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Panel on Administration of Justice and Legal Services

Meeting on 6 November 2023

Background brief on judicial service pay adjustments

Purpose

This paper provides 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 to facilitate members' consideration of the "2023-2024 Judicial Service Pay Adjustment" proposed by the Administration.

Background

2. In May 2002, the Judiciary Administration ("Jud Adm") 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 ("CJ") 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 Available at: https://www.judiciary.hk/doc/en/publications/consultancy_report_e.pdf [Accessed October 2023].

4. In January 2004, CE asked the Standing Committee on Judicial Salaries and Conditions of Service (“the Committee”)² to make recommendations 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 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 Committee. The new judicial remuneration review (“JRR”) mechanism 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 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”); benefits and allowances enjoyed by JJOs; unique features of 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.

² The Standing Committee on Judicial Salaries and Conditions of Service (“the 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”). 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 Available from: http://www.jsscs.gov.hk/reports/en/jscs_08/index.htm [Accessed October 2023].

⁴ The Committee decided that a benchmark study should in principle be conducted every five years, with its frequency subject to periodic review. Report of the most recent benchmark study conducted in 2020 is available at https://www.jsscs.gov.hk/reports/en/jscs_21/r_benchmarkstudy2020.pdf [Accessed October 2023].

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

Previous judicial service pay adjustments

7. By applying the JRR mechanism, the judicial salaries pay adjustments recommended by the Committee in previous years are summarized below:

<u>Year</u>	<u>Adjustment rate</u>
2009-2010	0%
2010-2011	0%
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%
2019-2020	+5.63%
2020-2021	0%
2021-2022	0%
2022-2023	+2.5%

8. The Panel on Administration of Justice and Legal Services (“the Panel”) was consulted on the above pay adjustments, and the pay increases had subsequently been considered and approved by the Finance Committee (“FC”):

Major views and concerns of Legislative Council Members

9. The major views and concerns expressed by members of the Panel as well as the relevant bills committee⁶ regarding the judicial service pay adjustments and related subjects are summarized in the ensuing paragraphs.

Private sector pay levels and trends

10. Some 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 Committee would consider a basket of factors, which included benchmarking with private sector legal practitioners.

⁶ Bills Committee on Judicial Officers (Extension of Retirement Age) (Amendment) Bill 2019

11. The Administration advised that the JRR mechanism comprised an annual salary review and a Benchmark Study on the Earnings of Legal Practitioners in Hong Kong ("Benchmark Study") conducted on a regular basis which sought to check whether judicial pay is kept broadly in line with the movements of legal sector earnings over time. It further explained that following the Benchmark Study conducted in 2015, the Committee recommended an upward pay adjustment of 6% for Judges at the CFI level and above and an upward adjustment of 4% for JJOs below the CFI level. In 2016, the Committee considered and supported a package of proposals to enhance some of the conditions of service for JJOs.

12. Some members suggested that the Benchmark Study should be conducted at more frequent intervals, such as 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 Committee to ascertain whether the pay relativities between judicial positions and legal positions were widening or narrowing over time.

13. Jud Adm also drew members' attention to the findings in one of the reports of the Committee which revealed that, whilst remuneration or earnings was an important factor to be considered in terms of the timing of making a career move to the Judiciary, it was not a determinative driver while the commitment to serve the community was the most important consideration.

Inflation rate

14. In relation to the 2015 JRR, some members expressed concern that the proposed pay increase was below the headline inflation for the corresponding 12-month period. 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.

Retention and recruitment of judges and judicial officers

15. Concerned about the persistent recruitment difficulties faced by the Judiciary in recruiting judges (particularly at High Court-level or above), some members 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.

16. Members noted that judges of Hong Kong were enjoying security of tenure and upon the appointment, District Judges and above were precluded from returning to practice in Hong Kong as a barrister or a solicitor. There was a view that such a system was daunting to some legal practitioners since, even if it occurred to them that the jobs were not right after accepting the appointment, there would be no return to legal practice. Some members suggested that judges be allowed to return to legal practice with safeguards against conflict of interests imposed, e.g. having to go through a sanitization period and be barred from practising in areas which he/she had adjudicated before.

17. In reply, Jud Adm stressed that the above-mentioned system was well established and imperative for ensuring judicial independence, and for avoiding any allegations of conflict of interests, real or perceived, for judges. Some members shared Jud Adm's view and agreed that the system was an important pillar underpinning judicial independence in support of Hong Kong's status as a regional hub of legal and dispute resolution services. Jud Adm added that, legal practitioners appointed as Magistrates would be allowed to revert back to practice in the private sector upon completion of their tenures.

18. There was a view that experienced solicitors should be more than capable to take up appointment as JJOs, especially on civil and commercial proceedings. In reply, Jud Adm clarified that solicitors meeting the professional qualifications for JJOs under the relevant Ordinances were also eligible to apply for filling JJOs' vacancies.

Latest position

19. The Administration plans to consult members on "2023-2024 Judicial Service Pay Adjustment" at the Panel meeting to be held on 6 November 2023.

Relevant papers

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

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List of relevant papers

Meeting	Date of meeting	Paper
Bills Committee on Judicial Officers (Extension of Retirement Age) Bill 2019	--	Report
Panel on Administration of Justice and Legal Services	23.11.2015	Agenda item III: 2015-2016 Judicial Service Pay Adjustment Legislative Council Brief Minutes
	27.4.2020	Agenda item III: 2019-2020 Judicial Service Pay Adjustment Legislative Council Brief Minutes
	7.11.2022	Agenda item V: 2022-2023 Judicial service pay adjustment Legislative Council Brief Minutes
	24.7.2023	Agenda item IV: Issues related to court waiting time Minutes