

立法會

Legislative Council

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Paper for the House Committee Meeting on 22 March 2019

Legal Service Division Report on Judicial Officers (Extension of Retirement Age) (Amendment) Bill 2019

I. SUMMARY

- 1. The Bill**

The Bill seeks to amend the High Court Ordinance (Cap. 4), the District Court Ordinance (Cap. 336), the Pension Benefits (Judicial Officers) Ordinance (Cap. 401) and the Hong Kong Court of Final Appeal Ordinance (Cap. 484) to provide for the extension of retirement age, extension of terms of office and related arrangements for certain Judges and Judicial Officers ("JJOs").
- 2. Public Consultation**

The Judiciary engaged a consultant to conduct a questionnaire survey on the statutory retirement ages for JJOs from March to May 2016, and the respondents of the survey covered all serving JJOs at that period and other stakeholder groups. The Administration has consulted the Standing Committee on Judicial Salaries and Conditions of Service ("Judicial Committee") on the Judiciary's proposals on the extension of the statutory retirement ages for JJOs. The Judicial Committee renders full support for the Judiciary's proposals. The Judiciary has also consulted the Hong Kong Bar Association and the Law Society of Hong Kong. The two professional bodies indicated support for the proposals.
- 3. Consultation with LegCo Panel**

The Panel on Administration of Justice and Legal Services ("Panel") was briefed on the Judiciary's proposals on the extension of the statutory retirement ages for JJOs on 18 July 2018. The Panel members generally supported the proposals.
- 4. Conclusion**

The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. As the Bill seeks to reform the statutory retirement ages of JJOs in Hong Kong, Members may consider forming a Bills Committee to study the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 20 March 2019. Members may refer to the Legislative Council ("LegCo") Brief (File Ref.: AW-275-010-010-005) issued by Chief Secretary for Administration's Office and Judiciary Administration on 27 February 2019 for background of the Bill.

Object of the Bill

2. The Bill seeks to amend the High Court Ordinance (Cap. 4) ("HCO"), the District Court Ordinance (Cap. 336) ("DCO"), the Pension Benefits (Judicial Officers) Ordinance (Cap. 401) ("PB(JO)O") and the Hong Kong Court of Final Appeal Ordinance (Cap. 484) ("HKCFAO") to provide for the extension of retirement age, extension of terms of office and related arrangements for certain Judges and Judicial Officers ("JJOs"), to introduce a discretionary early retirement arrangement for certain Judges, and to provide for transitional and related matters.

Background

3. At present, the statutory retirement ages of JJOs, as provided respectively in HKCFAO, HCO, DCO and PB(JO)O, are as follows:

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|--|-----------------|
| (a) The Chief Justice ("CJ") and permanent judges of the Court of Final Appeal ("CFA") | 65 ¹ |
| (b) Judges of the Court of Appeal ("CA") and Court of First Instance ("CFI") | 65 ² |
| (c) Judges of the District Court ("DC") | 65 ³ |
| (d) Registrars/Senior Deputy Registrars/Deputy Registrars of HC ("HC Registrars") | 65 ⁴ |
| (e) Other judicial officers ⁵ ("other JOs") | 60 ⁶ |

¹ See section 14(11) of CFAO.

² See section 11A of HCO

³ See section 11A of DCO.

⁴ See section 6 (1)(b) of PB(JO)O

⁵ Such as members of the Lands Tribunal, Magistrates, presiding officers of the Labour Tribunal, Coroners and adjudicators of the Small Claims Tribunal who are appointed on pensionable terms, see sections 2 and 6(1) of PB(JO)O on the meaning of "officer" and section 2 of the Public Service Commission Ordinance (Cap. 93) on the meaning of "judicial office" and Schedule 1 to the Judicial Officers Recommendation Commission Ordinance (Cap. 92).

⁶ See section 6(1)(c) of PB(JO)O.

4. Under section 14(2) of HKCFAO the terms of office of CJ and permanent judges of CFA may be extended for not more than two periods of three years. The terms of office of Judges of the High Court ("HC") (i.e. the CA and CFI), HC Registrars and other JOs appointed on pensionable terms may be extended for a specified period or periods not exceeding five years in the aggregate under the relevant provisions in HCO and PB(JO)O respectively. However, there is no provision in DCO providing for extension of term of office of DC Judges. Moreover, by virtue of section 7(1)(b)(ii) of PB(JO)O, JJOs appointed on or after 1 July 1987 (and on pensionable terms) may voluntarily retire early on or after attaining the age of 60 years after completion of the specified period of qualifying service.

5. According to paragraphs 2 and 3 of the LegCo Brief, with a view to encouraging recruitment of the best legal talents to the Judiciary, the Judiciary conducted a review of the statutory retirement ages for JJOs in 2014 and engaged a consultant ("the Consultant") to carry out a questionnaire survey on this matter conducted from March to May 2016 to gauge the views of all serving JJOs at that period and other stakeholder groups. Having regard to the outcome of the review and the Consultant's recommendations, the Judiciary proposes to make changes to the existing statutory retirement ages for JJOs ("the Judiciary's Proposals"). These changes include extending the statutory retirement ages for Judges of CFA (excluding non-permanent CFA Judges), CA and CFI from 65 to 70 and other JOs from 60 to 65; introducing a new statutory discretionary early retirement age of 60 for Judges of CFA, CA and CFI; and introducing a discretionary extension of term of office for DC Judges. According to paragraphs 6 and 7 of the LegCo Brief, the Administration supports the Judiciary's Proposals as it considers that the proposals would enable the Judiciary to sustain their manpower across different levels of court, which is crucial to efficient and effective operation of the Judiciary.

Provisions of the Bill

6. The Bill seeks to implement the Judiciary's Proposals on the extension of the statutory retirement ages and related arrangements for JJOs by amending HKCFAO, HCO, DCO and PB(JO)O⁷ respectively. The key provisions the Bill are summarized in the following paragraphs.

Extension of the statutory retirement ages for certain JJOs

7. Clauses 3 and 4 of the Bill seek to amend HCO to extend the statutory retirement age of HC Judges from 65 to 70. Clause 20 seeks to amend HKCFAO to extend the statutory retirement age of CJ and the Permanent

⁷ Part 2 of the Bill amends HCO, Part 3 amends DCO, Part 4 amends PB(JO)O and Part 5 amends HKCFAO.

Judges of CFA from 65 to 70⁸. Clause 10 seeks to amend PB(JO)O to extend the statutory retirement age of magistrates and other JOs from 60 to 65⁹.

8. Clause 12 seeks to amend PB(JO)O to, among others, extend the statutory early retirement age for CJ, Permanent Judges of CFA and HC Judges who would be subject to the new retirement age arrangement from 60 to 65 and specify all other JJOs' statutory early retirement age at 60.

New early retirement age for certain JJOs

9. In addition to the statutory early retirement ages, clause 18 of the Bill seeks to add new sections 12A and 12B to PB(JO)O to provide for a new discretionary early retirement age of 60 for CJ, the Permanent Judges of CFA and HC Judges who are subject to the new retirement age arrangements. Applications to retire at the new discretionary early retirement age of 60 would need to be made to CJ (or the Chief Executive if it is CJ's application) who may approve such applications in exceptional circumstances. Under the new section 12B of PB(JO)O, CJ must delegate the power to approve such applications if CJ considers that there is a conflict of interest in the exercise of such power.

Discretionary extension of term of office for DC Judges

10. Clause 6 of the Bill seeks to amend DCO to provide that for DC Judges who are subject to the new retirement age arrangements, their terms of office may be extended for a specified period or periods not exceeding five years in aggregate by the Chief Executive with the recommendation of the Judicial Officers Recommendation Commission.

Transitional arrangements for certain Judges of CFA and HC

11. Clauses 5, 11 and 22 of the Bill seek to amend HKCFAO, HCO and PB(JO)O to provide for transitional arrangements for CJ, the Permanent Judges of CFA and HC Judges who are currently on extended terms of office beyond the existing statutory retirement age and would opt for the new retirement age arrangements¹⁰.

⁸ Under the proposed new section 13A of HKCFAO and the amended section 11A of HCO, for Judges of CFA and HC who have not opted for the new retirement age arrangements, their statutory retirement age would remain at 65.

⁹ Under amended section 6 of PB(JO)O, for the Magistrates or other JOs who have not opted for the new retirement age arrangements, their statutory retirement age would be 60.

¹⁰ Under the respective provisions as amended by the Bill, the relevant Judges' terms of office will first be extended to the date immediately before the new retirement age (i.e. the date before 70). After that, their terms may be further extended pursuant to the relevant provisions in HKCFAO and HCO as if their terms of office had not been extended in accordance with the existing provisions concerned.

JJOs subject to the new retirement age arrangements

12. Under the proposed new section 5A of PB(JO)O, as added by clause 9 of the Bill, the JJOs who are subject to the new retirement age arrangements would be the serving JJOs who have opted for the new retirement age arrangements and JJOs who join the Judiciary on or after the commencement of the Bill after it is published in the Gazette as an Ordinance.

Implementation details and procedural matters

13. The new sections 11A, 11B and 11C to PB(JO)O, as added by clause 17 of the Bill, seek to provide for the implementation details including the categories of JJOs who are entitled to opt for the new retirement age arrangements and the procedures for exercising the option.

Commencement

14. The Bill, if passed, would come into operation on the day on which the enacted Ordinance is published in the Gazette.

Public Consultation

15. According to paragraphs 47 and 48 of the Lego Brief, the Consultant engaged by the Judiciary has gauged views from relevant stakeholders from within and outside the Judiciary. The Administration 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 Judiciary's Proposals. The Judiciary has also consulted various stakeholders including the Hong Kong Bar Association and the Law Society of Hong Kong. The two professional bodies indicated support for the Judiciary's Proposals.

Consultation with LegCo Panel

16. As advised by the Clerk to the Panel on Administration of Justice and Legal Services ("the Panel"), the Panel was briefed on the Judiciary's Proposals to extend the statutory retirement ages for JJOs on 18 July 2018. The Panel members generally supported the Judiciary's Proposals as their implementation would help attract talents to join the Judiciary, in particular those experienced legal practitioners in private practice, and retain the experienced JJOs and hence alleviate the shortage of judicial manpower. At the Panel meeting, members raised various questions including those relating to the transitional arrangements for implementing the Judiciary's Proposals, and

the possibility of adopting a uniform retirement age and maximum retirement age for all JJOs.

Conclusion

17. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. As the Bill seeks to reform the statutory retirement ages for JJOs in Hong Kong, Members may consider forming a Bills Committee to study the Bill in detail.

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