

LEGISLATIVE COUNCIL BRIEF

2018-19 JUDICIAL SERVICE PAY ADJUSTMENT

INTRODUCTION

At the meeting of the Executive Council on 9 October 2018, the Council ADVISED and the Chief Executive (CE) ORDERED that the pay for judges and judicial officers¹ (JJOs) for 2018-19 should be increased by **4.69%** with effect from 1 April 2018.

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. For the 2018 judicial remuneration review (JRR), the Judicial Committee submitted its report to the CE on 20 July 2018, recommending a 4.69% increase in the pay for JJOs for 2018-19. In coming up with this recommendation, 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 28 below), the principle of judicial independence and the position of the Judiciary. A copy of the Judicial Committee's report is at Annex. Key deliberations of the Judicial Committee and our assessment are set out in the ensuing paragraphs.

¹ "Judges" refer to officers in the grades of Chief Justice, Court of Final Appeal; Judge, Court of Final Appeal; 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 Professor Wong Yuk-shan. Other members are Mr T C Chan, Mr Alfred Chan, Mr Jat Sew-tong, Ms May Tan, Ms Melissa Wu and Mr Dieter Yih.

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. While the caseloads of the Judiciary as a whole remained steady in the past few years, there was a noticeable decrease in the number of cases at the Obscene Articles Tribunal and an increase at the Coroner's Court in 2017. For the Obscene Articles Tribunal, there was a general decline in the number of cases handled in recent years, including that for 2017, which is probably due to the changing trend in the publishing industry. For the Coroner's Court, the number of inquests ordered by coroners each year fluctuates from time to time. This is because the decision on whether to hold a death inquest is made under the Coroners Ordinance (Cap. 504), having regard to all relevant facts of the death concerned. The factors considered in each of the coroner's decisions and the statutory provisions on which his decision is based are contingent on the circumstances of the respective case.

4. Despite the relatively steady caseload figures, the Judiciary considers it important to point 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 the cases. Further, it is very difficult to devise quantifiable indicators in a meaningful way to reflect the increasing workload and heavier responsibilities of JJOs. The above factors are generally true for all levels of court but the pressure is particularly felt at the level of the High Court. Increased complexity in cases not only means longer hearing times but also considerably more time is required for 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 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 as a result. For the High Court, the Judiciary points out that there are many complex trials involving complicated commercial crimes, long and complicated criminal trials and important public law cases in recent years.

5. All along, 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. 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 direct comparison between the two difficult. The Judicial Committee trusts that the Judiciary will 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 agree with the observations of the Judicial Committee in this regard and will continue to see to the resource needs of the Judiciary being met in the future.

(ii) Recruitment and retention in the Judiciary

6. As of 31 March 2018, against the establishment of 214 judicial posts, 164 were filled substantively. This represents a net increase of six in the strength of JJOs as compared with 31 March 2017. On recruitment of JJOs, the Judicial Committee notes that up to 31 March 2018, a total of 104 judicial appointments were made in a total of 12 open recruitment exercises for various judicial ranks conducted between 2011 and 2017, of which three District Judges and ten Magistrates were appointed in 2017-18. 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 decreased from a total of 35 as at 31 March 2017 to 23 as at 31 March 2018.

7. The Judicial Committee notes that at the Court of First Instance of the High Court (CFI) level, the Judiciary has been conducting open recruitment exercises on a more regular basis in recent years, with four such exercises being conducted since 2012. With the completion of the latest round of recruitment exercise launched in 2016, a total of 20 appointments were made since 2012. From the experience of these recruitment exercises, the Judicial Committee notes that there have been recruitment difficulties at this level of court. The number of eligible candidates suitable for appointment could not fill all the available vacancies. The Judicial Committee is fully aware of the persistent recruitment difficulties at CFI level. In the context of JRR 2016, the Judicial Committee examined the findings of the 2015 Benchmark Study on the Earnings of Legal Practitioners in Hong Kong (2015 Benchmark Study) and noted a clear trend of widening differential between judicial pay and earnings of legal practitioners. In particular, for CFI Judges, the findings clearly indicated that judicial pay had been consistently lower than legal sector earnings over the years, and the pay lag had further widened in recent years. Taking into account the persistent recruitment difficulties and the widening pay gap, the Judicial Committee then

recommended an upward pay adjustment of 6% for Judges at the CFI level and above following the 2015 Benchmark Study³. In addition, in 2016, the Judicial Committee considered and supported a package of proposals to enhance some of the conditions of service for JJOs (see paragraph 13 below). The pay adjustment and enhancement proposals were subsequently implemented in September 2016 and April 2017 respectively.

8. Furthermore, the Judicial Committee has recently considered and supported the Judiciary's proposals relating to the statutory retirement ages for JJOs. In brief, under the proposals, the statutory retirement age for Judges at the level of CFI and above is to be raised from 65 to 70, for Registrar/Senior Deputy Registrars/Deputy Registrars of the High Court is to be maintained at 65, and for Magistrates and Members of the Lands Tribunal and other Judicial Officers at the magistrate level is to be raised from 60 to 65. The statutory retirement age for District Judges is to be maintained at 65, but there will be allowance for discretionary extension of the term of service of not exceeding five years in aggregate beyond this age. In view of the limited pool of potential candidates, particularly for appointment to CFI level 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 those who are at a later stage of their career in private practice. The proposals will help retain experienced JJOs, thereby strengthening manpower support for the Judiciary.

9. For District Judges, the Judicial Committee notes that two rounds of open recruitments were completed in 2012 and 2016 respectively. All of the 23 vacancies then fillable were filled through the recruitment exercise completed in 2012. For the recruitment exercise in 2016, against the 11 fillable vacancies, eight appointments were made. As for Permanent Magistrates, in the latest recruitment exercise conducted in 2016, against 16 fillable vacancies, ten candidates were appointed. As for Special Magistrates, the last open recruitment exercise was launched in 2014 and all the five fillable vacancies of Special Magistrates were filled as a result.

10. The Judicial Committee also notes that while the recruitment exercise for CFI Judges has been launched, the Judiciary is planning to conduct the next round of recruitment exercises for District Judges and Permanent Magistrates by end 2018 and in the first half of 2019 respectively. The Judicial Committee will continue to keep in view the

³ An upward pay adjustment of 4% for JJOs below the CFI level was also recommended following the 2015 Benchmark Study.

recruitment situation of JJOs, especially whether the upward pay adjustment following the 2015 Benchmark Study, enhanced conditions of service and the extension of the statutory retirement ages for JJOs could help the Judiciary in recruiting and retaining talents.

11. We take note of the Judicial Committee's observations and will continue to keep a close watch on the manpower situation of the Judiciary. Meanwhile, we are of the view that the total package for JJOs, which comprises not only the remuneration package, but also other factors such as 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, remains reasonably attractive to outside talents who wish to join the bench. For the extension of the statutory retirement ages for JJOs, the Government has accepted the Judiciary's proposals. We have consulted and obtained the support of the Legislative Council (LegCo) Panel on Administration of Justice and Legal Services to the proposals. We are working with the Judiciary to amend the relevant legislation and hope to introduce them into LegCo in the 2018-2019 legislative session.

(iii) Retirement age and retirement benefits of JJOs

12. Judges enjoy security of tenure⁴. The current 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 65, 70 or 71, depending on the level of 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 eight (or 4.9% of current strength) in 2018-19, increasing to 14 (or 8.5% of current strength) in 2019-20 and slightly dropping to 12 (or 7.3% of current strength) in 2020-21. The Judicial Committee trusts that the Judiciary will keep in view the challenges to the judicial manpower that may be posed by the retirement situation and continue to attract new blood and to groom and retain existing talents. As mentioned in paragraph 11 above, we will take forward the relevant legislative amendment exercise as a matter of priority so as to implement the Judiciary's proposals to extend the statutory retirement ages for JJOs as soon as practicable.

⁴ 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 Court of Final Appeal and the Chief Judge of the High Court) has to be endorsed by LegCo and reported to the Standing Committee of the National People's Congress for record.

(iv) *Benefits and allowances enjoyed by JJOs*

13. Depending on their ranks, length of service and terms of appointment, JJOs are entitled to a range of benefits and allowances in addition to salary. Further to the implementation of enhancements to five areas of the conditions of service for JJOs (i.e. housing benefits, medical and dental benefits, Local Education Allowance, Judicial Dress Allowance and transport services for leave travel) with effect from 1 April 2017, the Judicial Committee notes the following recent changes to the package of fringe benefits and allowances for JJOs –

- (a) the rates of Judiciary Quarters Allowance, Non-accountable Cash Allowance⁵ and the ceiling rates of Medical Insurance Allowance⁶, Local Education Allowance⁷ and Judicial Dress Allowance⁸ were revised according to the established adjustment mechanism;
- (b) the rates of Leave Passage Allowance⁹ and Home Financing Allowance⁵ were revised following similar revisions in the civil service; and
- (c) the rates of two Extraneous Duties Allowances (Responsibility) (EDA(R)) for Justices of Appeal of the Court of Appeal of the High Court (JAs)¹⁰ in 2017-18 were revised based on the judicial service pay adjustments for 2017-18.

14. The Judicial Committee stands ready to review the package if invited to do so by the Government. We will keep a close watch on the results of the recruitment exercises at various levels and assess with the

⁵ Judiciary Quarters Allowance, Non-accountable Cash Allowance and Home Financing Allowance are various types of housing allowance offered to eligible JJOs.

⁶ Medical Insurance Allowance is an allowance to reimburse eligible JJOs and their eligible dependents the premium of their medical insurance plans.

⁷ Local Education Allowance is an allowance to reimburse eligible JJOs the cost of education of their dependent children (up to four at any one time and ages below 19) who are receiving full-time primary/secondary education in Hong Kong.

⁸ JJOs of the High Court and the District Court may, on first appointment, be reimbursed with the cost of purchasing their required judicial attire on a “once-and-for-all” basis.

⁹ Leave Passage Allowance is an allowance to reimburse eligible officers (and their eligible family members, where applicable) their travel-related expenses.

¹⁰ 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 Court of Final Appeal, while the other is for JAs appointed as Vice Presidents of the Court of Appeal of the High Court.

Judiciary the effectiveness of the enhanced package of benefits and allowances introduced since April 2017 in addressing the recruitment and retention challenges.

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

15. 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 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 and High Court levels must give an undertaking not to practise in future as barristers or solicitors in Hong Kong without the permission of CE. On the other hand, judges enjoy security of tenure and high esteem, which may be seen as attractions for legal practitioners joining the bench. The Judicial Committee notes that these are established arrangements and continue to apply during the annual review in 2018.

(vi) *Overseas remuneration arrangements*

16. The Judicial Committee notes that the systems of judicial remuneration in six overseas common law jurisdictions, namely, Australia, Canada, New Zealand, Singapore, the United Kingdom and the United States, did not undergo any significant changes in 2017-18. 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 actions appeared to be the prevailing state of economy of the respective jurisdictions. While the Judiciary has not recruited from overseas in recent years, 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. We note the observations of the Judicial Committee on overseas remuneration arrangements and have no particular comment.

(vii) *Cost of living adjustment*

(viii) *General economic situation in Hong Kong*

(ix) *Budgetary situation of the Government*

17. The Judicial Committee takes note of the information provided by the Government in May and June 2018 respectively 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 3-4% for 2018 in May 2018, while the rate of the underlying consumer price inflation (i.e. excluding one-off relief measures introduced by the Government) for 2018 was forecast to be 2.5%. The seasonally adjusted unemployment rate was 2.8% in March to May 2018, as compared to 3.2% in the same period in 2017. The consolidated surplus of the Government for 2017-18 was \$148.9 billion and the fiscal reserves stood at \$1,102.9 billion as at end March 2018. The 2018-19 Budget forecasts a consolidated surplus of \$34.9 billion, equivalent to 1.2% of our Gross Domestic Product (GDP). After the submission of the Judicial Committee's report in July 2018, recognising the strong year-on-year growth in the first half of the year and yet the increased external headwinds, the official forecast real GDP growth for 2018 as a whole was maintained at 3-4% in mid-August 2018. The forecast rate of underlying consumer price inflation for 2018 as a whole was also kept unchanged at 2.5%. Meanwhile, the seasonally adjusted unemployment rate held stable at a low level of 2.8% in May to July 2018. According to the Medium Range Forecast, the Government's budget will remain broadly-balanced in the next five years.

(x) *Private sector pay levels and trends*

18. The Judicial Committee notes 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. It is also difficult to make any direct comparison between judicial pay and legal sector pay 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)¹¹, which reflect the overall private sector pay trend, and capture, among others, the general market changes, cost of living, merit and

¹¹ The annual PTS measures the year-on-year 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 pay movements of private sector employees in three salary ranges. Using the 2018 PTS as an example, the salary ranges of the three salary bands are as follows –

- (i) Lower Salary Band covering employees in the salary range below \$21,880 per month;
- (ii) Middle Salary Band covering employees in the salary range of \$21,880 to \$67,065 per month;
and
- (iii) Upper Salary Band covering employees in the salary range of \$67,066 to \$135,075 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 Point 1 of the Judicial Service Pay Scale, currently at \$84,575.

in-scale increment in the private sector. 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 suitable for reference in the context of JRR. Accordingly, the private sector pay trend for JRR purpose (i.e. calculated by subtracting the consolidated cost of increments for JJOs at 0.56% from the relevant gross PTI at 5.25%) in 2018 is therefore 4.69%. We agree with the assessment of the Judicial Committee.

(xi) Public sector pay as a reference

19. With the approval of the Chief Executive in Council in 2008, the judicial pay adjustment mechanism is delinked from that of the civil service. Public sector pay is only one of the factors for consideration under the balanced approach in determining judicial pay. In the 2018 JRR, the Judicial Committee made reference to the decision of the Chief Executive in Council in June 2018 to increase the pay for civil servants in the Upper Salary Band and above by 4.06% with effect from 1 April 2018. The pay adjustment was approved by the Finance Committee of LegCo on 16 July 2018. The Judicial Committee also notes that a Pay Level Survey (PLS) is conducted every six years for civil servants to assess whether civil service pay is broadly comparable with that of the private sector at a particular reference point in time. The last PLS was conducted in 2013. Since JJOs and civil servants are subject to different and separate mechanisms for pay adjustment since 2008, 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 a Benchmark Study (instead of the PLS) in accordance with the existing mechanism for the determination of judicial remuneration. The next Benchmark Study will be conducted in 2020, subject to review nearer the time. We agree with the Judicial Committee that public sector pay is only one of the factors for consideration under the balanced approach.

B. Judicial independence

20. Apart from considering the basket of factors summarised above, the Judicial Committee continues to premise its deliberations on the need to uphold the principle of judicial independence. In discharging its functions, the Judicial Committee is guided by the principle that judicial remuneration should be 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.

C. Position of the Judiciary

21. The Judiciary sought a pay increase of 4.69% for the judicial service in 2018-19. The Judiciary also reiterated its position that there should not be any reduction in judicial pay as a matter of principle.

Recommendation of the Judicial Committee

22. Having considered the above factors, the Judicial Committee recommends that judicial pay for 2018-19 should be increased by 4.69% with effect from 1 April 2018.

The Government's views

23. We consider that the Judicial Committee has thoroughly examined the basket of factors as approved by the Chief Executive in Council in May 2008. 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 considered 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 recommendation. We therefore support its recommendation that judicial pay for 2018-19 should be increased by 4.69%.

IMPLICATIONS OF THE PROPOSAL

24. The estimated financial implication for 2018-19¹² arising from a 4.69% increase in the pay for JJOs is \$19.85 million. The established practice is that the additional resources required for coping with the pay rise in a particular year will first be absorbed by the Judiciary. Additional provision, if required, will be sought according to the established mechanism. 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.

¹² The estimate was calculated by the Judiciary in around mid-August 2018 by multiplying the proposed judicial pay increase of 4.69% to the actual salaries and acting allowances for JJOs for the four months from April to July 2018 and their projected salaries and acting allowances for the eight months from August 2018 to March 2019.

PUBLIC CONSULTATION

25. 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 recommendation to the CE, we have invited the Judiciary to give its response to the Judicial Committee's recommendation to increase the pay for JJOs for 2018-19 by 4.69%. The Judiciary has indicated its support for the Judicial Committee's recommendation. No public consultation outside the Judiciary has been conducted.

PUBLICITY

26. We have informed the Judiciary and the Judicial Committee of the Government's decision on the 2018-19 judicial service pay adjustment. We will also issue a press release and a spokesman will be made available to handle press enquiries. We will also brief the LegCo Panel on Administration of Justice and Legal Services in October/November 2018 before we proceed to seek the approval of the LegCo Finance Committee on the proposed pay adjustment. The Judicial Committee will separately release its report to the public.

BACKGROUND

27. 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 decided that the Benchmark Study should in principle be conducted every five years to check whether judicial pay is kept broadly in line with the movements of legal sector earning over time, with its frequency subject to periodic review. The last Benchmark Study was conducted in 2015. The next Benchmark Study will be conducted in 2020, subject to review nearer the time.

28. 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

29. Enquiries on this brief should be addressed to Ms Jennifer Chan, Deputy Director of Administration, at 2810 3008 or Ms Vivian Cheung, Assistant Director of Administration, at 2810 3946.

Administration Wing
Chief Secretary for Administration's Office
9 October 2018

STANDING COMMITTEE ON JUDICIAL SALARIES AND CONDITIONS OF SERVICE

Report on Judicial Remuneration Review 2018

July 2018

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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) 2018. 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.jssc.gov.hk/en/publications/reports_jssc.htm.

were expanded. Its current 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. In discharging its functions, the Judicial Committee is guided by the principle that judicial remuneration should be 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 2018

1.6 In conducting the Review in 2018, the Judicial Committee invited the Judiciary and the Government to provide relevant data and views pertaining to the basket of factors³. The Judicial Committee then exercised its best judgment in analysing and balancing all relevant

³ The basket of factors which the Judicial Committee takes into account in reviewing judicial remuneration are set out in paragraphs 2.5 and 2.6.

considerations in formulating its recommendation. Having considered all relevant factors, the Judicial Committee **recommends** that judicial salaries should be increased by 4.69% in 2018-19.

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 made⁴.

2.3 The Judicial Committee further decided in 2009 that a benchmark study should in principle be conducted every five years, with its frequency subject to periodic review. Since then, the Judicial Committee has completed two benchmark studies, in 2010 and 2015

⁴ The 2005 Report, paragraph 3.26.

respectively⁵. The next benchmark study will be conducted in 2020, subject to review nearer the time.

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.

⁵ A pilot study was conducted by the Judicial Committee in 2005 to ascertain the feasibility of such benchmark studies.

2.6 In addition to the above, the Judicial Committee has 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 tenth 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 continues 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 does not observe any major change in the responsibility and working conditions of JJOs. Members of the Judiciary continue 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 levels of court and the respective judicial ranks have remained the same 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, with a noticeable decrease in the number of cases at the Obscene Articles Tribunal and an increase at the Coroner's Court in 2017. The caseloads in different levels of court between 2015 and 2017 are shown in **Appendix E**. In 2017, the decrease in the number of cases handled at the Obscene Articles Tribunal and the increase in the number of cases handled at the Coroner's Court were noticeable. For the Obscene Articles Tribunal, there was a general decline in the number of cases handled in recent years, including that for

2017, which is probably due to the changing trend in the publishing industry. For the Coroner's Court, the number of inquests ordered by coroners each year fluctuates from time to time. This is because the decision on whether to hold a death inquest is made under the Coroners Ordinance (Cap. 504), having regard to all relevant facts of the death concerned. The factors considered in each of the coroner's decisions and the statutory provisions on which his decision is based are contingent on the circumstances of the respective case.

3.4 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 the cases. It is also very difficult to devise quantifiable indicators in a meaningful way to reflect the increasing workload and heavier responsibilities of JJOs. All the above are generally true for all levels of court but the pressure is particularly felt at the level of the High Court⁶.

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. The high ratio of unrepresented litigants in civil cases also creates great challenges. Where there are unrepresented litigants, JJOs are not properly assisted in dealing with complex legal issues. Hearings (and their preparation) take longer time as a result.

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 difficult. The Judicial Committee trusts that the Judiciary will

⁶ As advised by the Judiciary, for the High Court, there have been many complex trials involving complicated commercial crimes, long and complicated criminal trials and important public law cases in recent years.

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 2018, against the establishment of 214 judicial posts, 164 were filled substantively. This represents a net increase of six in the strength of JJOs as compared with 31 March 2017. The establishment and strength of JJOs as at 31 March 2018 are in **Table 1** below –

Table 1: Establishment and strength of JJOs

| Level of court | As at 31.3.2018* | | Net change in strength over 31.3.2017 |
|--|------------------|------------------|---------------------------------------|
| | Establishment | Strength | |
| CFA ⁷ | 4 (4) | 4 (4) | 0 |
| High Court ⁸ | 59 (59) | 43 (44) | -1 |
| District Court ⁹ | 50 (41) | 43 (41) | +2 |
| Magistrates' Courts and Specialised Tribunals/Court ⁹ | 101 (96) | 74 (69) | +5 |
| Total | 214 (200) | 164 (158) | +6 |

* Figures in brackets denote position as at 31.3.2017.

3.8 On recruitment of JJOs, the Judiciary has advised that a total of 12 open recruitment exercises for various judicial ranks were conducted from 2011 to 2017. Up to 31 March 2018, a total of 104 judicial appointments were made as a result of these open recruitment exercises, of which three District Judges and ten Magistrates were appointed in 2017-18.

⁷ 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).

⁸ 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.

⁹ 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.

3.9 The Judicial Committee notes that at the Court of First Instance of the High Court (CFI) level, the Judiciary has been conducting open recruitment exercises on a more regular basis in recent years, with four such exercises being conducted since 2012. With the completion of the latest round of recruitment exercise launched in 2016, a total of 20 appointments have been made since 2012. From the experience of these recruitment exercises, the Judicial Committees notes that there have been recruitment difficulties at this level of court. The number of eligible candidates suitable for appointment could not fill all the available vacancies.

3.10 The Judicial Committee is fully aware of the persistent recruitment difficulties at CFI level. In the context of JRR 2016, the Judicial Committee examined the findings of the 2015 Benchmark Study on the Earnings of Legal Practitioners in Hong Kong (2015 Benchmark Study) and noted a clear trend of widening differential between judicial pay and earnings of legal practitioners. In particular, for CFI Judges, the findings clearly indicated that judicial pay had been consistently lower than legal sector earnings over the years, and the pay lag had further widened in recent years. Taking into account the persistent recruitment difficulties and the widening pay gap, the Judicial Committee then recommended an upward pay adjustment of 6% for Judges at the CFI level and above following the 2015 Benchmark Study¹⁰. In addition, in 2016 the Judicial Committee considered and supported a package of proposals to enhance some of the conditions of service for JJOs¹¹. The pay adjustment and enhancement proposals were subsequently implemented in September 2016 and April 2017 respectively.

3.11 Furthermore, the Judicial Committee has recently considered and supported the Judiciary's proposals relating to the statutory retirement ages for JJOs. In brief, under the proposals, the statutory retirement age for Judges at the level of CFI of the High Court

¹⁰ An upward pay adjustment of 4% for JJOs below the CFI level was also recommended following the 2015 Benchmark Study.

¹¹ They include housing benefits, medical and dental benefits, Local Education Allowance, Judicial Dress Allowance and transport services for leave travel.

and above is to be raised from 65 to 70, for Registrar/Senior Deputy Registrars/Deputy Registrars of the High Court is to be maintained at 65, and for Magistrates and Members of the Lands Tribunal and other Judicial Officers at the magistrate level is to be raised from 60 to 65. The statutory retirement age for District Judges is to be maintained at 65, but there will be allowance for discretionary extension of the term of service of not exceeding five years in aggregate beyond this age. In view of the limited pool of potential candidates, particularly for appointment to the CFI level 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 those who are at a later stage of their career in private practice. The proposals will at the same time help retain experienced JJOs, thereby strengthening manpower support for the Judiciary.

3.12 For District Judges, the Judicial Committee notes that two rounds of open recruitments were completed in 2012 and 2016 respectively. Through the recruitment exercise completed in 2012, all of the 23 vacancies then fillable were filled. For the one in 2016, against the 11 fillable vacancies, eight appointments have been made. As for Permanent Magistrates, in the latest recruitment exercise conducted in 2016, against 16 fillable vacancies, ten candidates have been appointed. As for Special Magistrates, the last open recruitment exercise was launched in 2014 and all the five fillable vacancies of Special Magistrates were filled as a result.

3.13 The Judicial Committee also notes that while the recruitment exercise for CFI Judges has been launched, the Judiciary is planning to conduct the next round of recruitment exercises for District Judges and Permanent Magistrates by end 2018 and in the first half of 2019 respectively. The Judicial Committee will continue to keep in view the recruitment situation of JJOs, especially whether the measures mentioned in paragraphs 3.10 and 3.11 could help the Judiciary in recruiting and retaining talents.

3.14 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 decreased from a total of 35 as at 31 March 2017 to 23 as at 31 March 2018.

Retirement

3.15 The current statutory normal retirement ages for JJOs are 60 or 65, depending on the level of court¹². Beyond that, extension of service may be approved up to the age of 65, 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.

3.16 Retirement is the main source of wastage among JJOs. The anticipated retirement will be eight (or 4.9% of current strength) in 2018-19, surging to 14 (or 8.5% of current strength) in 2019-20 and then slightly dropping to 12 (or 7.3% of current strength) in 2020-21.

3.17 As mentioned in paragraph 3.11, the Judicial Committee has rendered full support for the Judiciary's proposals relating to the statutory retirement ages for JJOs. The Judicial Committee trusts that the Judiciary will keep in view the challenges to the judicial manpower that may be posed by the retirement situation and continue to attract new blood and to groom and retain existing talents.

Benefits and Allowances

3.18 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, important as it is that has helped attract capable legal practitioners to join the bench.

¹² Please see paragraph 3.11 for the latest proposals.

3.19 Further to the implementation of enhancements to five areas of the conditions of service for JJOs (i.e. housing benefits, medical and dental benefits, Local Education Allowance, Judicial Dress Allowance and transport services for leave travel) with effect from 1 April 2017, the Judicial Committee notes the following recent changes to the package of existing fringe benefits and allowances for JJOs –

- (a) The rates of Judiciary Quarters Allowance, Non-accountable Cash Allowance¹³ and the ceiling rates of Medical Insurance Allowance¹⁴, Local Education Allowance¹⁵ and Judicial Dress Allowance¹⁶ were revised according to the established adjustment mechanism;
- (b) The rates of Leave Passage Allowance¹⁷ and Home Financing Allowance¹³ were revised following similar revisions in the civil service; and
- (c) The rates of two Extraneous Duties Allowances (Responsibility) (EDA(R)) for Justices of Appeal of the Court of Appeal of the High Court (JAs)¹⁸ in 2017-18 were revised based on the judicial service pay adjustments for 2017-18.

3.20 The Judicial Committee already stands ready to review the package if invited to do so by the Government.

¹³ Judiciary Quarters Allowance, Non-accountable Cash Allowance and Home Financing Allowance are various types of housing allowance offered to eligible JJOs.

¹⁴ Medical Insurance Allowance is an allowance to reimburse eligible JJOs and their eligible dependants the premium of their medical insurance plans.

¹⁵ Local Education Allowance is an allowance to reimburse eligible JJOs the cost of education of their dependent children (up to four at any one time and ages below 19) who are receiving full-time primary/secondary education in Hong Kong.

¹⁶ JJOs of the High Court and the District Court may, on first appointment, be reimbursed with the cost of purchasing their required judicial attire on a “once-and-for-all” basis.

¹⁷ Leave Passage Allowance is an allowance to reimburse eligible JJOs (and their eligible family members, where applicable) their travel-related expenses, e.g. air fares and accommodation.

¹⁸ 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.

Unique Features of the Judicial Service

3.21 The Judiciary is unique in many aspects. A prominent feature is the prohibition against return to private practice. Judges at the District Court and High Court levels must give an undertaking not to practise in future as barristers or solicitors in Hong Kong unless the Chief Executive permits. 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 tenure¹⁹ and high esteem, which may be seen as attractions for legal practitioners joining the bench. The Judicial Committee notes that these are established arrangements and continue to apply during the annual review in 2018.

Overseas Remuneration Arrangements

3.22 The Judicial Committee notes that the systems of judicial remuneration in six overseas common law jurisdictions, namely, Australia, Canada, New Zealand, Singapore, the United Kingdom and the United States, did not undergo any significant changes in 2017-18. 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.

General Economic Situation and Cost of Living Adjustments in Hong Kong

3.23 The Government has provided detailed information on Hong Kong's economic and fiscal indicators for the Judicial

¹⁹ 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.

Committee’s reference. The Gross Domestic Product (GDP) grew robustly by 4.7% in real terms in the first quarter of 2018 over a year earlier, sustaining the upturn in 2017. For 2018 as a whole, the Hong Kong economy is projected to grow by 3% to 4%. 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 |
|------|-------------|---------------------------|
| 2017 | Q1 | +4.4% |
| | Q2 | +3.9% |
| | Q3 | +3.6% |
| | Q4 | +3.4% |
| 2018 | Q1 | +4.7%* |

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

* Preliminary figure

3.24 The labour market remained tight in the first quarter of 2018. Compared to the preceding quarter, the seasonally adjusted unemployment rate in the first quarter of 2018 remained unchanged at a low level of 2.9%. The figure decreased to 2.8% from March to May 2018. As compared to 3.2% in the same period in 2017, the labour market remained tight and the total employment registered further solid growth on a year-on-year basis.

3.25 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 Index²⁰, went up to 2.4% year-on-year in the first quarter of 2018, from 1.6% in the fourth quarter of 2017. For the 12-month period ended March 2018, headline inflation averaged at 2.0%²¹. Looking ahead, the consumer price inflation should remain well contained in the near term. Taking the latest developments into account, the forecast headline inflation for 2018 as a whole is 2.2%²².

²⁰ Composite Consumer Price Index reflects the impact of consumer price change on the household sector as a whole.

²¹ The underlying inflation netting out all Government’s one-off relief measures for the 12-month period ended March 2018 averaged at 1.9%.

²² The forecast underlying inflation for 2018 is 2.5%.

Budgetary Situation of the Government

3.26 Based on the information from the Government, the consolidated surplus for 2017-18 is \$148.9 billion and the fiscal reserves stood at \$1,102.9 billion as at end March 2018. For 2018-19, a surplus of \$2.9 billion and a surplus of \$32 billion are estimated for the Operating Account and Capital Account respectively. This results in a surplus of \$34.9 billion in the Consolidated Account, equivalent to 1.2% of the GDP.

3.27 The annual staff cost of the Judiciary in 2018-19 is estimated at about \$1.3 billion, which is roughly 0.29% of the Government's total operating expenditure of about \$453.3 billion in the 2018-19 Estimates.

Private Sector Pay Levels and Trends

3.28 The Judicial Committee notes 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, it would be difficult to make any direct comparison between judicial pay and legal sector pay having regard to the uniqueness of judicial work. Such being the case, the Judicial Committee continues to make reference to the gross Pay Trend Indicators (PTIs) from the annual Pay Trend Survey (PTS)²³, which reflected the overall private sector pay trend, and captured, among

²³ 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 \$21,880 per month;
- (ii) Middle Salary Band covering employees in the salary range of \$21,880 to \$67,065 per month; and
- (iii) Upper Salary Band covering employees in the salary range of \$67,066 to \$135,075 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 \$84,575.

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

3.29 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 respectively²⁴. 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 five years based on information from the Judiciary are set out in **Table 3** below –

Table 3 : CCOI for JJOs (2013-14 to 2017-18)

| Year | CCOI for JJOs |
|-------------|----------------------|
| 2013-14 | 0.14% |
| 2014-15 | 0.55% |
| 2015-16 | 0.43% |
| 2016-17 | 0.08% |
| 2017-18 | 0.56% |

3.30 The Judicial Committee has all along 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 has also agreed to this arrangement.

²⁴ 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.

Private Sector Pay Trend for Judicial Remuneration Review Purpose

3.31 The gross PTI of private sector employees in the highest salary range was +5.25% for the 12-month period from 2 April 2017 to 1 April 2018. As mentioned in paragraph 3.29, the CCOI for JJOs in 2017-18 was 0.56%. The private sector pay trend for JRR purpose (i.e. calculated by subtracting the CCOI for JJOs from the gross PTI) in 2018 is therefore +4.69%.

3.32 The Judicial Committee has also made reference to other private sector pay indicators. In 2017, private sector remuneration generally maintained an overall upward adjustment.

Public Sector Pay as a Reference

3.33 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 consultative process on annual pay adjustment which the Government has established with the civil service unions and staff associations²⁵. Public sector pay is hence one of the factors under the balanced approach for determining judicial remuneration.

3.34 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

²⁵ The 2005 Report, paragraph 3.14.

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

3.35 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 adjustment²⁶ which was made in June 2018 that the pay for civil servants in the Upper Salary Band and above should be increased by 4.06% with retrospective effect from 1 April 2018. The pay adjustment was approved by the Finance Committee of the Legislative Council on 16 July 2018.

Pay Level Survey

3.36 The Judicial Committee notes that a PLS is conducted at six-yearly intervals for civil servants to assess whether civil service pay is broadly comparable with that of the private sector at a particular reference point in time. The last PLS was conducted in 2013. Since JJOs and civil servants are subject to different and separate mechanisms for pay adjustment since 2008, 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 a benchmark study (instead of the PLS) in accordance with the existing mechanism for the determination of judicial remuneration. As mentioned in paragraph 2.3,

²⁶ In arriving at the decision, the Chief Executive-in-Council has taken into account the relevant factors (such as the net PTIs derived from the 2018 PTS, the state of the economy of Hong Kong, the Government's fiscal position, changes in the cost of living, pay claims of the staff side and civil service morale).

the next benchmark study will be conducted in 2020, subject to review nearer the time.

The Judiciary's Position

3.37 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 seeks a pay increase of 4.69% (i.e. the relevant gross PTI at 5.25% less the CCOI for JJOs at 0.56%) for the annual adjustment for the judicial service in 2018-19.

Chapter 4

Recommendation and Acknowledgements

Recommendation

4.1 During the year covered by this report, the Judicial Committee has completed the annual review and formulated its recommendation in respect of the 2018-19 annual adjustment. Taking into account the basket of factors and having balanced all considerations, the Judicial Committee **recommends** that judicial salaries should be increased by 4.69% with effect from 1 April 2018.

4.2 For future reviews, the Judicial Committee will continue to adopt a balanced approach taking into account the basket of factors. Among others, we will continue to keep in view the recruitment situation of the Judiciary. In addition, the Judicial Committee will continue to take into account the experience in the past JRRs conducted under the approved mechanism.

Acknowledgements

4.3 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 on the basket of factors 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 this review.

4.4 We would also like to record our appreciation to Mr Benjamin Yu, SC, SBS, JP, for his dedicated service in the past six years. Mr Yu retired from the Judicial Committee by the end of 2017.

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 2018

Chairman

Professor Wong Yuk-shan, SBS, JP

Members

Mr T C Chan, BBS, JP

Mr Alfred Chan Wing-kin, BBS

Mr Jat Sew-tong, SBS, SC, JP

Ms May Tan Siew-boi

Ms Melissa Wu

Mr Dieter Yih, JP

Judicial Service Pay Scale
(with effect from 1 April 2017)

| Judicial Service Pay Scale (JSPS) | | Rank |
|-----------------------------------|-----------|---|
| Point | \$ | |
| 19 | 350,300 | ✧ Chief Justice, Court of Final Appeal |
| 18 | 340,600 | ✧ Permanent Judge, Court of Final Appeal ✧ Chief Judge of the High Court |
| 17 | 307,050 | ✧ Justice of Appeal of the Court of Appeal of the High Court |
| 16 | 292,650 | ✧ Judge of the Court of First Instance of the High Court |
| 15 | 237,300 | ✧ Registrar, High Court ✧ Chief Judge of the District Court |
| 14 | (229,600) | ✧ Senior Deputy Registrar, High Court ✧ Principal Family Court Judge, District Court |
| | (222,950) | |
| | 216,400 | |
| 13 | (215,000) | ✧ Deputy Registrar, High Court ✧ Judge of the District Court ✧ Chief Magistrate |
| | (208,850) | |
| | 202,800 | |
| 12 | (185,150) | ✧ Assistant Registrar, High Court ✧ Member, Lands Tribunal |
| | (179,800) | |
| | 174,450 | |
| 11 | (170,350) | ✧ Registrar, District Court ✧ Principal Adjudicator, Small Claims Tribunal ✧ Principal Magistrate ✧ Principal Presiding Officer, Labour Tribunal |
| | (165,650) | |
| | 160,700 | |
| 10 | (155,950) | ✧ Adjudicator, Small Claims Tribunal ✧ Coroner ✧ Deputy Registrar, District Court ✧ Presiding Officer, Labour Tribunal |
| | (151,350) | |
| | 147,000 | |
| 10 | (155,950) | ✧ Magistrate |
| | (151,350) | |
| | 147,000 | |
| 9 | 136,485 | |
| 8 | 133,295 | |
| 7 | 130,115 | |

| Judicial Service Pay Scale (JSPS) | | Rank |
|--------------------------------------|--------|----------------------|
| Point | \$ | |
| 6 | 99,925 | ◇ Special Magistrate |
| 5 | 95,290 | |
| 4 | 90,870 | |
| 3 | 88,750 | |
| 2 | 86,645 | |
| 1 | 84,575 | |

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 |
| 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 |

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

Caseloads in Different Levels of Court between 2015 and 2017

| No. of Cases Level of Court | 2015 | 2016 | 2017 |
|---|---------------|---------------|---------------|
| Court of Final Appeal | | | |
| – application for leave to appeal | 127 | 129 | 112 |
| – appeals | 31 | 32 | 26 |
| – miscellaneous proceedings | 0 | 0 | 0 |
| Total | 158 | 161 | 138 |
| Court of Appeal of the High Court | | | |
| – criminal appeals | 442 | 400 | 420 |
| – civil appeals | 279 | 246 | 298 |
| – miscellaneous proceedings ^{Note 1} | - | - | 83 |
| Total | 721 | 646 | 801 |
| Court of First Instance of the High Court | | | |
| – criminal jurisdiction | | | |
| • criminal cases | 503 | 497 | 449 |
| • confidential miscellaneous proceedings | 402 | 405 | 382 |
| • miscellaneous proceedings (criminal) ^{Note 2} | - | - | 374 |
| • appeals from Magistrates' Courts | 777 | 702 | 659 |
| – civil jurisdiction ^{Note 3} | 19 885 | 19 467 | 17 719 |
| Sub-total | 21 567 | 21 071 | 19 583 |
| – probate cases | 19 127 | 18 368 | 20 477 |
| Total | 40 694 | 39 439 | 40 060 |
| Competition Tribunal | 0 | 0 | 2 |
| District Court | | | |
| – criminal cases | 1 118 | 1 215 | 1 156 |
| – civil cases | 20 346 | 21 902 | 20 550 |

Note 1 A new case type has since 1 July 2017 been created for criminal and civil miscellaneous matters before the Court of Appeal of the High Court. Such caseload was formerly subsumed under High Court Miscellaneous Proceedings which was categorised under civil jurisdiction of the Court of First Instance of the High Court.

Note 2 A new case type has since 1 July 2017 been created for criminal miscellaneous matters before the Court of First Instance of the High Court. Such caseload was formerly subsumed under High Court Miscellaneous Proceedings which was categorised under civil jurisdiction of the Court of First Instance of the High Court.

Note 3 The case type of High Court Miscellaneous Proceedings has excluded miscellaneous matters before the Court of Appeal of the High Court and criminal miscellaneous matters before the Court of First Instance of the High Court since 1 July 2017.

Appendix E

| No. of Cases | 2015 | 2016 | 2017 |
|----------------------------------|----------------|----------------|----------------|
| Level of Court | | | |
| – family cases | 21 834 | 22 297 | 23 634 |
| Total | 43 298 | 45 414 | 45 340 |
| Magistrates' Courts | 317 006 | 334 048 | 338 977 |
| Lands Tribunal | 4 740 | 4 629 | 4 653 |
| Labour Tribunal | 4 006 | 4 326 | 4 015 |
| Small Claims Tribunal | 49 775 | 49 169 | 51 012 |
| Obscene Articles Tribunal | 4 278 | 226 | 174 |
| Coroner's Court | 93 | 83 | 131 |