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Panel on Administration of Justice and Legal Services

Meeting on 24 February 2020

Updated background brief on judicial service pay adjustments

Purpose

This paper provides updated background information on the judicial service pay adjustments. It also summarizes the major views and concerns of Legislative Council Members on the above and related subjects in recent years.

Background

Judicial remuneration review mechanism

2. In May 2002, the Judiciary Administration commissioned Sir Anthony Mason to undertake a consultancy study with a view to recommending an appropriate system for the determination of judicial remuneration in Hong Kong. The Consultancy Report on "System for the Determination of Judicial Remuneration" ("the Mason Report") was completed in February 2003.¹

3. Following completion of the Mason Report, the Chief Justice of the Court of Final Appeal put forward to the Chief Executive ("CE") the Judiciary's proposal that the recommendations and views contained in the Mason Report should be adopted as the appropriate system for the determination of judicial remuneration in Hong Kong. Relevant recommendations made in the Mason Report include, among others, that judicial remuneration should be fixed by the Executive after considering recommendations by an independent body which should be established by statute; the members of the independent body should be appointed by the Executive; and the methodology, that is the factors to be considered, should be specified in the statute.

¹ Hyperlink of the report:
https://www.judiciary.hk/doc/en/publications/consultancy_report_e.pdf
[Accessed February 2020].

4. In January 2004, CE asked the Standing Committee on Judicial Salaries and Conditions of Service ("the Judicial Committee")² to make recommendations to him on the appropriate institutional structure, mechanism and methodology for the determination of judicial remuneration and, in particular, on whether the Judiciary's proposal based on the Mason Report should be accepted. The Judicial Committee submitted a report setting out its recommendations to CE in November 2005 ("the 2005 Report").³

5. In May 2008, CE-in-Council accepted all the major recommendations of the 2005 Report and agreed that judicial remuneration should be determined according to a mechanism separate from that of the civil service. Specifically, judicial remuneration is determined by CE-in-Council after considering the recommendations of the Judicial Committee. The new mechanism for judicial remuneration review ("JRR") comprises a benchmark study to be conducted on a regular basis⁴ which seeks to check whether judicial pay is kept broadly in line with the movements of legal sector earnings over time; and an annual review.

6. In coming up with the recommendations, the Judicial Committee would take into account the basket of factors approved by CE-in-Council in May 2008, the principle of judicial independence and the position of the Judiciary.⁵ The basket of factors include responsibility, working conditions and workload of judges vis-à-vis those of lawyers in private practice; recruitment and retention in the Judiciary; retirement age and retirement benefits of Judges and Judicial Officers ("JJOs");⁶ benefits and allowances enjoyed by JJOs; unique features of

² The Judicial Committee is an independent advisory body appointed by CE to advise and make recommendations on matters concerning the salary and conditions of service of Judges and Judicial Officers ("JJOs"). 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 services of JJOs to be dealt with separately from those of the civil service.

³ Hyperlink of the report: http://www.jssc.gov.hk/reports/en/jscs_08/index.htm [Accessed February 2020].

⁴ The Judicial Committee has decided that a benchmark study should in principle be conducted every five years, with its frequency subject to periodic review. The most recent benchmark study was conducted in 2015.

⁵ The Judiciary considers that there should not be any reduction in judicial pay as a matter of principle.

⁶ According to the Legislative Council brief on 2019-2020 judicial service pay adjustment (File Ref: AW-275-010-015-001) issued on 23 October 2019, "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.

the judicial service; prohibition against return to private practice in Hong Kong; overseas remuneration arrangements; cost of living adjustment; general economic situation in Hong Kong; budgetary situation of the Government; private sector pay levels and trends; and public sector pay as a reference.

Previous judicial service pay adjustments

7. Under the new mechanism for JRR as approved by CE-in-Council in 2008, the judicial salaries remained unchanged in 2009-2010 and 2010-2011 whereas the Judicial Committee recommended pay increases in subsequent annual reviews. Details are as follows:

<u>Year</u>	<u>Adjustment rate</u>
2011-2012	+4.22%
2012-2013	+5.66%
2013-2014	+3.15%
2014-2015	+6.77%
2015-2016	+4.41%
2016-2017	+4.85%
2017-2018	+2.95%
2018-2019	+4.69%

8. The above proposed judicial service pay adjustments were discussed at the meetings of the Panel on Administration of Justice and Legal Services ("the Panel"),⁷ which were then considered and approved by the Finance Committee ("FC").⁸

Major views and concerns of Legislative Council Members

9. The major views and concerns expressed by members of the Panel, FC and the Bills Committee on Judicial Officers (Extension of Retirement Age) (Amendment) Bill 2019 ("the Bills Committee") in the past discussions on judicial service pay adjustments and related subjects are summarized in the ensuing paragraphs.

⁷ The Panel had considered the proposed pay increases at its meetings on 20 October 2011, 30 October 2012, 26 November 2013, 24 November 2014, 23 November 2015, 23 January 2017, 30 October 2017 and 29 October 2018.

⁸ The eight proposed judicial service pay adjustments were approved by FC at its meetings held on 18 November 2011, 7 December 2012, 20 December 2013, 20 March 2015, 19 March 2016, 10 February 2017, 5 January 2018 and 14 December 2018.

Judicial remuneration

Benchmark study

10. Some Panel members considered that the judicial remuneration was not sufficient to recruit and retain the best possible talents as JJOs. They suggested that the benchmark study should be conducted at more frequent intervals, e.g. once every two or three years instead of five years, in order to keep abreast of the latest information/data on legal sector earnings. The Administration responded that a two-year interval might be too short for the Judicial Committee to ascertain whether the pay relativities between judicial positions and legal positions were widening or narrowing over time. However, the Administration undertook to relay the suggestion to the Judicial Committee for consideration.

Private sector pay levels and trends

11. Some Panel members considered that the salary and benefits of JJOs should be benchmarked with legal practitioners in the private sector in order to attract talents to join the bench, whereas some considered that making direct comparison between the judicial pay and the legal sector pay was not appropriate having regard to the uniqueness of judicial work, and that many legal practitioners who joined the Judiciary were indeed motivated by their aspirations to serve the public, and salary and benefits were not their primary consideration. In response, the Administration said that in determining the rate of salary adjustment for JJOs, the Judicial Committee would consider a basket of factors, which included benchmarking with private sector legal practitioners.

Inflation rate

12. In relation to the 2015 JRR, some Panel members expressed concern that the proposed pay increase of 4.41% for JJOs was below the headline inflation averaged at 4.5% for the 12-month period ended March 2015. The Administration responded that whilst judicial remuneration was determined under a mechanism which was separate from that of the civil service, similar to annual civil service pay adjustment, the aim of annual pay adjustment for JJOs was not to track inflation. In fact, there had been cases in the past whereby the annual pay adjustments for JJOs were lower than the headline inflation rates for the years concerned.

Other issues

Conditions of service of Judges and Judicial Officers

13. Some members at the meetings of the Panel and the Bills Committee expressed concern whether the package of fringe benefits and allowances, such as the provisions of pensions and housing benefits, could be enhanced to make it more attractive for recruiting JJOs and retaining existing talents. In this regard, the Administration responded that the Judiciary had improved the conditions of service for JJOs by making enhancements to items such as cash housing allowances, medical benefits and local education allowances since 1 April 2017.

Effectiveness of upward pay adjustments and enhancement in other conditions of service of Judges and Judicial Officers

14. Some members at previous Panel meetings urged the Administration to conduct a comprehensive study to assess the effectiveness of upward pay adjustments and enhancement in some of the conditions of service for JJOs in attracting new blood and grooming and retaining existing talents in the Judiciary. The Administration assured members that it would closely monitor whether the pay increase and implementation of the enhanced conditions of service for JJOs would have a positive impact on recruiting and retaining the best possible talents to serve as JJOs.

Recruitment difficulties

15. Some members at previous Panel meetings expressed concern about the problems of inadequate JJOs and the difficulties facing the Judiciary in recruiting judges, particularly at the Court of First Instance of the High Court ("CFI") level or above. To address the recruitment difficulties, the Judiciary should also recruit judges from outside Hong Kong. There was also a suggestion that the Administration should consider attracting more law students to serve as assistants to JJOs so as to gain exposure to the Judiciary and help increase the judicial manpower in the long run. The Judiciary was urged to step up its efforts to meet the recruitment and retention challenges.

16. According to the information provided by the Administration in April 2019, the Judiciary had launched a new round of open recruitment of JJOs at different levels of courts starting from mid-2018. The recruitment for the CFI Judges had reached an advanced stage and four CFI Judges had been appointed so far. Further appointments would be announced in due course. The recruitment exercise for District Judges was launched in end 2018 which was in progress and a new recruitment exercise for Permanent Magistrates had also been launched in March 2019.

17. In view of the persistent recruitment difficulties encountered by the Judiciary, some members of the Bills Committee suggested reviewing the judicial recruitment process. They expressed concern that if the threshold for being a JJO was set too tight or outdated, certain suitable talents might not be able to join the bench in this regard. The Administration and the Judiciary Administration noted the views of members. The Judiciary Administration noted that only suitable qualified persons would be appointed to the bench.

Judicial workload

18. When discussing the judicial service pay adjustment at the FC meeting on 14 December 2018, some members were concerned about the workload of the Judiciary. They noted that for different levels of courts, the time required for listing of cases (including judicial review cases) and delivery of judgments could be as long as several years. In this connection, they were worried that excessive workload might adversely affect the quality of judicial services.

19. The Administration replied that whilst the caseload of different levels of courts had been stable in 2017, hearings might be lengthened for complicated cases. For judicial review cases, between 2015 and 2017, the average waiting time from listing to hearings was 94 to 97 days. Regarding the delivery of judgments, the Judiciary agreed that it was necessary to deliver judgments within a reasonable time, and it would step up monitoring on the time taken to deliver judgments. According to the guidelines issued by the Chief Judge of the High Court in 2016, if judges of various levels of courts did not envisage that judgments could be delivered within a short time, they should provide both parties of the litigation with an estimated date for handing down the judgment.

20. During the deliberations on the proposed amendments to the High Court Ordinance (Cap. 4) to facilitate the more efficient handling of cases, including those relating to non-refoulement claims ("the proposed legislative amendments") at the Panel meeting on 24 June 2019, some members pointed out that the shortage of judicial manpower was a long-standing problem causing the slow progress of processing cases and delivering judgments by the court. Therefore, the Administration should strengthen its manpower to minimize judicial reviews and on other measures to relieve the pressure on the courts due to the sudden increase in judicial reviews in 2017 and 2018.

21. In reply, the Judiciary Administration advised that the proposed legislative amendments were among the measures to alleviate the heavy workload of the Judiciary, particularly that arising from the sharp rise in judicial review cases from non-refoulement claims in recent years. The Judiciary would put forward bids for additional judicial and other staffing resources to the Government according to the established mechanism of the budgetary arrangement between the Judiciary and the Government if required. The Judiciary Administration

added that in view of the sharp rise in caseloads, the Judiciary had engaged more deputy judges, including retired judges, to handle the relevant judicial work.

Prohibition against judges' return to private practice in Hong Kong

22. With a view to alleviating the problem of the shortage of judicial manpower, some members at the meetings of the Panel and the Bills Committee suggested relaxing the requirement of prohibition against judges' return to private practice, such as imposing the requirement that judges might not work in the private sector only within a certain period of time after leaving their judicial service. Nonetheless, some members considered that the prohibition was a long established arrangement conducive to uphold of the principle of judicial independence and the maintenance of public confidence in the judiciary.

23. In response, the Judiciary Administration explained that to maintain judicial independence and command public confidence in the Judiciary, Judges at the District Court and above were prohibited from returning to private practice after leaving the Judiciary. However, they had security of tenure. The Judiciary Administration stressed that as the above established practice sought to underpin judicial independence and public confidence in the Judiciary, the Judiciary did not agree that there should be any relaxation of the above prohibition.

Latest position

24. For the 2019 JRR, the Judicial Committee submitted its report to CE on 23 July 2019, recommending a 5.63% increase in the pay for JJOs for 2019-2020. In coming up with this recommendation, the Judicial Committee has taken into account the basket of factors as approved by CE-in-Council in May 2008, the principle of judicial independence and the position of the Judiciary.⁹

25. On the recommendation of the Judicial Committee, the Acting CE-in-Council has decided at its meeting on 22 October 2019 that the pay for JJOs for 2019-2020 should be increased by 5.63%. The pay adjustment will take retrospective effect from 1 April 2019. As in the case of the past judicial service pay adjustments, the Administration intends to seek the views of the Panel prior to seeking funding support from FC.

26. The Administration plans to consult members on its proposal to increase the pay for JJOs at the Panel meeting to be held on 24 February 2020.

⁹ Hyperlink of the report:
https://www.jsscs.gov.hk/reports/en/jscs_19.pdf [Accessed February 2020].

Relevant papers

27. A list of the relevant papers is in the **Appendix**.

Council Business Division 4
Legislative Council Secretariat
18 February 2020

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List of relevant papers

Date of meeting	Meeting	Minutes/Paper	LC Paper No.
30.10.2012	Panel on Administration of Justice and Legal Services	Legislative Council Brief on 2012-2013 judicial service pay adjustment	File Ref: CSO/ADM CR 6/3221/02 http://www.legco.gov.hk/yr12-13/english/panels/ajls/papers/aj1030-csoadmcr6322102-e.pdf
		Letter dated 30 October 2012 from The Law Society of Hong Kong on the 2012-2013 judicial service pay adjustment and related issues	CB(4)79/12-13(01) http://www.legco.gov.hk/yr12-13/english/panels/ajls/papers/aj1030cb4-79-1-e.pdf
		Minutes of meeting	CB(4)220/12-13 http://www.legco.gov.hk/yr12-13/english/panels/ajls/minutes/aj20121030.pdf
26.11.2013	Panel on Administration of Justice and Legal Services	Legislative Council Brief on 2013-2014 judicial service pay adjustment	File Ref: CSO/ADM CR 6/3221/02 http://www.legco.gov.hk/yr13-14/english/panels/ajls/papers/aj1126-csoadmcr6322102-e.pdf
		Administration's follow-up paper	CB(4)223/13-14(01) http://www.legco.gov.hk/yr13-14/english/panels/ajls/papers/aj1126cb4-223-1-e.pdf

Date of meeting	Meeting	Minutes/Paper	LC Paper No.
		Minutes of meeting	CB(4)511/13-14 http://www.legco.gov.hk/yr13-14/english/panels/ajls/minutes/aj20131126.pdf
24.11.2014	Panel on Administration of Justice and Legal Services	Legislative Council Brief on 2014-2015 judicial service pay adjustment	File Ref: CSO/ADM CR 6/3221/02 http://www.legco.gov.hk/yr14-15/english/panels/ajls/papers/ajls20141124-csoadmcr6322102-e.pdf
		Administration's follow-up paper	CB(4)992/14-15(01) http://www.legco.gov.hk/yr14-15/english/panels/ajls/papers/ajls20141124cb4-992-1-e.pdf
		Minutes of meeting	CB(4)355/14-15 http://www.legco.gov.hk/yr14-15/english/panels/ajls/minutes/ajls20141124.pdf
23.11.2015	Panel on Administration of Justice and Legal Services	Legislative Council Brief on 2015-2016 judicial service pay adjustment	File Ref: CSO/ADM CR 6/3221/02 http://www.legco.gov.hk/yr15-16/english/panels/ajls/papers/ajls20151123-csoadmcr6322102-e.pdf
		Administration's follow-up paper	CB(4)385/15-16(01) http://www.legco.gov.hk/yr15-16/english/panels/ajls/papers/ajls20151123cb4-385-1-e.pdf

Date of meeting	Meeting	Minutes/Paper	LC Paper No.
		Minutes of meeting	CB(4)422/15-16 http://www.legco.gov.hk/yr15-16/english/panels/ajls/minutes/ajls20151123.pdf
23.1.2017	Panel on Administration of Justice and Legal Services	Legislative Council Brief on 2016-2017 judicial service pay adjustment	File Ref: CSO/ADM CR 6/3221/02 http://www.legco.gov.hk/yr16-17/english/panels/ajls/papers/ajls20170123-csoadmcr6322102-e.pdf
		Minutes of meeting	CB(4)1189/16-17 http://www.legco.gov.hk/yr16-17/english/panels/ajls/minutes/ajls20170123.pdf
30.10.2017	Panel on Administration of Justice and Legal Services	Legislative Council Brief on 2017-2018 judicial service pay adjustment	File Ref: CSO/ADM CR 6/3221/02 https://www.legco.gov.hk/yr17-18/english/panels/ajls/papers/ajls20171030-csoadmcr6322102-e.pdf
		Minutes of meeting	CB(4)562/17-18 https://www.legco.gov.hk/yr17-18/english/panels/ajls/minutes/ajls20171030.pdf
29.10.2018	Panel on Administration of Justice and Legal Services	Legislative Council Brief on 2018-2019 judicial service pay adjustment	File Ref: AW-275-010-015-001 https://www.legco.gov.hk/yr18-19/english/panels/ajls/papers/ajls20181029-aw275010015001-e.pdf

Date of meeting	Meeting	Minutes/Paper	LC Paper No.
		Minutes of meeting	CB(4)589/18-19 https://www.legco.gov.hk/yr18-19/english/panels/ajls/minutes/ajls20181029.pdf
--	Bills Committee on Judicial Officers (Extension of Retirement Age) (Amendment) Bill 2019	Report of the Bills Committee on Judicial Officers (Extension of Retirement Age) (Amendment) Bill 2019	CB(4)25/19-20 https://www.legco.gov.hk/yr18-19/english/bc/bc101/reports/bc10120191023cb4-25-e.pdf

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