

LEGISLATIVE COUNCIL BRIEF

2019-20 JUDICIAL SERVICE PAY ADJUSTMENT

INTRODUCTION

At the meeting of the Executive Council on 22 October 2019, the Council ADVISED and the Acting Chief Executive ORDERED that the pay for judges and judicial officers¹ (JJOs) for 2019-20 should be increased by **5.63%** with effect from 1 April 2019.

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 2019 judicial remuneration review (JRR), the Judicial Committee submitted its report to the Chief Executive on 23 July 2019, recommending a 5.63% increase in the pay for JJOs for 2019-20. 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 (CFA); Judge, CFA; Judge of the High Court; and Judge of the District Court. "Judicial officers" refer to officers in the grades of Registrar, High Court; Registrar, District Court; Member, Lands Tribunal; Magistrate; Presiding Officer, Labour Tribunal; Adjudicator, Small Claims Tribunal; Coroner; and Special Magistrate.

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. As regards workload, there was a noticeable increase in the number of cases at different levels of court, including the Court of First Instance (CFI) and the Court of Appeal (CA) of the High Court and the Court of Final Appeal (CFA). The noticeable increase in caseload at the CFI and the CA levels was mainly due to the sharp increase in number of judicial review cases and appeals in relation to non-refoulement claim cases. The Judicial Committee notes that more of such cases are now being filed with the CFA. The Obscene Articles Tribunal also recorded a sharp increase of cases in 2018, which was mainly due to a total of 9 073 articles for determination involved in two cases. 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. 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. 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, there have been many complex trials involving complicated commercial crime, long and complicated criminal trials and important public law cases. A sharp increase in non-refoulement claim cases has also added significant impact on the already heavy workload.

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 takes note that the Judiciary has been taking measures to address issues arising from the tight manpower situation and 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 2019, against the establishment of 218 judicial posts, 156 were filled substantively. This represents a net increase of four in the establishment and a net decrease of eight in the strength of JJOs as compared with 31 March 2018. The changes in establishment and strength are the result of the creation of new posts, judicial appointments as well as retirement and other wastage. On recruitment of JJOs, the Judicial Committee notes that up to 31 March 2019, a total of 107 judicial appointments were made in a total of 14 open recruitment exercises for various judicial ranks conducted between 2011 and 2018. Meanwhile, the Judiciary has continued to engage temporary judicial resources to help relieve workload, including appointing internal/external deputies and appointing temporary or acting JJOs. The number of external deputy JJOs has increased from a total of 23 as at 31 March 2018 to 33 as at 31 March 2019.

7. The Judicial Committee notes that at the CFI level, the Judiciary has been conducting open recruitment exercises on a more regular basis in recent years, with five such exercises being conducted since 2012. Taking into account the latest round of recruitment exercise launched in mid-2018, a total of 24 appointments have been made since 2012, including three in 2018-19 and one in April 2019. Further appointments would be announced in due course. From the experience of these recruitment exercises, the Judicial Committee notes that there have been persistent recruitment difficulties at this level of court and will keep in view the filling of available vacancies at the 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 had 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. The pay adjustment and enhancement proposals were subsequently implemented in September 2016 and April 2017 respectively.

8. For District Judges, the Judicial Committee notes that two rounds of open recruitment were completed in 2012 and 2016 respectively. A total of 31 judicial appointments were made as a result. A new round of recruitment exercise was launched in October 2018 which is in progress. For Permanent Magistrates, three rounds of open recruitment conducted since 2011 were completed and a total of 41 Permanent Magistrates were appointed as a result. A new round of recruitment exercise was launched in March 2019.

9. Furthermore, the Judicial Committee has considered and supported the Judiciary's proposals to extend the statutory retirement ages for JJOs. Major proposals include –

- (a) for Judges at the CFI level and above, the retirement age be extended from 65 to 70;
- (b) notwithstanding the retirement age for District Judges remaining at 65, there be allowance for an extension of the term of service beyond this age, which is not available at present; and
- (c) the retirement age for Magistrates be increased from 60 to 65.

The Judiciary envisages that extending the retirement ages of JJOs would have a positive impact on attracting quality candidates who are in private practice to join the bench at the later stage of their career life, in particular at the CFI level, and also on retaining experienced judicial manpower where appropriate. The Judicial Committee notes that, with the

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

approval of the Chief Executive in Council, the Government introduced the Judicial Officers (Extension of Retirement Age) (Amendment) Bill 2019 for the implementation of the new retirement ages and related arrangements into the Legislative Council (LegCo) in March 2019.

10. The Judicial Committee will continue to keep in view the recruitment situation of JJOs, especially whether the upward pay adjustment following the 2015 Benchmark Study, the 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. We note that apart from the remuneration package, 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 are also relevant in attracting outside talents to join the bench. For the extension of the statutory retirement ages for JJOs, after introduction into LegCo, the relevant Bill has been considered and supported by the LegCo Bills Committee. The Second Reading debate of the Bill is expected to be resumed in LegCo in the 2019-2020 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 ten (or 6.4% of current strength) in 2019-20, rising to 13 (or 8.3% of current strength) in 2020-21 and then dropping to ten (or 6.4% of current strength) in 2021-22. 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 so as to implement

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 CFA 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.

the Judiciary's proposals to extend the statutory retirement ages for JJOs.

(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 CA of the High Court (JAs)¹⁰ in 2018-19 were revised based on the judicial service pay adjustments for 2018-19.

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 CFA, while the other is for JAs appointed as Vice Presidents of the CA of the High Court.

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 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. 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 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.

(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 2018-19. 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 adjustments*
- (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 July 2019 respectively on the cost of living adjustments, general economic situation in Hong Kong and the budgetary situation of the Government. The economy was then forecast to grow by 2% to 3% for 2019 in May 2019, while the rate of the underlying consumer price inflation (i.e. excluding one-off relief measures introduced by the Government) for 2019 was then forecast to be 2.5%. The seasonally adjusted unemployment rate was 2.8% in March to May 2019. The consolidated surplus of the Government for 2018-19 was \$68.0 billion and the fiscal reserves stood at \$1,170.9 billion as at end March 2019. For 2019-20, a deficit of \$34.5 billion and a surplus of \$52.8 billion are estimated for the Operating Account and Capital Account respectively. After repayment of bonds and notes of \$1.5 billion, there is an estimated surplus of \$16.8 billion in the Consolidated Account, equivalent to 0.6% of our Gross Domestic Product (GDP). After the submission of the Judicial Committee's report in July 2019, the official forecast real GDP growth for 2019 as a whole was revised downwards to 0% to 1% in mid-August 2019, taking into account the much worse-than-expected actual outturn of 0.5% year-on-year real GDP growth in the first half of the year and considering the substantial downside risks. The forecast rate of underlying consumer price inflation for 2019 as a whole was revised upwards to 2.7%. Meanwhile, the seasonally adjusted unemployment rate edged up by 0.1 percentage point to a still-low level of 2.9% in May to July 2019, after remaining unchanged for over a year. 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 in-scale increment in the private sector. As the gross PTIs already included merit 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 therefore 5.63%. We agree with the assessment of the Judicial Committee.

(xi) *Public sector pay as a reference*

19. With the approval of this 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 2019 JRR, the Judicial Committee has made reference to the decision of the Chief Executive in Council in June 2019 to increase the pay for civil servants in the Upper Salary Band and above by 4.75% with effect from 1 April 2019, subject to the approval of the LegCo Finance Committee. Apart from that, the Judicial Committee notes that the Chief Executive in Council decided that from the 2019-20 civil service pay adjustment onwards, the average payroll cost of increments (PCIs) for each salary band of the civil service from 1989-90¹² to 2019-20, or the actual PCI for the particular salary band of the civil service for the year, whichever is the lower, would be adopted for deriving the net PTI for that salary band of the civil service (the refined methodology)¹³, having regard to the impact of the rising

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. The salary ranges of the three salary bands in the 2019 PTS 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 Judicial Service Pay Scale, currently at \$88,540.

¹² It is the year when the PCI deduction arrangement was first introduced in civil service pay adjustment.

¹³ The Judiciary considers that the approach of the refined methodology should be adopted in deriving the net PTI for judicial service pay adjustment. Detailed are set out in paragraph 21 below.

PCIs on the net PTIs and other relevant considerations. The Judicial Committee also notes that a Pay Level Survey (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. The next Benchmark Study will be conducted in 2020 and preparatory work for the study will commence after the current JRR. We agree with the Judicial Committee that public sector pay is only one of the factors for consideration under the balanced approach and take note of the refined methodology for determining the PCIs to be deducted for deriving the net PTIs in civil service pay adjustment.

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. 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 2009-10 to 2019-20 (0.29%) or this year's actual CCOI for all JJOs (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 2019-20 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. We agree that the approach of the refined methodology for civil service pay adjustment should be adopted in judicial service pay adjustment from this year onwards.

Recommendation of the Judicial Committee

22. Having considered the above factors, the Judicial Committee recommends that judicial service pay for 2019-20 should be increased by 5.63% with effect from 1 April 2019.

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, including its views on the adoption of the approach of the refined methodology in judicial service pay adjustment from this year onwards, 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 2019-20 should be increased by 5.63%.

IMPLICATIONS OF THE PROPOSAL

24. The estimated financial implication for 2019-20¹⁴ arising from a 5.63% increase in the pay for JJOs is \$24.9 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, environmental, sustainability, family or gender implications.

¹⁴ The estimate was calculated by the Judiciary in around mid-August 2019 by multiplying the proposed judicial pay increase of 5.63% to the actual salaries and acting allowances for JJOs for the four months from April to July 2019 and their projected salaries and acting allowances for the eight months from August 2019 to March 2020.

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 Chief Executive, we have invited the Judiciary to give its response to the Judicial Committee's recommendation to increase the pay for JJOs for 2019-20 by 5.63%. 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 2019-20 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 November 2019 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. Further to the last Benchmark Study in 2015, the next Benchmark Study will be conducted in 2020.

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 judicial service, such as the security of tenure, the prestigious status and high esteem of 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
22 October 2019

STANDING COMMITTEE ON JUDICIAL SALARIES AND CONDITIONS OF SERVICE

Report on Judicial Remuneration Review 2019

July 2019

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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) 2019. 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

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.

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 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.

² The 2005 Report can be found on the website http://www.jsscs.gov.hk/en/publications/reports_jscs.htm.

Judicial Remuneration Review 2019

1.6 In conducting the Review in 2019, 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 considerations in formulating its recommendation. Having considered all relevant factors, the Judicial Committee **recommends** that judicial salaries should be increased by 5.63% in 2019-20.

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.

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.

⁴ The 2005 Report, paragraph 3.26.

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 respectively⁵. The next benchmark study will be conducted in 2020. Preparatory work for the study will commence after the current JRR.

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

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

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.

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 eleventh 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 and Working Conditions

3.2 On the basis of the latest information provided by the Judiciary, the Judicial Committee has not observed 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**.

Workload and Complexity of Judicial Work

3.3 As regards workload, there was a noticeable increase in the number of cases at different levels of court, including the Court of First Instance (CFI) and the Court of Appeal (CA) of the High Court and the CFA. The Obscene Articles Tribunal also recorded a sharp increase of cases in 2018. The caseloads in different levels of court between 2016 and 2018 are shown in **Appendix E**.

3.4 In 2018, the caseload of the CFI of the High Court continued to increase. This was mainly due to the sharp increase of judicial review cases in relation to non-refoulement claims. There was also a significant increase in the number of civil appeals to the CA of the High Court. This was also mainly due to an increase in appeals in relation to non-refoulement claim cases. It is also noted that more of such cases are now being filed with the CFA.

3.5 For the Obscene Articles Tribunal, the sharp increase in caseload in 2018 was mainly due to a total of 9 073 articles for determination involved in two cases. For the Coroner's Court, the number of inquests ordered by coroners each year fluctuates from time to time. This is because the decision whether to hold a death inquest is made by the Coroner 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.

3.6 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.

3.7 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.

3.8 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 takes note that the Judiciary has been taking measures to address issues arising from the tight manpower situation and 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.

Recruitment and Retention

3.9 As at 31 March 2019, against the establishment of 218 judicial posts, 156 were substantively filled. This represents a net decrease of eight in the strength of JJOs as compared with the position as at 31 March 2018. The changes in establishment and strength are the result of the creation of new posts, judicial appointments as well as retirement and other wastage. The establishment and strength of JJOs as at 31 March 2019 are set out in **Table 1** below –

⁶ As advised by the Judiciary, for the High Court, there have been many complex trials involving complicated commercial crime, long and complicated criminal trials and important public law cases. A sharp increase in non-refoulement claim cases has also added significant impact on the already heavy workload.

Table 1: Establishment and strength of JJOs

Level of court	As at 31.3.2019*		Net change in strength over 31.3.2018
	Establishment	Strength	
CFA ⁷	4 (4)	4 (4)	0
High Court ⁸	63 (59)	42 (43)	-1
District Court ⁹	50 (50)	40 (43)	-3
Magistrates' Courts and Specialised Tribunals/Court ⁹	101 (101)	70 (74)	-4
Total	218 (214)	156 (164)	-8

* Figures in brackets denote position as at 31.3.2018.

3.10 On recruitment of JJOs, the Judiciary has advised that a total of 14 open recruitment exercises for various judicial ranks were conducted from 2011 to 2018. Up to 31 March 2019, a total of 107 judicial appointments were made as a result of these open recruitment exercises, of which three CFI Judges were appointed in 2018-19. Another CFI Judge was appointed in April 2019.

3.11 The Judicial Committee notes that at the CFI level, the Judiciary has been conducting open recruitment exercises on a more regular basis in recent years, with five such exercises being conducted since 2012. Taking into account the latest round of recruitment exercise launched in mid-2018, a total of 24 appointments have been made since 2012, including three in 2018-19 and one in April 2019. Further appointments would be announced in due course. From the experience of these recruitment exercises, the Judicial Committee notes that there have been recruitment difficulties at this level of court. The Judicial Committee will keep in view the filling of available vacancies at the CFI level.

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 now mostly 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.

3.12 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 a 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 differential, the Judicial Committee had 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.

3.13 For District Judges, the Judicial Committee notes that two rounds of open recruitment were completed in 2012 and 2016 respectively. A total of 31 judicial appointments were made as a result. A new round of recruitment exercise was launched in October 2018 which is in progress. For Permanent Magistrates, three rounds of open recruitment conducted since 2011 were completed and a total of 41 Permanent Magistrates were appointed as a result. A new round of recruitment exercise was launched in March 2019.

3.14 Furthermore, in May 2018, the Judicial Committee considered and supported the Judiciary's proposals relating to the extension of the statutory retirement ages for JJOs. With the support of the Government, the Judiciary is now taking forward the following proposals –

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.

- (a) for Judges at the CFI level and above, the relevant retirement age be extended from 65 to 70;
- (b) notwithstanding the retirement age for Judges of the District Court remaining at 65, there be allowance for an extension of the term of service beyond this age, which is not available at present; and
- (c) the retirement age for Magistrates be increased from 60 to 65.

The Judiciary envisages that extending the retirement ages of JJOs would have a positive impact on attracting quality candidates who are in private practice to join the bench at the later stage of their career life, in particular at the CFI level, and also on retaining experienced judicial manpower where appropriate. The Government has already introduced a bill on the necessary legislative amendments for the implementation of the new retirement ages and related arrangements to the Legislative Council (LegCo) in March 2019. It is hoped that the legislative exercise could be completed in the 2019-20 legislative session.

3.15 The Judicial Committee will continue to keep in view the recruitment situation of JJOs, especially whether the measures mentioned in paragraphs 3.12 and 3.14 could help the Judiciary in recruiting and retaining talents.

3.16 Meanwhile, the Judiciary has continued to engage temporary judicial resources to help relieve workload, including appointing internal/external deputies and appointing temporary or acting JJOs. The number of external deputy JJOs has increased from a total of 23 as at 31 March 2018 to 33 as at 31 March 2019.

Retirement

3.17 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. As mentioned in paragraph 3.14 above, in May 2018, the Judicial Committee considered and supported the Judiciary's proposal relating to the extension of the statutory retirement ages of JJOs. The Government has already introduced a bill to LegCo in March 2019 on the necessary legislative amendments to implement the new retirement ages for JJOs. 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.

3.18 Retirement is the main source of wastage among JJOs. The anticipated retirement will be 10 (or 6.4% of current strength) in 2019-20, rising to 13 (or 8.3% of current strength) in 2020-21 and then dropping to 10 (or 6.4% of current strength) in 2021-22.

3.19 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

3.20 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.

3.21 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 Allowance¹² and the ceiling rates of Medical Insurance Allowance¹³, Local Education Allowance¹⁴ and Judicial Dress Allowance¹⁵ were revised according to the established adjustment mechanism;
- (b) The rates of Leave Passage Allowance¹⁶ and Home Financing Allowance¹² 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 CA of the High Court (JAs)¹⁷ in 2018-19 were revised based on the judicial service pay adjustments for 2018-19.

3.22 The Judicial Committee stands ready to review the package of benefits and allowances if invited to do so by the Government.

¹² Judiciary Quarters Allowance, Non-accountable Cash Allowance and Home Financing Allowance are various types of housing allowance offered to eligible JJOs.

¹³ Medical Insurance Allowance is an allowance to reimburse eligible JJOs and their eligible dependants the premium of their medical insurance plans.

¹⁴ 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 at ages below 19) who are receiving full-time primary/secondary education in Hong Kong.

¹⁵ 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.

¹⁶ 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.

¹⁷ 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 CA of the High Court.

Unique Features of the Judicial Service

3.23 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 tenure¹⁸ and high esteem, which may be seen as attractions for legal practitioners joining the bench. The Judicial Committee notes that these are established arrangements which continue to apply during the annual review in 2019.

Overseas Remuneration Arrangements

3.24 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 2018-19. 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 the economy of the respective jurisdictions.

¹⁸ 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 LegCo and reported to the Standing Committee of the National People's Congress for the record.

General Economic Situation and Cost of Living Adjustments in Hong Kong

3.25 The Government has provided detailed information on Hong Kong's economic and fiscal indicators for the Judicial Committee's reference. The Gross Domestic Product (GDP) expanded modestly by 0.6% in real terms in the first quarter of 2019 over a year earlier, weighed down by the weaker performance of the global economy, US-China trade tensions and various external headwinds. The modest growth also reflected the high base of comparison in the first quarter of last year. The near-term economic outlook is subject to a high level of uncertainty. For 2019 as a whole, the Hong Kong economy is projected to grow by 2% to 3%, compared with the growth of 3.0% in 2018. 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
2018	Q1	+4.6%
	Q2	+3.6%
	Q3	+2.8%
	Q4	+1.2%
2019	Q1	+0.6%

(Source: Figures published by the Census and Statistics Department as at 17 May 2019)

3.26 The labour market remained tight in the first quarter of 2019. Compared with the preceding quarter, the seasonally adjusted unemployment rate in the first quarter of 2019 held steady at a low level of 2.8%. The figure stayed unchanged at 2.8% from March to May 2019, as compared with the same period in 2018. The labour market is expected to remain largely stable in the near term. Yet, in view of the various external headwinds facing the economy, the situation should be monitored closely.

3.27 On changes in cost of living, the headline consumer price inflation, as measured by the year-on-year rate of change of the Composite Consumer Price Index¹⁹, went down to 2.2% in the first

¹⁹ Composite Consumer Price Index reflects the impact of consumer price change on the household sector as a whole.

quarter of 2019, from 2.6% in the fourth quarter of 2018. For the 12-month period ending March 2019, the headline inflation averaged at 2.3%²⁰. Looking ahead, inflation will stay moderate in the near term. Taking the latest developments into account, the forecast headline inflation for 2019 as a whole is 2.5%²¹.

Budgetary Situation of the Government

3.28 Based on the information from the Government, the consolidated surplus for 2018-19 is \$68.0 billion and the fiscal reserves stood at \$1,170.9 billion as at end March 2019. For 2019-20, a deficit of \$34.5 billion and a surplus of \$52.8 billion are estimated for the Operating Account and Capital Account respectively. After repayment of bonds and notes of \$1.5 billion, there is an estimated surplus of \$16.8 billion in the Consolidated Account, equivalent to 0.6% of the GDP.

3.29 The annual staff cost of the Judiciary in 2019-20 is estimated at about \$1.49 billion, which is roughly 0.30% of the Government's total operating expenditure of about \$501.5 billion in the 2019-20 Estimates.

Private Sector Pay Levels and Trends

3.30 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

²⁰ The headline inflation is the inflation rate before netting out of all Government's one-off relief measures for the 12-month period ending March 2019. The underlying inflation is that after the netting out of all Government's one-off relief measures for the 12-month period ending March 2019 which averaged at 2.7%.

²¹ The forecast underlying inflation for 2019 is 2.5%.

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)²² conducted by the Pay Survey and Research Unit and commissioned by the Pay Trend Survey Committee, which reflected the overall private sector pay trend, and captured, among 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 deduct 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

3.31 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 points 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 respectively²³. JJOs serving on JSPS 15 and above have no increment. The consolidated cost of increments (CCOI) as a percentage of total payroll

²² 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 \$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.

Since 2009, the Judicial Committee had agreed that in the absence of a comprehensive or representative pay trend survey for the legal sector, reference should be made to the PTIs from the annual PTS reflecting overall private sector pay trend. The PTI for the Upper Salary Band in the PTS is considered a suitable reference for comparison with judicial salaries, which start at JSPS 1, currently at \$88,540.

²³ 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.

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 (2014-15 to 2018-19)

Year	CCOI for JJOs
2014-15	0.55%
2015-16	0.43%
2016-17	0.08%
2017-18	0.56%
2018-19	0.16%

3.32 Since 2011, the Judicial Committee has 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.

Private Sector Pay Trend for Judicial Remuneration Review Purpose

3.33 According to the findings of the 2019 PTS, the gross PTI of private sector employees in the highest salary range was 5.79% for the 12-month period from 2 April 2018 to 1 April 2019. As mentioned in paragraph 3.31, the CCOI for JJOs in 2018-19 was 0.16%. The private sector pay trend for JRR purpose (i.e. calculated by deducting the CCOI for JJOs from the gross PTI) in 2019 is 5.63%.

3.34 The Judicial Committee has also made reference to other private sector pay indicators. In 2018, private sector remuneration generally maintained an overall upward adjustment.

Public Sector Pay as a Reference

3.35 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 considered 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 associations²⁴. Public sector pay is hence one of the factors under the balanced approach for determining judicial remuneration.

3.36 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 year-on-year pay movements in the private sector; (b) a Pay Level Survey (PLS) conducted every six years to ascertain whether civil service pay is broadly comparable with private sector pay; and (c) a Starting Salaries Survey (SSS) which will be conducted as and when necessary in future in response to specific circumstances²⁵. As the SSS focuses only on the starting salaries of civil service jobs at entry level, only (a) and (b) may be relevant in the consideration of judicial remuneration.

Annual Civil Service Pay Adjustment

3.37 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

²⁴ The 2005 Report, paragraph 3.14.

²⁵ Previously, SSS was conducted once every three years. In December 2018, the Standing Commission on Civil Service Salaries and Conditions of Service (Standing Commission) completed a review on the PLS and SSS and recommended, among other things, that in future, SSS should be conducted as and when necessary in response to specific circumstances. On 9 April 2019, the Chief Executive-in-Council decided that the recommendations of the Standing Commission as contained in its Report No. 59, including those ones relating to the future conduct of SSS, should be accepted in full.

adjustment²⁶ which was made in June 2019 that the pay for civil servants in the Upper Salary Band and above should be increased by 4.75% with retrospective effect from 1 April 2019, subject to the approval of the LegCo Finance Committee.

3.38 The Judicial Committee notes that the Chief Executive-in-Council decided that from this year's (the 2019-20) civil service pay adjustment onwards, the average payroll cost of increments (PCIs) for each salary band of the civil service from 1989-90²⁷ to 2019-20, or the actual PCI for the particular salary band of the civil service for the year, whichever is the lower, would be adopted for deriving the net PTI for that salary band of the civil service ("the refined methodology"), having regard to the impact of the rising PCIs on the net PTIs and other relevant considerations including civil service morale.

Pay Level Survey

3.39 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, the next benchmark study will be conducted in 2020 and preparatory work for the study will commence after the current JRR.

²⁶ In arriving at the decision, the Chief Executive-in-Council has taken into account the relevant factors (such as the PTIs derived from the 2019 PTS, the state of the Hong Kong's economy, the Government's fiscal position, changes in the cost of living, the pay claims of the staff side and civil service morale).

²⁷ The year when the PCI deduction arrangement was first introduced.

The Judiciary's Position

3.40 The Judiciary has taken note that the Chief Executive-in-Council decided that from the 2019-20 civil service pay adjustment onwards, it would adopt the refined methodology²⁸ to derive the net PTI for salary adjustment for the respective salary band of the civil service. The Judiciary is of the view that the approach of this refined methodology should also be adopted for deriving the net PTI for judicial pay adjustment from 2019-20 onwards. The Judiciary considers this 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.

3.41 Following the approach of the refined methodology, the average CCOI for all JJOs available from 2009-10 to 2019-20 (0.29%) is compared with the actual CCOI for all JJOs in 2019-20 (0.16%). As the actual CCOI for all JJOs in 2019-20 is lower than the average CCOI from 2009-10 to 2019-20, the actual CCOI should be adopted for deriving the net PTI for judicial pay for 2019-20.

3.42 The Judiciary seeks 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 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.

²⁸ Please see paragraph 3.38 for the relevant decision.

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 2019-20 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 5.63% with effect from 1 April 2019.

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.

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 2019

Chairman

Professor Wong Yuk-shan, SBS, JP

Members

Mr Chan Tze-ching, 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 Lai-tak, JP

Judicial Service Pay Scale
(with effect from 1 April 2018)

Judicial Service Pay Scale (JSPS)		Rank
Point	\$	
19	366,750	✧ Chief Justice, Court of Final Appeal
18	356,550	✧ Permanent Judge, Court of Final Appeal ✧ Chief Judge of the High Court
17	321,450	✧ Justice of Appeal of the Court of Appeal of the High Court
16	306,400	✧ Judge of the Court of First Instance of the High Court
15	248,450	✧ Registrar, High Court ✧ Chief Judge of the District Court
14	(240,350)	✧ Senior Deputy Registrar, High Court ✧ Principal Family Court Judge, District Court
	(233,400)	
	226,550	
13	(225,100)	✧ Deputy Registrar, High Court ✧ Judge of the District Court ✧ Chief Magistrate
	(218,650)	
	212,300	
12	(193,850)	✧ Assistant Registrar, High Court ✧ Member, Lands Tribunal
	(188,250)	
	182,650	
11	(178,350)	✧ Registrar, District Court ✧ Principal Adjudicator, Small Claims Tribunal ✧ Principal Magistrate ✧ Principal Presiding Officer, Labour Tribunal
	(173,400)	
	168,250	
10	(163,250)	✧ Adjudicator, Small Claims Tribunal ✧ Coroner ✧ Deputy Registrar, District Court ✧ Presiding Officer, Labour Tribunal
	(158,450)	
	153,900	
10	(163,250)	✧ Magistrate
	(158,450)	
	153,900	
9	142,885	
8	139,545	
7	136,215	

Judicial Service Pay Scale (JSPS)		Rank
Point	\$	
6	104,610	◇ Special Magistrate
5	99,760	
4	95,130	
3	92,910	
2	90,710	
1	88,540	

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 2016 and 2018

No. of Cases Level of Court	2016	2017	2018
Court of Final Appeal			
– application for leave to appeal	129	112	194
– appeals	32	26	40
– miscellaneous proceedings	0	0	0
Total	161	138	234
Court of Appeal of the High Court			
– criminal appeals	400	420	388
– civil appeals	246	298	611
– miscellaneous proceedings ^{Note 1}	-	83	204
Total	646	801	1 203
Court of First Instance of the High Court			
– criminal jurisdiction			
• criminal cases	497	449	421
• confidential miscellaneous proceedings	405	382	402
• miscellaneous proceedings (criminal) ^{Note 2}	-	374	789
• appeals from Magistrates' Courts	702	659	620
– civil jurisdiction ^{Note 3}	19 467	17 719	18 605
Sub-total	21 071	19 583	20 837
– probate cases	18 368	20 477	20 797
Total	39 439	40 060	41 634
Competition Tribunal	0	2	3

Note 1 Since 1 July 2017, a new case type has 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. The full year figure of this type was 204 in 2018.

Note 2 Since 1 July 2017, a new case type has 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. The full year figure for this case type was 789 in 2018.

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. Despite such exclusion, the caseload for the civil jurisdiction continued to increase in 2018. Of particular note was the sharp increase of 1 845 Judicial Review cases in relation to non-refoulement claims (from 1 006 to 2 851).

Level of Court	No. of Cases	2016	2017	2018
District Court				
– criminal cases		1 215	1 156	1 188
– civil cases		21 902	20 550	21 453
– family cases		22 297	23 634	23 345
	Total	45 414	45 340	45 986
Magistrates' Courts				
Lands Tribunal				
		4 629	4 653	4 299
Labour Tribunal				
		4 326	4 015	3 955
Small Claims Tribunal				
		49 169	51 012	55 007
Obscene Articles Tribunal				
		226	174	9 240
Coroner's Court				
		83	131	167