

香港特別行政區政府
政務司司長辦公室轄下行政署



The Government of
The Hong Kong Special Administrative Region
Administration Wing,
Chief Secretary for Administration's Office

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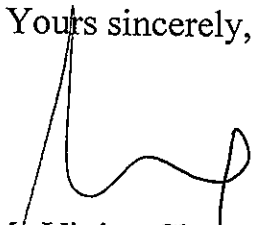
Mr Yick Wing-kin
Senior Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

Dear Mr Yick,

**Judicial Officers (Extension of Retirement Age)
(Amendment) Bill 2019**

Thank you for your letter dated 1 April 2019. Having consulted the Judiciary, I attach at **Annex** our written response to the questions raised in your letter, please.

Yours sincerely,


(Ms Vivian Cheung)
for Director of Administration

c.c. Clerk to Bills Committee
Judiciary (Attn: Ms Wendy Cheung)
Department of Justice (Attn: Ms Karmen Kwok and
Mr Wallance Ng)

**Judicial Officers (Extension of Retirement Age)
(Amendment) Bill 2019**

- (a) **Please confirm whether the retirement age extension arrangements for the judges and judicial officers (“JJOs”) engaged on terms that do not attract pension benefits under the Pension Benefits (Judicial Officers) Ordinance (Cap. 401) would be identical with the relevant arrangements for JJOs appointed on pensionable terms under the Bill. If not, please clarify the details and the reasons for the difference(s) made in the arrangements concerned.**

As explained in the Legislative Council brief, the applicability of the present legislative exercise to Judges and Judicial Officers is different. The proposed arrangements for pensionable and agreement Judges and Judicial Officers will also be different. Details are elaborated as follows –

Judges

2. For Judges at the Court of Final Appeal (“CFA”), the High Court and the District Court, their respective statutory retirement ages are specified in the Ordinances governing the relevant courts (i.e. Hong Kong Court of Final Appeal Ordinance (Cap. 484), the High Court Ordinance (Cap. 4) and the District Court Ordinance (Cap. 336)). The statutory retirement ages are therefore applicable to Judges at the District Court and above irrespective of whether they are employed on pensionable or agreement terms.
3. Besides, Judges of the CFA, High Court and District Court have security of tenure. Judges have to provide an undertaking that they will not return to private practice after they have left the Judiciary. The Judiciary considers that it has effectively undertaken to employ Judges until their normal retirement age.
4. As the present legislative amendment exercise seeks to extend the statutory retirement ages of JJOs in various legislation, the proposed amendments will be applicable to all serving Judges of the CFA, High Court and District Court. In short, all serving Judges would be invited to opt for the new retirement arrangements, regardless of whether they have pensionable service.

5. Against the above background, Judges will be subject to the new retirement arrangements if they so opt or if they join the Judiciary after the Bill takes effect. For those subject to the new arrangements, all the relevant proposals in this legislative amendment exercise would be applicable to them as appropriate, e.g. increase in statutory retirement ages, corresponding increase in early retirement ages and introduction of discretionary early retirement arrangements, etc.

6. For Judges on agreement terms, similar to the pensionable Judges above, they may be subject to the new retirement arrangements if they so opt or if they join the Judiciary after the Bill comes into effect. For these Judges subject to the new arrangements, their agreements will be extended up to their new statutory retirement ages. In addition, if and when they change to pensionable terms, their option (whether new or existing arrangements) would be preserved (please see the new section 5A of Cap. 401).

Judicial Officers

7. As regards Judicial Officers, their statutory retirement ages are not specified in the legislation of the relevant courts. Instead, the retirement ages are only stipulated in Cap. 401 and are therefore tied to their pension benefits. In other words, only those Judicial Officers who have pensionable service would be covered by the relevant legislation and hence this legislative amendment exercise.

8. In addition, Judicial Officers are not required to provide an undertaking that they will not return to private practice after they have left the Judiciary and they do not have security of tenure.

9. As such, only serving Judicial Officers who have pensionable service when the Bill takes effect would be invited to opt. They will be subject to the new retirement arrangements if they so opt or if they join the Judiciary after the Bill takes effect. For those subject to the new arrangements, all the relevant proposals in this legislative amendment exercise would be applicable to them as appropriate, e.g. increase in statutory retirement ages and introduction of an early retirement age, etc.

10. Though serving Judicial Officers without pensionable service would not be invited to opt, the Judiciary will generally use the new statutory retirement ages as the age ceiling when offering to them possible renewal of

agreements. If and when they transfer to pensionable terms after commencement of the Bill, they will automatically be subject to the new retirement arrangements under Cap. 401.

(b) By virtue of the new section 11A(2A) of the District Court Ordinance (Cap. 336) proposed in the Bill, the District Judges who have not opted for the new retirement age (extension) arrangement under the Bill ("the extension arrangement") would be excluded to the new discretionary extension of term of office (not exceeding five years in aggregate) under the amended section 11A(3) of Cap. 336. Please explain the reason(s) for providing such exclusion in the Bill for the District Judges mentioned above.

11. Currently, under section 11A(3) of Cap. 336, unless a District Judge was appointed before 1 January 1987, the discretionary extension of term of office (not exceeding five years in aggregate) after he has reached the statutory retirement age is not applicable to him. As no serving District Judges were appointed before 1987, such discretionary extension of term of office is not applicable to any serving District Judges.

12. The proposed new section 11A(2A) of Cap. 336 is to enable that the discretionary extension of term of office be applicable to any serving District Judges who have opted for the new arrangements. In other words, for those serving District Judges who have not so opted, the discretionary extension arrangements will not be applicable to them if they remain in the rank as a District Judge as at the statutory retirement age (which is and will continue to be 65 under the Bill).

(c) Please clarify whether the normal retirement age for the Registrar of the Court of Final Appeal ("CFA") appointed under section 42 of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) is provided in the Bill under section 6(b) (i.e. age 65) or the amended section 6(c) (i.e. age 60 or 65) of Cap. 401.

13. The judicial office of the Registrar of CFA is pegged to the rank of Senior Deputy Registrar, High Court. There is no separate rank of Registrar of CFA as such. Therefore, the normal retirement age for the Registrar of CFA will remain at 65 according to the amended section 6(1)(b) of Cap. 401.

- (d) **The proposed new section 11A of Cap. 401 provides for the specified JJOs who may opt for the extension arrangement. Please clarify that whether on the commencement date of the Bill, JJOs who would have attained normal retirement age but continue in office for as long as necessary to enable them to deliver judgments in relation to proceedings that were commenced before the JJOs' respective normal retirement age (respectively pursuant to section 11A(2) of the High Court Ordinance (Cap. 4), section 11A(2) of Cap. 336 or section 6(4) of Cap. 401)) would be entitled to opting for the extension arrangement under that new section.**

14. Section 11A of Cap. 401 provides that a “specified officer” may opt for the new retirement arrangements if (i) he was appointed on pensionable terms before the Bill takes effect; and (ii) he has not yet reached the normal retirement age or his existing term of office has not yet expired when the Bill takes effect.

15. In general, a JJO who has attained his normal retirement age must vacate his judicial office unless his term of office has been extended (please see for example section 11A of Cap. 4). So, for a JJO or former JJO who has reached the normal retirement age or whose term of office has expired, while he may be given powers under the relevant legislation (such as section 11A(2) of Cap. 4) to continue in office, this is only to enable him to handle any outstanding matters (such as delivery of judgment) for the proceedings commenced before him before his vacation of the judicial office. As his term of office has not been extended because of such “continuation in office”, he will not be invited to opt for the new arrangements under section 11A of Cap. 401.

- (e) **Under the proposed new section 11B of Cap. 401, JJOs may opt for the extension requirement by delivering a written notice in the specified form to the Judiciary Administrator, please clarify if such form would be specified by the Judiciary Administrator or the Circular to be issued by the Chief Justice ("CJ") under the new section 11C of Cap. 401.**

16. The form to indicate whether a JJO would like to opt for the new retirement arrangements will be specified by the Circular to be issued by CJ.

- (f) **Please clarify if the Circulars to be issued by the CJ respectively under the proposed new section 11AA of Cap. 4, new section 11A(5) of Cap. 336, new section 5A(4) of Cap. 401, new section 11C of Cap. 401 and new section 13A(2) of Cap. 484 would be subsidiary legislation subject to the negative vetting of the Legislative Council under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1).**

17. The Circulars to be issued by CJ under the relevant provisions will be administrative in nature. Details about the opting arrangements will be set out, including the form of notice, how to submit the notice, detailed implications of the opting arrangements for different categories of JJOs, etc. As such, they are not subsidiary legislation and hence will not be subject to negative vetting of the Legislative Council under section 34 of Cap. 1.

- (g) **Regarding the new discretionary early retirement for the CJ, the permanent judges of the CFA and the High Court Judges introduced in the Bill by the proposed new section 12A of Cap. 401, please clarify if an application for discretionary early retirement is refused by the CJ (or the Chief Executive (“CE”), in case of the CJ's application), (i) whether such refusal may be reviewed by the CJ himself (or the CE, as the case may be) upon a request made by the applicant for a review; and (ii) whether after the refusal of the first application, the applicant may submit another application under the new section 12A of Cap. 401 before he (or she) attains the age of 65 years.**

18. The Judiciary does not intend to introduce a mechanism for CJ (or the CE, as the case may be) to review any refusal of applications for discretionary early retirement. This is in line with the arrangements for other similar powers of CJ under Cap. 401. If the applicant is really aggrieved, he may consider seeking a judicial review of the decision of CJ (or the CE).

19. In any case, if there are material changes in circumstances, the applicant may consider submitting another application for discretionary early retirement before he reaches the age of 65.