

ITEM FOR FINANCE COMMITTEE

2019-20 JUDICIAL SERVICE PAY ADJUSTMENT

Members are invited to approve, with effect from 1 April 2019, an increase in pay by 5.63% for judges and judicial officers.

PROBLEM

We need to adjust the pay scales for judges and judicial officers (JJOs)¹ in accordance with the decision of the Chief Executive (CE) in Council.

PROPOSAL

2. We propose to increase the dollar value of the pay points for JJOs by 5.63% with effect from 1 April 2019.

Encl. 3. Upon approval of the proposal in paragraph 2 above, the judicial service pay scale (JSPS) will be revised as set out at Enclosure.

/JUSTIFICATION

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.

JUSTIFICATION

Judicial Service Pay Mechanism

4. Judicial remuneration is determined according to a mechanism separate from that of the civil service. Specifically, judicial remuneration is determined by the CE in Council after considering the recommendations of the independent Standing Committee on Judicial Salaries and Conditions of Service (Judicial Committee)². The mechanism comprises an annual salary review and a regular Benchmark Study which seeks to check whether judicial pay is kept broadly in line with the movements of legal sector earnings over time. In arriving at the recommendation, the Judicial Committee adopts a balanced approach, taking into account the basket of factors as approved by the CE in Council in May 2008, the principle of judicial independence and the position of the Judiciary. The basket of factors includes the following –

- (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.

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² The Judicial Committee is appointed by the CE. At present, it 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.

The 2019 Judicial Remuneration Review

5. In conducting the 2019 judicial remuneration review (JRR), the Judicial Committee examined the basket of factors listed in paragraph 4 above, and exercised its best judgment in analysing and balancing all relevant considerations in formulating its recommendation on whether and, if so, how judicial pay should be adjusted in 2019-20.

6. In considering private sector pay levels and trends, the Judicial Committee continues to make reference to the Pay Trend Indicators (PTIs) from the annual Pay Trend Survey (PTS)³, which reflect the overall year-on-year change of private sector pay. As the gross PTIs already include merit and in-scale increment in the private sector, the Judicial Committee considers it appropriate to deduct 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 deducting the consolidated cost of increments (CCOI) for JJOs at 0.16% from the relevant gross PTI at 5.79%) in 2019 is 5.63%.

7. The Judicial Committee notes that there is no comprehensive or representative pay trend survey on the legal sector. It also considers direct comparison between judicial pay and legal sector pay difficult having regard to the uniqueness of judicial work. The Judicial Committee takes the view that a Benchmark Study on the level of earnings of legal practitioners should be conducted on a regular basis to check whether judicial pay was kept broadly in line with the movements of legal sector earnings over time. The Judicial Committee decided in 2009 that a Benchmark Study should in principle be conducted every five years, with its frequency subject to periodic review. Since then, the Judicial Committee has completed two Benchmark Studies in 2010 and 2015⁴ respectively. The next Benchmark Study will be conducted in 2020.

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³ 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 2019 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 \$22,865 per month;
- (ii) Middle Salary Band covering employees in the salary range of \$22,865 to \$70,090 per month; and
- (iii) Upper Salary Band covering employees in the salary range of \$70,091 to \$140,560 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 JSPS, currently at \$88,540.

⁴ The Judicial Committee has considered the 2015 Benchmark Study alongside the basket of factors in the 2016 JRR.

8. The judicial pay adjustment mechanism is delinked from that of the civil service. Public sector pay is only one of the factors for consideration in the balanced approach for determining judicial pay. In the 2019 JRR, the Judicial Committee made reference to the decision of the CE in Council in June 2019 to increase the pay for civil servants in the directorate and Upper Salary Band by 4.75% with effect from 1 April 2019. The Judicial Committee notes particularly that the CE in Council decided that from 2019-20 onwards, a refined methodology should be adopted for civil service pay adjustment. According to the refined methodology⁵, the average payroll cost of increments (PCIs) for each salary band of civil service from 1989-90⁶ to 2019-20, or the actual PCI for the particular salary band of civil service for the year⁷, whichever is the lower, would be adopted for deriving the net PTI for that salary band of the civil service, having regard to the impact of the rising PCIs on the net PTIs and other relevant considerations. 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 time⁸. As JJOs and civil servants have been 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 in accordance with the existing mechanism for the determination of judicial remuneration as mentioned in paragraph 7 above.

Judicial Independence

9. 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. Maintaining an independent Judiciary of the highest integrity is of utmost importance.

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⁵ The Judiciary considers that the approach of the refined methodology should be adopted in deriving the net PTI for judicial service pay adjustment. Details are set out in paragraph 10 below.

⁶ It is the year when the PCI deduction arrangement was first introduced in civil service pay adjustment.

⁷ For example, for the purpose of the 2019-20 civil service pay adjustment, the PCIs for the year refer to the actual PCIs incurred for each of the three salary bands in 2018-19.

⁸ The last PLS was conducted in 2013.

The Position of the Judiciary

10. The Judicial Committee has also considered the Judiciary's views. Noting the adoption of the refined methodology for civil service pay adjustment from 2019-20 onwards, the Judiciary is of the view that the approach of this refined methodology should also be adopted for deriving the net PTI for judicial service pay adjustment from 2019-20 onwards as this is a better approach when compared with the old one and would avoid putting the JJOs in a disadvantaged position vis-à-vis that of the civil service in this regard. Following the approach of the refined methodology, the average CCOI for all JJOs available from 2009-10⁹ to 2019-20 (0.29%) or the actual CCOI for all JJOs for the year¹⁰ (0.16%), whichever is the lower, should be adopted for deriving the net PTI for judicial pay for 2019-20. The Judiciary therefore sought a pay increase of 5.63% (i.e. the relevant gross PTI at 5.79% less the actual CCOI for JJOs at 0.16%) for the annual adjustment for the judicial service in 2019-20. 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

11. Having considered the above factors, the Judicial Committee submitted its report to the CE on 23 July 2019, recommending a 5.63% increase in the pay for JJOs for 2019-20.

Judicial Service Pay Adjustment Rate

12. After consideration of the Judicial Committee's recommendation and the Judiciary's position, the CE in Council decided that the pay for JJOs for 2019-20 should be increased by 5.63% with effect from 1 April 2019.

13. Judicial pay is reviewed annually. It has been the established practice that the proposed annual adjustment, if any, will take effect from 1 April (i.e. the beginning of the relevant financial year). As approved by the Finance Committee (FC) on 14 December 2018, the last pay adjustment for 2018-19 took effect from 1 April 2018.

FINANCIAL IMPLICATION

14. The annual financial implication arising from the proposed 5.63% pay increase for JJOs is around \$28.9 million.

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⁹ It is the year when the pay adjustment for JJOs was first determined under the new mechanism separate from that of the civil service.

¹⁰ For the purpose of the 2019-20 judicial service pay adjustment, the CCOI for JJOs for the year refers to the actual CCOI incurred in 2018-19.

15. While additional provision has been made for the annual financial implication for 2020-21 under Head 80 – Judiciary in the 2020-21 Estimates, the same has not been made to cater for the back-pay for the period from 1 April 2019 to 31 March 2020 arising from the proposed pay adjustment. Subject to FC's approval, both the annual financial implication and back-pay will be paid from within the provision under Head 80 – Judiciary in 2020-21. On 9 March 1983 (vide Item B170), FC delegated to the Financial Secretary (FS) the authority to approve supplementary provision without limit in personal emoluments subheads, provided that the supplementary provision is required for salaries in accordance with approved pay scales in respect of approved posts. Subject to FC's approval of the proposal, FS shall approve under delegated authority the supplementary provisions for 2020-21, if required by the Judiciary.

PUBLIC CONSULTATION

16. We briefed the Legislative Council Panel on Administration of Justice and Legal Services on the 2019-20 judicial service pay adjustment at its meeting held on 27 April 2020. Members had no objection to the proposed pay adjustment and noted that we would seek approval from FC.

Administration Wing
Chief Secretary for Administration's Office
May 2020

Enclosure to FCR(2020-21)12**Judicial Service Pay Scale**

Point	(As at 31.3.2019)	(w.e.f. 1.4.2019)
	\$	\$
19	366,750	387,400
18	356,550	376,600
17	321,450	339,550
16	306,400	323,650
15	248,450	262,450
	(240,350)	(253,900)
	(233,400)	(246,550)
14	226,550	239,300
	(225,100)	(237,750)
	(218,650)	(230,950)
13	212,300	224,250
	(193,850)	(204,750)
	(188,250)	(198,850)
12	182,650	192,950
	(178,350)	(188,400)
	(173,400)	(183,150)
11	168,250	177,700
	(163,250)	(172,450)
	(158,450)	(167,350)
10	153,900	162,550
9	142,885	150,930
8	139,545	147,400
7	136,215	143,885
6	104,610	110,500
5	99,760	105,375
4	95,130	100,485
3	92,910	98,140
2	90,710	95,815
1	88,540	93,525

Note Figures in brackets represent increments.
