has worked out the financial implication of the recommendations according to Hong Kong Accounting Standard 19 on an accrual basis. The calculation result shown is the net present value of Defined Benefit Obligation (“DBO”) which is the present value of the expected future pension and gratuity payments payable by the Government.
27. For calculation purpose, Hay Group has assessed the financial implication, by making reference to a set of demographic and economic assumptions, on four generalised scenarios to compare their present values of DBO of the existing and proposed statutory and maximum retiring ages:

Retiring Age Pension	Statutory Retiring Age	Maximum Retiring Age
<b>Unreduced Pension</b>	<b>Scenario A</b> <ul style="list-style-type: none"> <li>• <i>No discretionary extension of service granted</i></li> <li>• <i>0% lump sum opted</i></li> </ul>	<b>Scenario C</b> <ul style="list-style-type: none"> <li>• <i>Maximum discretionary extension of service granted</i></li> <li>• <i>0% lump sum opted</i></li> </ul>
<b>Reduced Pension</b>	<b>Scenario B</b> <ul style="list-style-type: none"> <li>• <i>No discretionary extension of service granted</i></li> <li>• <i>50% lump sum opted</i></li> </ul>	<b>Scenario D</b> <ul style="list-style-type: none"> <li>• <i>Maximum discretionary extension of service granted</i></li> <li>• <i>50% lump sum opted</i></li> </ul>

28. Apart from pension in the form of lump sum and monthly payments, Hay Group has also projected the additional gratuity payments on the assumption that after attaining maximum pension status, JJOs will retire and be re-employed on agreement terms until the statutory or maximum retiring ages. During the re-employment period, they will receive a gratuity of 25% of their total basic salaries.

#### *Pension Payments*

29. On pension payments, generally speaking, there will be:
- (a) a decreasing impact on the present value of DBO for Judges at the High Court and above level if the statutory retiring age is extended from 65 to 70. It is because the number of additional service years is limited as quite a number of them have reached/will have reached the maximum amount of service months (i.e. 450 months), whereas pension payments will start five years later;
  - (b) an increasing impact for Magistrates if the statutory retiring age is extended from 60 to 65. It is because not many of them will reach the maximum amount of service months, which will in turn enable the addition of more service years for pension calculation.

### *Gratuity Payments*

30. On gratuity payments, the recommended changes will inevitably lead to a cost increase since more JJOs will reach the maximum amount of service years, after which gratuity payments are applicable. Moreover, gratuity payments during the re-employment period will be paid for a longer period in accordance with the extension of retiring ages at various levels of court.

### *Overall Financial Implications*

31. The overall financial implications in terms of the total DBO (including pension and gratuity payments) on the four scenarios are summarised below:

<b>Retiring Age</b> <b>Pension</b>	<b>Statutory Retiring Age</b>	<b>Maximum Retiring Age</b>
<b>Unreduced Pension</b>	<b>Scenario A</b> - HK\$101.48 million (- 1.62%)	<b>Scenario C</b> + HK\$35.20 million (+ 0.53%)
<b>Reduced Pension</b>	<b>Scenario B</b> + HK\$206.22 million (+ 4.39%)	<b>Scenario D</b> + HK\$288.56 million (+ 5.57%)

### *Changes in Statutory Retiring Age*

32. Depending on the commutation percentage of pension opted by JJOs, it is estimated that the financial implication on the recommended changes in the statutory retiring ages, based on the present value of DBO, will range from a decrease of HK\$101.48 million (-1.62%) under Scenario A to an increase of HK\$206.22 million (+4.39%) under Scenario B. In this regard, it is worthy to note that since JJOs will retire at different times, the Government is expected to pay off the liabilities, including any increasing amount, over a long period of time.

### *Changes in Maximum Retiring Age*

33. Again, depending on the commutation percentage of pension opted by JJOs, it is estimated that the financial implication on the recommended changes in the maximum retiring ages, based on the present value of DBO, will range from a slight increase of HK\$35.20 million (+0.53%) under Scenario C to an increase of HK\$288.56 million (+5.57%) under Scenario D. In this regard, it is worthy to note that since extension of service will be granted on a discretionary basis and subject to the willingness of JJOs to work further after the statutory retiring age, it is unlikely that all JJOs will be granted with the maximum number of extended years as assumed in the calculation.

## V. Legislative Amendments

34. Finally, to enable the implementation of the recommendations, legislative amendments will be required. With the assistance of the Judiciary, it is identified that, amendments are likely to be needed to at least the following Ordinances:
- (a) High Court Ordinance (Cap. 4);
  - (b) Pensions Ordinance (Cap. 89);
  - (c) District Court Ordinance (Cap. 336);
  - (d) Pensions Benefits (Judicial Officers) Ordinance (Cap. 401); and
  - (e) Hong Kong Court of Final Appeal Ordinance (Cap. 484).

## VI. Conclusion

35. In conducting this Consultancy Study, Hay Group has considered various findings and factors, including the views and interests of different stakeholders, the trends and practices in overseas jurisdictions, the operational needs and circumstances of different levels of court, as well as the challenges and future development of the Judiciary.
36. Hay Group hopes that the recommendations and consequential financial and legislative implications set out above will facilitate the Judiciary to arrive at a well-considered decision on whether and what changes should be made on the JJOs' statutory retiring ages, which will ultimately meet the overall long-term development of the Judiciary.
37. Below is an overview of the existing and recommended retiring ages of JJOs if the recommendations made by Hay Group are accepted.

Court Level	Statutory Retiring Age		Discretionary Extension Year		Early Retirement Age			Maximum Retiring Age	
	Existing	Recommended	Existing	Recommended	Existing	Recommended		Existing	Recommended
						Discretionary	Statutory		
CFA	65	70	6 (3+3)	6 (3+3)	60	60*	65	71	76
High Court (CA)	65	70	5	5	60	60*	65	70	75
High Court (CFI)	65	70	5	5	60	60*	65	70	75
High Court (R/SDR/DR)	65	65	5	5	60	60		70	70
District Court (District Judge)	65	65	Nil	5	60	60		65	70
District Court (M/LT)	60	65	5	5	Nil	60		65	70
Magistrates' Courts	60	65	5	5	Nil	60		65	70

### Notes:

 Figures in shade denote changes to the existing arrangements.

\* Discretionary early retirement between the ages of 60 and 65 to be approved by the Chief Justice.