

Executive Summary

Introduction

1. The Standing Committee on Judicial Salaries and Conditions of Service (Judicial Committee) has been asked by the Chief Executive to undertake a study on the appropriate institutional structure, mechanism and methodology for the determination of judicial remuneration, and to make recommendations on whether the Judiciary's proposal based on the Mason Report should be accepted.

2. We conducted the study in two phases. The first phase focussed on commenting on the Mason Report. The second phase sought to formulate a framework on the institutional structure, mechanism and methodology for the determination of judicial remuneration. To facilitate our study, we commissioned two consultancy studies by Professor Albert H Y Chen and the Hay Group respectively. In making our recommendations, we have taken into consideration the views and recommendations in the Mason Report and the reports of the two consultancy studies. We have also considered the implications of the recent judgment of the Court of Final Appeal on the civil service pay reductions. Furthermore, we have noted the views of the Legislative Council Panel on Administration of Justice and Legal Services on the Mason Report and the budgetary arrangements for the Judiciary.

Judiciary's Proposal as depicted in the Mason Report

Judicial Independence

3. We fundamentally premise our report on the pivotal importance of judicial independence. The essential conditions of judicial independence include security of tenure, financial security and institutional independence. We see the need for Hong Kong to ensure that we have a system for determining judicial salaries which makes the strongest possible statement of our community's commitment to ensuring the independence of the Judiciary.

4. We have concluded that while theoretically it is doubtful that judicial independence will be perceived to be threatened by a reduction in

judicial salaries which is general and non-discriminatory and is widely perceived in the community as being justified, it has at no time been easy to find a process which is not in any way politicised and that judges are not under any actual or perceived political or community pressure. We therefore **recommend** that judicial pay be frozen at the present level for the time being and be reviewed when the new institutional structure, mechanism and methodology are put in place and new benchmarks established within that structure.

Recommendations in the Mason Report

5. We have carefully considered the recommendations of the Mason Report as listed at **Annex A** and agree with the thrust of Recommendations Two to Nine.

6. As regards Recommendation One that legislation should be enacted prohibiting absolutely any reduction in judicial remuneration, we believe that the Hong Kong Special Administrative Region should seek to promote the principle of not disadvantaging judges in relation to their salaries while in office. However, since pay reduction cannot be implemented without legislation, and the recommendations which we are making will go a long way to confirm the principle of judicial independence, we do not consider it essential to adopt Recommendation One at this point in time. Should there be general support from the community to this recommendation, then it might be appropriate for the Administration to consider whether or not to introduce legislation in the future.

Institutional Structure, Mechanism and Methodology for the Determination of Judicial Remuneration

Institutional Structure

Independent Body

7. We **recommend** that there should be an independent body having a fair and transparent methodology to advise on the determination and adjustment of judicial remuneration. The body should comprise seven non-official members (including two practising lawyers) whose terms of appointment should be staggered. The body should, in due course, be established by statute. The existing Judicial Committee could continue to

operate, with expanded membership and more detailed terms of reference, and be transformed into a statutory body through introducing legislation in due course.

Standing Appropriation

8. An underlying feature of judicial independence is fiscal autonomy. We **recommend** that the Administration should, in due course, consider introducing standing appropriation for judicial pay along the lines of similar arrangements in some other jurisdictions.

9. We further **recommend** that the authority to create judicial posts at directorate level should be vested in the Chief Justice or the Judiciary Administrator subject to rules and limits to be drawn up. The Chief Executive will retain the authority to make judicial appointments on the recommendations of the Judicial Officers Recommendation Commission.

Mechanism

Comparison with the Civil Service

10. Having regard to new developments in the past few years, we are of the opinion that the traditional link between judicial and civil service pay systems is no longer desirable and practical. The opportunity should be taken to de-link or unpeg judicial remuneration from the civil service pay.

Comparison with the Private Sector

11. Whilst it is possible to compare judicial pay with the pay of the private sector legal practitioners, it would be important to understand the differences between the two sectors in their respective responsibilities, working conditions and pay systems before making comparisons.

Balanced Approach

12. We therefore **recommend** a balanced approach taking into account a basket of factors including but not limited to private sector and public sector remuneration. The basket of factors include –

- (a) private sector pay levels and trends;

- (b) the responsibility, working conditions and workload of judges vis-à-vis those of lawyers in private practice;
- (c) the benefits and allowances enjoyed by judges and judicial officers;
- (d) the retirement age of judges and judicial officers and their retirement benefits;
- (e) recruitment and retention in the Judiciary;
- (f) public sector pay as a reference;
- (g) cost of living adjustments;
- (h) the general economic situation in Hong Kong; and
- (i) prohibition against return to private practice in Hong Kong.

13. We further **recommend** that a mechanism be introduced for the collection and analysis of the earnings of private legal practitioners for reference. In this connection, benchmark studies should be conducted every three to five years to check whether the judicial pay is kept broadly in line with the movements of private sector earnings over time. During the intervening years, annual reviews should be conducted to see whether and how the judicial pay should be adjusted.

Methodology

14. We **recommend** that the Judicial Committee, or the independent statutory body to be established in the future, may consider collecting information on private sector earnings in consultation with the Judiciary and the legal profession. Possible methods include conducting surveys and compiling relevant information on the earnings of senior counsel and applicants for judicial appointments.

Way Forward

15. We will proceed with conducting a pilot benchmark survey in the last quarter of 2005.