

LEGISLATIVE COUNCIL BRIEF

2023-24 JUDICIAL SERVICE PAY ADJUSTMENT

INTRODUCTION

At the meeting of the Executive Council on 10 October 2023, the Council ADVISED and the Chief Executive ORDERED that the pay for judges and judicial officers¹ (JJOs) for 2023-24 should be increased by **3.62%** with retrospective effect from 1 April 2023.

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 2023 judicial remuneration review (JRR), the Judicial Committee submitted its report to the Chief Executive on 20 July 2023, recommending a 3.62% increase in pay for JJOs for 2023-24. In coming up with this recommendation, the Judicial Committee premised its deliberations on the need to uphold the principle of judicial independence and took into account the basket of factors as approved by the Chief Executive in Council in May 2008 (see items (a) to (l) of paragraph 23 below) 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 (District Judge). "Judicial officers" refer to officers in the grades of Registrar, High Court; Registrar, District Court; Member, Lands Tribunal; Magistrate; Presiding Officer, Labour Tribunal; Adjudicator, Small Claims Tribunal; Coroner; and Special Magistrate.

² The Judicial Committee is chaired by Dr Clement Chen. Other members are Ms Daisy Ho, Mr Stephen Hung, Mr Jat Sew-tong, Ms Miranda Kwok, Professor Paul Lam and Ms Cecilia Lee.

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, the Judicial Committee notes that caseload has remained largely stable in recent years except for a slight drop in caseload in 2020 due to the COVID-19 epidemic. The Judicial Committee notes that judicial work pressures have been felt by the Judiciary particularly at the levels of High Court and District Court. At the level of High Court, the number of non-refoulement claims filed sustained a high level in 2022. Also, as National Security cases are mainly handled at the High Court level, each case usually involving three judges and entailing long trials, substantial judicial resources have to be expended and thereby impacts the listing of all other criminal trials. At the District Court level, the Judicial Committee notes that its major challenge in recent years has been to cope with cases arising from the violence events and riots in 2019 in relation to the proposed extradition amendment bill, where large number of defendants and lengthy trials were often involved. All in all, the Judicial Committee notes the mounting challenges posed to the Judiciary by the two types of cases in terms of judicial resources, manpower support, competing use of court premises and the provision of suitable media and security arrangement.

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 meaningful and quantifiable indicators to reflect the increasing workload and heavier responsibilities of JJOs. 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. We agree with the observations of the Judicial Committee in this regard.

(ii) *Recruitment and retention in the Judiciary*

5. As at 31 March 2023, against the establishment of 222 judicial posts, 166 were substantively filled. There was a net increase of six in the strength of JJOs as compared with the position as at 31 March 2022. On recruitment of JJOs, the Judicial Committee notes that up to 31 March 2023, a total of 148 judicial appointments were made as a result of the 18 open recruitment exercises conducted since 2011. Five District Judge and ten Permanent Magistrates were appointed in 2022-23. The Judiciary will launch a new round of recruitment exercise later this year for Judges at the Court of First Instance of the High Court (CFI), whilst recruitment exercise for District Judges and Permanent Magistrates are now in progress.

6. The Judicial Committee will continue to keep in view the recruitment situation of JJOs, especially whether the Judicial Committee's regular tracking of the earning levels of legal practitioners through benchmark studies; reviewing the conditions of service of JJOs at the invitation of the Government; and the Judiciary's effort to promote judicial career in collaboration with the legal profession, could help recruiting and retaining talents. We take note of the Judicial Committee's observations and will continue to keep a close watch on the manpower situation of the Judiciary.

(iii) *Retirement age and retirement benefits of JJOs*

7. Judges enjoy security of tenure³. Following the enactment of the Judicial Officers (Extension of Retirement Age) (Amendment) Ordinance in 2019, over 80% of eligible JJOs opted for the new retirement age arrangements by the deadline in December 2021. The new statutory normal retirement ages for JJOs now stand at 65 or 70, depending on the level of court. Beyond that, extension of service may be approved up to the age of 70, 75 or 76, depending on the level of court and subject to consideration on a case-by-case basis. The Judicial Committee notes that retirement is the main source of wastage among JJOs. The anticipated retirement in each of the coming three years ranges from nine to 13, amounting to 5.4% to 7.8% of the current strength. The Judicial Committee trusts that the Judiciary will keep in view the challenges to judicial manpower that may be posed by the retirement situation, and continue to attract new blood as well as to groom and retain

³ Any removal from office is subject to detailed statutory procedures, and the removal of the most senior judges (i.e. the Chief Justice, Judges of the CFA and the Chief Judge of the High Court) has to be endorsed by the Legislative Council (LegCo) and reported to the Standing Committee of the National People's Congress for record.

existing talents. We will keep a close watch on the impact of retirements of JJOs to judicial manpower, and would be ready to consider requirements of the Judiciary for the replenishment of judicial manpower.

(iv) *Benefits and allowances enjoyed by JJOs*

8. 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, such as housing benefits, medical and dental benefits, education allowance and leave passage allowance, etc. The Judicial Committee stands ready to review the package if invited to do so by the Government.

9. Separate from the JRR 2023 exercise, the Judicial Committee was invited by the Government to consider the Judiciary's proposal to maintain the existing adjustment mechanism of the ceiling rates of the Medical Insurance Allowance (MIA). As approved by the Chief Executive in Council for the enhancements to five conditions⁴ of service for JJOs in 2016, MIA was commenced in April 2017 and its adjustment mechanism should be reviewed after five years of implementation. MIA's ceiling rates are currently adjusted annually on 1 April with reference to the change in the Composite Consumer Price Index (CCPI) over the past 12 months ending 31 December. The Judiciary has completed its review and examined if the prevailing MIA ceiling rates adjusted under the existing adjustment mechanism are generally sufficient to cover the premium cost of medical insurance taken out by JJOs and their eligible dependents. The Judiciary is of the view that the existing adjustment mechanism is effective in maintaining the MIA ceiling rates at a reasonable level on par with the market. The Judiciary found that the insurance premium were found fully covered by the prevailing MIA ceiling rates in 79% of the MIA claims from JJOs, with the remaining 21% with insurance premium partially covered by the prevailing MIA ceiling rates, owing to personal choice of high-end insurance plans and/or tailored plans for meeting special medical needs which reasonably commensurate higher premium costs. The prevailing MIA ceiling rates, which are divided in six age groups, can also fully cover the average and median premium cost of claims made by claimants of the respective age groups. In view of the findings, the Judiciary recommends that the existing adjustment mechanism to MIA be maintained. Having consulted the Judicial Committee, the Government endorsed the Judiciary's recommendation.

⁴ Covering housing benefits, medical and dental benefits, local education allowance, judicial dress allowance, and provision of transport services for leave travel.

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

10. 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*

11. 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 2022-23. 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 judges 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*

12. The Judicial Committee takes note of the information provided by the Government on the cost of living adjustments, general economic situation in Hong Kong and the budgetary situation of the Government. The Judicial Committee notes that the Hong Kong economy improved visibly in the first quarter of 2023, led by strong recovery of inbound tourism and domestic demand. The forecast on economic growth for 2023, as announced in May 2023 was 3.5% to 5.5%. The seasonally adjusted unemployment rate fell successively from a high of 5.4% in February - April 2022 to 3.1% in the first quarter of 2023, and declined

further to 3.0% in February – April 2023. On changes in the cost of living, headline consumer price inflation, as measured by the year-on-year rate of change of the headline CCPI, averaged 2.0% for the 12-month period ending March 2023. The forecast headline consumer price inflation for 2023, as announced in May 2023, was 2.9%. The consolidated deficit of the Government for 2022-23 was \$122.3 billion and as at 31 March 2023, the fiscal reserves stood at \$834.8 billion, or equivalent to around 12 months of government expenditure. In the context of 2023 - 24 Budget, deficits of \$92.7 billion and \$25.9 billion are estimated for the Operating Account and Capital Account for 2023-24 respectively. After proceeds from the issuance of bonds and notes of \$65 billion and the repayment of bonds and notes of \$0.8 billion are taken into account, there is an estimated deficit of \$54.4 billion in the Consolidated Account, equivalent to 1.8% of the Gross Domestic Product.

(x) *Private sector pay levels and trends*

13. 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, the Judicial Committee continues to make reference to the gross Pay Trend Indicators (PTIs) from the annual Pay Trend Survey (PTS)⁵, 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 have 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, following the approach of

⁵ 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 pay movements of private sector employees in three salary ranges. The salary ranges of the three salary bands in the 2023 PTS are as follows –

- (i) Lower Salary Band covering employees in the salary range below \$24,670 per month;
- (ii) Middle Salary Band covering employees in the salary range of \$24,670 to \$75,620 per month;
- and
- (iii) Upper Salary Band covering employees in the salary range of \$75,621 to \$154,690 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 \$95,865.

the refined methodology⁶ adopted for deriving the net PTI for judicial pay adjustment from 2019-20 onwards, the private sector pay trend for JRR purpose in 2023 (i.e. calculated by deducting the average cost of increments (CCOI) for JJOs from 2009-10 to 2019-20 at 0.29% from the gross PTI for the upper salary band at 3.91%) is 3.62%. We agree with the assessment of the Judicial Committee.

(xi) *Public sector pay as a reference*

14. With the approval of Chief Executive in Council in 2008, the judicial pay adjustment mechanism is delinked from that of the civil service. Public sector pay is one of the factors for consideration under the balanced approach in determining judicial pay. In the 2023 JRR, the Judicial Committee has made reference to the decision of the Chief Executive in Council in June 2023 that the pay for civil servants in the upper salary band and above be increased by 2.87% with retrospective effect from 1 April 2023. Since JJOs and civil servants have been subject to different and separate mechanisms for pay adjustment since 2008, the Judicial Committee considers it appropriate to examine the levels of judicial pay vis-à-vis the levels of earnings in the private sector in the context of a Benchmark Study (instead of the Pay Level Survey conducted for civil servants) in accordance with the existing mechanism for the determination of judicial remuneration. We agree with the Judicial Committee that public sector pay is one of the factors for consideration under the balanced approach.

B. Judicial independence

15. 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.

⁶ From 2019-20 onwards, the average CCOI for all JJOs available from 2009-10 to 2019-20 (0.29%) or the actual CCOI for all JJOs for the year (i.e. for 2022-23 at 0.32%), whichever is the lower, would be adopted for deriving the net PTI for judicial pay.

C. Position of the Judiciary

16. The Judiciary informed the Judicial Committee that it seeks pay increase of 3.62% for JJOs in 2023-24, which aligns with the private sector pay trend for JRR purpose in 2023. The Judiciary also reiterates that as a matter of principle, there should be no reduction in judicial pay even if the pay is reduced for the civil service for any reasons.

Recommendation of the Judicial Committee

17. Taking into account the basket of factors and having balanced all considerations, the Judicial Committee recommends that judicial salaries be increased by 3.62% with retrospective effect from 1 April 2023.

The Government's views

18. We consider that the Judicial Committee has thoroughly taken into account the basket of factors as approved by the Chief Executive in Council in May 2008. It has premised its deliberations on the need to uphold the principle of judicial independence. It has also considered the position of the Judiciary. 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 for the increase of judicial salaries by 3.62% for 2023-24.

IMPLICATIONS OF THE PROPOSAL

19. The estimated financial implication for 2023-24⁷ arising from a 3.62% increase in the pay for JJOs is \$17.8 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.

⁷ The estimate was calculated by the Judiciary in early August 2023 by multiplying the proposed judicial pay increase of 3.62% to the actual salaries and acting allowances for JJOs for the four months from April to July 2023 and their projected salaries and acting allowances for the eight months from August 2023 to March 2024.

PUBLIC CONSULTATION

20. 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 pay for JJOs at a rate of 3.62% for 2023-24. The Judiciary has indicated its support for the Judicial Committee's recommendation. No public consultation outside the Judiciary has been conducted.

PUBLICITY

21. We have informed the Judiciary and the Judicial Committee of the Government's decision on the 2023-24 judicial service pay adjustment. We will also issue a press release and a spokesman will be made available to handle press enquiries. We will brief the LegCo Panel on Administration of Justice and Legal Services in November 2023 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

22. Having considered the recommendations of the Judicial Committee, the Chief Executive in Council decided in May 2008 that a new mechanism, separate from that of the civil service, should be put in place to determine judicial remuneration. Specifically, the Chief Executive in Council agreed that judicial remuneration should be determined by the Executive after considering the recommendations of the independent Judicial Committee. The new mechanism comprises a Benchmark Study to be conducted on a regular basis and an annual review. The Judicial Committee has decided that the Benchmark Study should in principle be conducted every five years to check whether judicial pay is kept broadly in line with the movements of legal sector earning over time, with its frequency subject to periodic review. The last Benchmark Study was conducted in 2020. The next Benchmark Study is tentatively scheduled for 2025, subject to review nearer the time.

23. 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

24. Enquiries on this brief should be addressed to Ms Eva Yam, Deputy Director of Administration, at 2810 3008 or Mr Steve Tse, Assistant Director of Administration, at 2810 3946.

Administration Wing
Chief Secretary for Administration's Office
10 October 2023

STANDING COMMITTEE ON JUDICIAL SALARIES AND CONDITIONS OF SERVICE

Report on Judicial Remuneration Review 2023

July 2023

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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) 2023. The Review was conducted in accordance with the mechanism for the determination of judicial remuneration as approved by the Chief Executive-in-Council in 2008.

The Judicial Committee

1.2 The Judicial Committee is an independent advisory body appointed by the Chief Executive to advise and make recommendations on matters concerning the salary and conditions of service of Judges and Judicial Officers (JJOs)¹. It was first established in December 1987 in recognition of the independent status of the Judiciary and the need for the pay and conditions of service of JJOs to be dealt with separately from those of the civil service.

1.3 In May 2008, the Chief Executive-in-Council accepted all the major recommendations of the Judicial Committee's Report on the Study on the Appropriate Institutional Structure, Mechanism and Methodology for the Determination of Judicial Remuneration in Hong

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.

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 accordance with which the courts exercise judicial power independently, free from any interference, as enshrined in the Basic Law³. 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, safeguards the rights and freedoms of the individual, 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.

³ Article 2 of the Basic Law states that the National People's Congress authorizes the Hong Kong Administrative Region (HKSAR) to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication, in accordance with the provisions of the Basic Law. Article 85 further states that the courts of HKSAR shall exercise judicial power independently, free from any interference. Members of the judiciary shall be immune from legal action in the performance of their judicial functions.

Judicial Remuneration Review 2023

1.6 The Judicial Committee has invited the Judiciary and the Government to provide relevant data, information and views pertaining to the basket of factors⁴ for the purpose of carrying out the Review in 2023. The Judicial Committee then exercised its best judgement in analysing and balancing all relevant considerations in formulating its recommendation. Having considered all relevant factors, the Judicial Committee **recommends** that judicial salaries be increased by 3.62% in 2023-24.

⁴ The basket of factors that 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 made⁵.

⁵ For details, please see paragraph 3.26 of the 2005 Report.

2.3 The Judicial Committee further decided in 2009 that a benchmark study should in principle be conducted once every five years, with its frequency subject to review. Since then⁶, the Judicial Committee has completed three benchmark studies (in 2010, 2015 and 2020). The next benchmark study is tentatively scheduled for 2025, and the Judicial Committee will in due course consider the timing to commence the study.

Annual Review

2.4 The Judicial Committee has agreed that an annual review on judicial remuneration should be conducted, including in the year in which a benchmark study is carried out. In reviewing judicial remuneration, the Judicial Committee will take a holistic view on a basket of factors (set out in paragraphs 2.5 and 2.6). During the year in which a benchmark study is carried out, the findings of the benchmark study will also be taken into account in the annual review on judicial remuneration. The Judicial Committee will then consider whether and, if so, how judicial pay should be adjusted in the context of the annual review.

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;

⁶ A pilot study was conducted by the Judicial Committee in 2005 to ascertain the feasibility of such benchmark studies.

- (d) the benefits and allowances enjoyed by JJOs;
- (e) prohibition against return to private practice in Hong Kong;
- (f) public sector pay as a reference;
- (g) private sector pay levels and trends;
- (h) cost of living adjustments; and
- (i) the general economic situation in Hong Kong.

2.6 In addition to the above, the Judicial Committee has agreed to take into account the following factors which are 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 The Judicial Committee continues to take forward the annual review of judicial remuneration by adopting a balanced approach, instead of a mechanical one, under which the basket of 12 factors and the views of the Judiciary are analysed and holistically considered before the Judicial Committee puts forth its recommendation to the Chief Executive.

Responsibility and Working Conditions

3.2 Having reviewed the latest information on the responsibility and working conditions of JJOs provided by the Judiciary, the Judicial Committee has not observed any major change in this aspect. 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 (in **Appendix D**) have remained the same as before.

Workload and Complexity of Judicial Work

3.3 The workload of the Judiciary, as represented by the caseload, has remained largely stable in recent years except for a slight

drop in caseload in 2020 due to the COVID-19 epidemic⁷. In 2022, the overall caseload resumed to the level comparable to that in 2019 (i.e. before the onset of the epidemic) and that in 2021. The caseloads in different levels of court between 2019 and 2022 are shown in **Appendix E**.

3.4 The Judicial Committee notes that pressures arising from judicial work have been felt by the Judiciary particularly at the levels of the High Court and the District Court. The Judicial Committee notices that at the level of the High Court, the number of non-refoulement claims filed at the Appeal Committee of the CFA, the Court of Appeal of the High Court (CA) and the Court of First Instance of the High Court (CFI) sustained at a high level in 2022. The Judicial Committee also notes that National Security cases are mainly handled at the High Court level, each usually involving three judges. National Security cases invariably entail longer trials, for which substantial judicial resources have to be expended, thereby impacting the listing of all other criminal cases. In respect of the District Court, the Judicial Committee notes that its major challenge in recent years has been to cope with cases arising from the violence events and riots in 2019 in relation to the proposed extradition amendment bill. Many of such cases involve a large number of defendants and lengthy trials⁸. These two types of cases have been posing mounting challenges to the Judiciary in terms of judicial resources, manpower support, competing use of court premises and the provision of suitable media and security arrangements.

3.5 The Judiciary has pointed out that caseload figures alone do not reflect fully the workload of JJOs and must not be looked at exclusively. They do not, for instance, reflect the complexity of the cases and the time required for the trials, which directly affects the

⁷ The Judiciary adjusted the schedule for its court business and implemented social distancing measures in 2020 in response to the COVID-19 epidemic. In 2020, the number of cases filed at various levels of court fell by varying magnitudes, from about 20% to about 25%, when compared with that in 2019.

⁸ According to the Judiciary, many of such cases entail hearings over a considerably long period of over 20 or 30 days as they invariably involve a large number of defendants (over 10 and up to 50 in some cases), legal representatives, media and public viewers, and evidence in the form of voluminous video recordings. Operational experience from these cases concluded at the District Court indicates that the processing time from first appearance at the Magistrates' Court to conclusion at the District Court would invariably range from 300 to 400 days or even longer, representing about 30% longer than other criminal cases on average.

judicial resources required and the amount of time and efforts required of JJOs to deal with the cases. The Judiciary opines that it is very difficult to devise meaningful quantifiable indicators 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 levels of the High Court and the District Court⁹.

3.6 The Judiciary further states that increased complexity in cases not only means longer hearing times but also considerably more time required for JJOs to conduct pre-hearing preparation and to write judgments. In recent years, there was a considerable increase in the number of lengthy trials, particularly for criminal trials involving complicated cases and multiple defendants. The high ratio of unrepresented litigants in civil cases also creates great challenges because JJOs are not properly assisted in such cases when dealing with complex legal issues. Hearings (and their preparation) have to take longer as a result.

3.7 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 Judicial Committee takes note that the Judiciary has been taking pro-active measures to address issues arising from the tight manpower situation and will keep in view its manpower position to ensure provision of quality services to court users and members of the public. The Judicial Committee notes that the Judiciary has been exploring how court cases can be better managed and how the caseload and case progress can be monitored more closely such that timely adjustments to resource deployment can be made.

⁹ As advised by the Judiciary, for the High Court, there have been many complex trials involving complicated commercial crime cases, long and complicated criminal trials and important public law cases. A sharp increase in non-refoulement claim cases also has a significant impact on the already heavy workload. As for the District Court, its continued challenge in recent years has been to cope with the cases arising from the violence events and riots in 2019 in relation to the proposed extradition amendment bill.

Recruitment and Retention

3.8 As at 31 March 2023, against the total establishment of 222 judicial posts, 166 were substantively filled. This establishment and strength position represents a net increase of six in the strength of JJOs as compared with the position as at 31 March 2022. This change in strength is the result of judicial appointments to vacancies, offset by retirement and other types of wastage. The establishment and strength of JJOs as at 31 March 2023 are set out in **Table 1** below –

Table 1: Establishment and strength of JJOs

| Level of court | As at 31.3.2023* | | Net change in strength over 31.3.2022 |
|---|-------------------------------|------------------|---------------------------------------|
| | Establishment | Strength | |
| CFA ¹⁰ | 4 (4) | 4 (4) | 0 |
| High Court ¹¹ | 64 (64) | 41 (42) | -1 |
| District Court ¹² | 53 (53) | 44 (42) | +2 |
| Magistrates' Courts and Specialised Tribunals/Court ¹² | 101 (101) | 77 (72) | +5 |
| Total | 222 (222)¹³ | 166 (160) | +6 |

* Figures in brackets denote position as at 31.3.2022.

3.9 On recruitment of JJOs, the Judiciary has advised that a total of 18 open recruitment exercises for filling judicial vacancies at various levels of court have been conducted since 2011. Up to 31 March 2023, a total of 148 judicial appointments have been made as a result of these open recruitment exercises, and of the appointments, five District Judges and ten Permanent Magistrates were appointed in 2022-23.

¹⁰ 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).

¹¹ 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 (and Principal Magistrates/Magistrates) who are appointed as Temporary Senior Deputy Registrars or Temporary Deputy Registrars under the cross-posting policy.

¹² For judicial offices in the Masters' Office of the District Court and at the Labour Tribunal, Small Claims Tribunal and 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 meet operational needs.

¹³ The establishment of JJOs was reduced to 211 on 1 April 2023 following the deletion of 11 posts of Special Magistrate on the same date.

3.10 The Judicial Committee notes that at the CFI level, the Judiciary has completed six open recruitment exercises since 2012. A total of 29 CFI Judges have been appointed as a result. A new round of recruitment exercise will be launched later this year.

3.11 For District Judges, the Judicial Committee notes that four rounds of open recruitment exercises have been completed since 2011. A total of 42 judicial appointments were made as a result, including five in 2022-23. A new round of recruitment exercise is now in progress. For Permanent Magistrates, five rounds of open recruitment exercises have been conducted since 2011. Taking into account the latest round of the recruitment exercise which was launched in August 2021 and is still in progress, a total of 65 Permanent Magistrates have been appointed as a result, including ten in 2022-23.

3.12 The Judicial Committee is fully aware of the persistent recruitment difficulties at the CFI level, and has previously recommended a spectrum of measures to address such difficulties. These measures include tracking the earnings levels of legal practitioners regularly through benchmark studies and proposing adjustment to judicial pay after considering the findings of the benchmark studies¹⁴, and reviewing the conditions of service for JJOs at the invitation of the

¹⁴ The Judicial Committee completed three benchmark studies (the 2010, 2015 and 2020 Benchmark Studies) under the approved mechanism for JRR. The findings of the studies and the recommendations of the Judicial Committee are set out as follows –

- (a) in the context of the JRR 2011, on the basis of the findings of the 2010 Benchmark Study, the Judicial Committee noted that the differentials between judicial pay and legal sector earnings over the years did not show a clear or consistent trend. The Judicial Committee considered that there were no strong arguments for proposing adjustments to judicial pay based on the survey findings;
- (b) in the context of the JRR 2016, the Judicial Committee noted from the findings of the 2015 Benchmark Study that there was a clear trend of a widening differential between judicial pay and earnings of legal practitioners. In particular, for the rank of CFI Judge, the findings indicated that judicial pay had been consistently lower than legal sector earnings over the years, and the pay lag had further widened since 2010. Taking into account the then persistent recruitment difficulties and the widening pay differential, the Judicial Committee recommended an upward pay adjustment of 6% for Judges at the CFI level and above; and 4% for JJOs below the CFI level. The pay adjustment took effect on 1 September 2016; and
- (c) in the context of the JRR 2021, the Judicial Committee observed that, from the findings of the 2020 Benchmark Study, while judicial pay for the rank of CFI Judge was still lower than its legal sector earnings, the pay lag narrowed. For the ranks of District Judge and Magistrate, judicial pay was found to be ahead of their legal sector earnings. After holistically considering the survey findings and all relevant factors, the Judicial Committee recommended that judicial salaries be frozen in 2021-22.

Government¹⁵. Besides, the Judicial Committee notes that the Judiciary has been working closely with the legal profession to promote judicial career through measures such as career seminars in order to provide legal practitioners with information on the different types of judicial work, the career pathways and remuneration packages, with a view to promoting the opportunities and attracting more potential candidates to join the bench¹⁶. The Judicial Committee hopes that the above measures could help the Judiciary recruit talents to fill judicial vacancies at various levels of court, especially at the CFI level.

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

3.14 Meanwhile, the Judiciary has continued to engage temporary judicial resources where appropriate to help relieve workload, including appointing internal or external deputies¹⁷ and appointing temporary or acting JJOs. The number of internal or external deputy JJOs serving at a particular point in time is, by its nature, a snapshot only, reflecting the particular situation subsisting at that time. With this caveat, the Judicial Committee notes that the number of external deputy JJOs decreased from a total of 45 as at 31 March 2022 to 40 as at 31 March 2023, while the number of internal deputy JJOs increased from a total of 35 to 43 over the same period.

¹⁵ In 2016, the Judicial Committee considered and supported a package of proposals to enhance five aspects 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) at the invitation of the Government. The enhancement proposals were implemented on 1 April 2017.

¹⁶ This is an initiative in response to a Judicial Committee's suggestion arising from the 2020 Benchmark Study.

¹⁷ Internal deputies refer to JJOs appointed to act in higher positions or cross-posted to sit in other judicial posts in the Judiciary. External deputies refer to members of the legal profession from outside the Judiciary and retired JJOs who are appointed to take up judicial posts.

Retirement

3.15 Retirement is the main source of wastage among JJOs. The anticipated retirement in each of the coming three years ranges from nine to 13, amounting to 5.4% to 7.8% of the current strength.

3.16 With the Judicial Officers (Extension of Retirement Age) (Amendment) Ordinance coming into effect on 6 December 2019 and over 80% of eligible JJOs opting for the new retirement age arrangements by the deadline in December 2021, the retirement ages of Judges at the CFI level and above as well as Judicial Officers at the magisterial level have generally been extended for five years to 70 and 65 respectively¹⁸. For District Judges, while their relevant retirement age is maintained at 65, there is allowance for discretionary extension of term of office beyond this age¹⁹. The new statutory normal retirement ages for JJOs now stand at 65 or 70, depending on the level of court. Beyond that, extension of service may be approved up to the age of 70, 75 or 76, depending on the level of court and subject to consideration on a case by case basis. The Judiciary believes 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.

3.17 The Judicial Committee trusts that the Judiciary will keep in view the challenges to judicial manpower that may be posed by the retirement situation, and that it will continue to attract new blood and to groom and retain existing talents.

¹⁸ Before the enactment of the Ordinance, the term of office for CFA Judges may be extended by no more than two periods of three years; and for Judicial Officers at the magisterial level, a period of not exceeding five years in aggregate. Such allowances for discretionary extension of term of office continue to apply after the enactment of the Ordinance.

¹⁹ After the enactment of the Ordinance, the discretionary extension of term of office has been extended to District Judges with an extension period of not exceeding five years in aggregate.

Benefits and Allowances

3.18 JJOs are entitled to a range of benefits and allowances in addition to salary. The package of benefits and allowances is an integral part of judicial remuneration, important as it is, that has helped attract capable legal practitioners to join the bench.

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

- (a) The rates of Judiciary Quarters Allowance, Non-accountable Cash Allowance²⁰ and the ceiling rates of Medical Insurance Allowance²¹, Local Education Allowance²² and Judicial Dress Allowance²³ were revised in accordance with the established adjustment mechanisms;
- (b) The rates of Leave Passage Allowance²⁴ and Home Financing Allowance²⁰ 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

²⁰ Judiciary Quarters Allowance, Non-accountable Cash Allowance and Home Financing Allowance are various types of housing allowance offered to eligible JJOs.

²¹ Medical Insurance Allowance is an allowance to reimburse eligible JJOs and their eligible dependants the premium of their medical insurance plans.

²² 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.

²³ 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.

²⁴ 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.

the Court of Appeal of the High Court (JAs)²⁵ in 2022-23 were revised with reference to the judicial service pay adjustment for 2022-23.

3.20 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.

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

Unique Features of the Judicial Service

3.22 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 (including permanent and non-permanent judges) of the CFA are prohibited by statute²⁶ from practising as barristers or solicitors in Hong Kong either while holding office or at any time after ceasing for any reason to hold office. On the other hand, judges enjoy security of tenure²⁷ 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 2023.

²⁵ Both EDA(R)s are payable in recognition of the higher responsibilities taken up by JAs. One is for JAs sitting as NPs of the CFA, while the other is for JAs appointed as Vice Presidents of the CA.

²⁶ Section 13 of the Hong Kong Court of Final Appeal Ordinance (Cap. 484).

²⁷ Any removal from office is subject to detailed statutory procedures, and the removal of the most senior judges (i.e. the Chief Justice, Judges of the CFA and the Chief Judge of the High Court) has to be endorsed by the Legislative Council and reported to the Standing Committee of the National People's Congress for the record.

Overseas Remuneration Arrangements

3.23 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 2022-23. 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.

General Economic Situation and Cost of Living Adjustments in Hong Kong

3.24 The Government has provided detailed information on Hong Kong's economic and fiscal indicators for the Judicial Committee's reference. The Hong Kong economy improved visibly in the first quarter of 2023, led by the strong recovery of inbound tourism and domestic demand. The real Gross Domestic Product (GDP) resumed 2.7% year-on-year growth in the first quarter of 2023, having contracted by 3.5% in 2022. Looking forward, inbound tourism and domestic demand will remain the major drivers of economic growth this year, while exports of goods will continue to face significant challenges. The economy is projected to grow by 3.5% to 5.5% in 2023 according to the forecast announced in May 2023. 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 |
|------|-------------|---------------------------|
| 2022 | Q1 | -3.9% |
| | Q2 | -1.2% |
| | Q3 | -4.6% |
| | Q4 | -4.1% |
| 2023 | Q1 | +2.7% |

(Source: Figures published by the Census and Statistics Department on 12 May 2023)

3.25 The labour market improved in the past year or so. The seasonally adjusted unemployment rate fell successively from a high of 5.4% in February – April 2022 to 3.1% in the first quarter of 2023, and declined further to 3.0% in February – April 2023. Looking ahead, the labour market should improve further alongside the ongoing economic recovery.

3.26 On changes in the cost of living, headline consumer price inflation, as measured by the year-on-year rate of change of the Composite Consumer Price Index (CCPI)²⁸, inched up from 1.8% in the fourth quarter of 2022 to 1.9% in the first quarter of 2023. For the 12-month period ending March 2023, headline consumer price inflation averaged 2.0%²⁹. Looking ahead, overall inflation should stay moderate in the near term. While domestic cost pressures may increase alongside the economic recovery, external price pressures will likely see some moderation though remaining notable. According to the forecast announced in May 2023, the headline and underlying consumer price inflation rates for 2023 are forecast to be 2.9% and 2.5% respectively, as compared with 1.9% and 1.7% in 2022.

Budgetary Situation of the Government

3.27 According to the information provided by the Government, the consolidated deficit for 2022-23 is \$122.3 billion and the fiscal reserves stood at \$834.8 billion as at end-March 2023. For 2023-24, a deficit of \$92.7 billion and a deficit of \$25.9 billion are estimated for the Operating Account and Capital Account respectively. After proceeds from issuance of bonds and notes of \$65 billion and repayment of bonds and notes of \$0.8 billion, there is an estimated deficit of \$54.4 billion in the Consolidated Account, equivalent to 1.8% of the GDP.

²⁸ CCPI reflects the impact of consumer price change on the household sector as a whole.

²⁹ The headline consumer price inflation includes the effect of the Government's all relevant one-off relief measures while the underlying consumer price inflation excludes the effect of these measures. The underlying consumer price inflation for the 12-month period ending March 2023 averaged 1.8%.

3.28 The annual staff cost of the Judiciary in 2023-24 is estimated at about \$1.63 billion, which is roughly 0.26% of the Government's total operating expenditure of about \$629.5 billion in the 2023-24 Estimates.

Private Sector Pay Levels and Trends

3.29 The Judicial Committee notes that there was no comprehensive or representative pay trend survey on the legal sector, although there were small surveys conducted by individual recruitment agencies with limited coverage, which were of little relevance to the Judiciary. Moreover, it would be difficult to make any direct comparison between judicial pay and legal sector pay having regard to the uniqueness of judicial work. Such being the case, the Judicial Committee continues the arrangement for making reference to, among other factors in the basket, the gross Pay Trend Indicators (PTIs) from the annual Pay Trend Survey (PTS)³⁰ commissioned by the Pay Trend Survey Committee, which reflected the overall private sector pay trend, and captured, among others, cost of living, general prosperity and company performance, general changes in market rates, merit increase and in-scale increment in the private sector. As the gross PTIs already included merit increase 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.

³⁰ 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. –

- (a) lower salary band covering employees in the salary range below \$24,670 per month;
- (b) middle salary band covering employees in the salary range of \$24,670 to \$75,620 per month; and
- (c) upper salary band covering employees in the salary range of \$75,621 to \$154,690 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 \$95,865.

Cost of Increments for JJOs

3.30 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 at 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 respectively³¹. JJOs remunerated at JSPS 15 and above have no increment. The consolidated cost of increments (CCOI) as a percentage of total payroll cost for all JJOs is therefore much smaller than that for the civil service. The figures in the past five years, compiled based on information supplied by the Judiciary, are set out in **Table 3** below –

Table 3: CCOI for JJOs (2018-19 to 2022-23)

| Year | CCOI for JJOs |
|---------|---------------|
| 2018-19 | 0.16% |
| 2019-20 | 0.15% |
| 2020-21 | 0.29% |
| 2021-22 | 0.19% |
| 2022-23 | 0.32% |

3.31 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

3.32 According to the findings of the 2023 PTS, the gross PTI for the upper salary band was 3.91% for the 12-month period from 2 April 2022 to 1 April 2023.

³¹ 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.

3.33 In JRR 2019, the Judicial Committee agreed with the Judiciary's proposal that the approach of the refined methodology as approved by the Chief Executive-in-Council in June 2019 for calculating the payroll cost of increments (PCIs) for the civil service³² be adopted for deriving the net PTI for judicial service from 2019-20 onwards. In accordance with this approach, the average CCOI for all JJOs from 2009-10³³ to 2019-20 (0.29%) or the actual CCOI for all JJOs for the year (0.32%)³⁴, whichever is the lower, should be adopted for deriving the net PTI for judicial service for 2023-24. As the average CCOI from 2009-10 to 2019-20 (i.e. 0.29%) is lower than the actual CCOI for the year (i.e. 0.32%), the average CCOI from 2009-10 to 2019-20 is adopted in calculating the private sector pay trend for JRR purposes in 2023 (or the net PTI for judicial service for 2023-24) which is 3.62% (calculated by deducting the average CCOI from 2009-10 to 2019-20 (0.29%) from the gross PTI for the upper salary band (3.91%)).

3.34 The Judicial Committee has also made reference to other private sector pay indicators. In 2022, wages and earnings showed accelerated year-on-year increases, and those in the professional and business services sector also showed an accelerated growth.

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 present mechanism for determining judicial remuneration. As concluded in the 2005 Report, while some reference to public sector pay

³² In considering the 2019-20 civil service pay adjustment in June 2019, the Chief Executive-in-Council also decided to put a cap on the PCIs to be deducted from the gross PTIs. Specifically, from the 2019-20 civil service pay adjustment onwards, the average PCI from 1989-90 (i.e. the year when the PCIs deduction arrangement was first introduced) to 2019-20 for each salary band of the civil service, or the actual PCI for the particular salary band of the civil service for the year, whichever is the lower, will be adopted for deriving the net PTI for that salary band of the civil service ("the refined methodology").

³³ It is the year when the pay adjustment for JJOs was first determined under the new mechanism separate from that of the civil service.

³⁴ For the purpose of JRR 2023, the CCOI for JJOs for the year refers to the actual CCOI incurred in 2022-23 which is 0.32% as mentioned in paragraph 3.30.

was considered beneficial, mechanical 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 associations³⁵. Public sector pay is but 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 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) generally 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 circumstances³⁶. As the SSS focuses only on the starting salaries of civil service jobs at the entry level, only (a) and (b) may be relevant in the consideration of judicial remuneration.

Annual Civil Service Pay Adjustment

3.37 On the annual civil service pay adjustment in 2023-24, the Judicial Committee notes the decision of the Chief Executive-in-Council in respect of the annual civil service pay adjustment which was made in June 2023 that the pay for civil servants in the upper salary band and above should be increased by 2.87% with retrospective effect from

³⁵ For details, please see paragraph 3.14 of the 2005 Report.

³⁶ 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.

1 April 2023. The pay adjustment was approved by the Finance Committee of the Legislative Council on 7 July 2023.

Pay Level Survey

3.38 The Judicial Committee notes that the Standing Commission has embarked on the latest round of PLS at the invitation of the Government. 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 is tentatively scheduled for 2025, and the Judicial Committee will in due course consider the timing to commence the study.

The Judiciary's Position

3.39 The Judiciary seeks a pay increase of 3.62% (i.e. the relevant gross PTI at 3.91% less the average CCOI from 2009-10 to 2019-20 at 0.29%) for the annual adjustment for the judicial service in 2023-24. The Judiciary reiterates that as a matter of principle, there should be no reduction in judicial pay even if the pay is reduced for the civil service for any reasons.

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 2023-24 annual adjustment. Taking into account the basket of factors and having balanced all considerations, the Judicial Committee **recommends** that judicial salaries be increased by 3.62% with retrospective effect from 1 April 2023.

4.2 The Judicial Committee will, under the approved mechanism, continue to adopt a balanced approach taking into consideration the basket of factors and the views of the Judiciary in taking forward future annual reviews. Factors prevailing at that time and other relevant developments will be considered holistically in each review. 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 the Judicial Committee with comprehensive and valuable information. Their contribution is most useful and has facilitated our deliberation on the basket of factors under the approved mechanism for the determination of judicial remuneration.

4.4 We would also like to record our appreciation to our former Chairman, Professor Wong Yuk-shan, GBS, JP, for his exemplary leadership in steering the Judicial Committee and for his contributions as a Member and then as the Chairman during his eight-year tenure from January 2015 to December 2022. We would also like to express our gratitude to our former Member Mr Chan Tze-ching, BBS, JP who retired in December 2022 after six years of dedicated service.

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 2023

Chairman

Dr Clement Chen Cheng-jen, GBS, JP

Members

Ms Daisy Ho Chiu-fung, BBS

Mr Stephen Hung Wan-shun, MH

Mr Jat Sew-tong, SBS, SC, JP

Ms Miranda Kwok Pui-fong, JP

Professor Paul Lam Kwan-sing, SBS, JP

Ms Cecilia Lee Sau-wai, JP

Judicial Service Pay Scale
(with effect from 1 April 2022)

| Judicial Service Pay Scale (JSPS) | | Rank |
|-----------------------------------|-----------|---|
| Point | \$ | |
| 19 | 397,100 | ✧ Chief Justice, Court of Final Appeal |
| 18 | 386,000 | ✧ Permanent Judge, Court of Final Appeal ✧ Chief Judge of the High Court |
| 17 | 348,050 | ✧ Justice of Appeal of the Court of Appeal of the High Court |
| 16 | 331,750 | ✧ Judge of the Court of First Instance of the High Court |
| 15 | 269,000 | ✧ Registrar, High Court ✧ Chief Judge of the District Court |
| 14 | (260,250) | ✧ Senior Deputy Registrar, High Court ✧ Principal Family Court Judge, District Court |
| | (252,700) | |
| | 245,300 | |
| 13 | (243,700) | ✧ Deputy Registrar, High Court ✧ Judge of the District Court ✧ Chief Magistrate |
| | (236,700) | |
| | 229,850 | |
| 12 | (209,850) | ✧ Assistant Registrar, High Court ✧ Member, Lands Tribunal |
| | (203,800) | |
| | 197,750 | |
| 11 | (193,100) | ✧ Registrar, District Court ✧ Principal Adjudicator, Small Claims Tribunal ✧ Principal Magistrate ✧ Principal Presiding Officer, Labour Tribunal |
| | (187,750) | |
| | 182,150 | |
| 10 | (176,750) | ✧ Adjudicator, Small Claims Tribunal ✧ Coroner ✧ Deputy Registrar, District Court ✧ Presiding Officer, Labour Tribunal |
| | (171,550) | |
| | 166,600 | |
| 10 | (176,750) | ✧ Magistrate |
| | (171,550) | |
| | 166,600 | |
| 9 | 154,705 | |
| 8 | 151,085 | |
| 7 | 147,480 | |

| Judicial Service Pay Scale (JSPS) | | Rank |
|--------------------------------------|---------|-----------------------|
| Point | \$ | |
| 6 | 113,265 | ✧ Special Magistrate* |
| 5 | 108,010 | |
| 4 | 102,995 | |
| 3 | 100,595 | |
| 2 | 98,210 | |
| 1 | 95,865 | |

Note: Figures in brackets (for JSPS 10 – 14) represent increments. An 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.

* The rank of Special Magistrate is being phased out and will be deleted from the list of judicial ranks in due course.

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.

* The rank of Special Magistrate is being phased out and will be deleted from the list of judicial ranks in due course.

Caseloads in Different Levels of Court between 2019 and 2022

| No. of Cases Level of Court | 2019 | 2020 | 2021 | 2022 |
|--|----------------|----------------|----------------|----------------|
| Court of Final Appeal | | | | |
| – application for leave to appeal | 493 | 342 | 599 | 728 |
| – appeals | 16 | 13 | 16 | 18 |
| – miscellaneous proceedings | 0 | 1 | 0 | 0 |
| Total | 509 | 356 | 615 | 746 |
| Court of Appeal of the High Court | | | | |
| – criminal appeals | 376 | 241 | 316 | 249 |
| – civil appeals | 597 | 653 | 599 | 501 |
| – miscellaneous proceedings | 321 | 263 | 602 | 556 |
| Total | 1 294 | 1 157 | 1 517 | 1 306 |
| Court of First Instance of the High Court | | | | |
| – criminal jurisdiction | | | | |
| • criminal cases | 424 | 366 | 256 | 223 |
| • confidential miscellaneous proceedings | 340 | 440 | 545 | 883 |
| • miscellaneous proceedings (criminal) | 684 | 772 | 724 | 637 |
| • appeals from Magistrates' Courts | 603 | 428 | 608 | 460 |
| – civil jurisdiction | 19 050 | 17 984 | 15 080 | 14 412 |
| Sub-total | 21 101 | 19 990 | 17 213 | 16 615 |
| – probate cases | 21 005 | 16 521 | 21 978 | 23 006 |
| Total | 42 106 | 36 511 | 39 191 | 39 621 |
| Competition Tribunal | 1 | 3 | 2 | 3 |
| District Court | | | | |
| – criminal cases | 961 | 1 119 | 1 171 | 1 193 |
| – civil cases | 25 942 | 24 153 | 22 827 | 21 377 |
| – family cases | 22 386 | 17 585 | 18 132 | 16 802 |
| Total | 49 289 | 42 857 | 42 130 | 39 372 |
| Magistrates' Courts | 332 746 | 317 104 | 372 456 | 383 512 |
| Lands Tribunal | 5 721 | 4 432 | 4 358 | 3 998 |
| Labour Tribunal | 4 323 | 3 533 | 4 278 | 3 378 |
| Small Claims Tribunal | 55 879 | 39 821 | 45 649 | 41 514 |

| No. of Cases Level of Court | 2019 | 2020 | 2021 | 2022 |
|--|----------------|----------------|----------------|----------------|
| Obscene Articles Tribunal* | 21 163 | 14 131 | 38 | 34 |
| Coroner's Court | 117 | 98 | 154 | 131 |
| Grand total | 513 148 | 460 003 | 510 388 | 513 615 |

* The indicator is the number of articles referred to the Obscene Articles Tribunal for determination and classification. In 2019, 21 081 articles involving three cases were referred to the Tribunal for determination; and in 2020, 14 024 articles involving two cases for determination. In 2021 and 2022, 38 articles and 34 articles respectively were referred to the Tribunal for classification only. No application for determination was received in 2021 and 2022.

