

Note on Judicial Remuneration Review 2009

Introduction

The Judicial Remuneration Review 2009 is the first review conducted in accordance with the new mechanism and methodology for the determination of judicial remuneration. Under the new mechanism, the Standing Committee on Judicial Salaries and Conditions of Service Standing (Judicial Committee) has adopted a balanced approach taking into account a basket of factors. In formulating its recommendations, the Committee has given serious consideration to all relevant factors. The following paragraphs elaborate on the consideration in respect of –

- (a) general economic situation in Hong Kong;
- (b) overseas judicial remuneration arrangements; and
- (c) public sector pay as a reference.

General Economic Situation in Hong Kong

2. In the course of its deliberation, the Judicial Committee has the benefit of detailed information about the general economic situation provided by the Administration. The Committee has come to the view that the prevailing economic environment necessitates that a prudent approach be adopted in pay adjustment¹.

3. The Committee has also revisited the implications of reduction of judicial salaries on the principles of judicial independence. Theoretically it is doubtful that judicial independence will be threatened by a reduction in judicial salaries (which is general and non-discriminatory and is widely perceived in the community as being justified due to exceptional circumstances). However, 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 pressure². Unless with dire economic difficulties that might warrant contemplation of any reduction in judicial pay, we should be mindful not to put Judges and Judicial Officers under any actual or perceived political or community pressure.

¹ Paragraph 4.3 of the Report on Judicial Remuneration Review 2009.

² Paragraph 4.2 of the Report on Judicial Remuneration Review 2009.

4. Taking into account the prevailing economic situation on the one hand, and the inherent risks associated with a decision to reduce judges' salaries in Hong Kong, the Judicial Committee has struck a fine balance in recommending that judicial salaries should remain unchanged in 2009-10.

Overseas Judicial Remuneration Arrangements

5. As noted in the 2009 Report, the Committee's research on major overseas jurisdictions reveals emerging signs of more conservative action in adjusting judicial pay in some jurisdictions in the light of the economic downturn³. These measures include postponing, staging or moderating the proposed increase in judicial salary. It is noteworthy that none of these jurisdictions propose any reduction in judicial salaries in 2008 and 2009. Indeed, as stated in our 2005 Report, some major overseas jurisdictions have constitutional or legislative protection against reduction in judicial remuneration as a measure to safeguard judicial independence.

Public Sector Pay as a Reference

6. In the context of the 2009 review, the Judicial Committee has made reference to public sector pay, and noted that civil servants in the middle and lower salary bands (88% of the entire civil service) will have a pay freeze in 2009-10, while civil servants in the upper salary band and above (12%) will have a 5.38% pay reduction, subject to the relevant legislation being approved and implemented.

7. The Judicial Committee has also reaffirmed its conclusion in the 2005 Report that, while some reference to public sector pay is beneficial, pegging is not appropriate. De-linking judicial remuneration from that of the civil service will not only strengthen the perception of judicial independence, but also provide the necessary safeguard and reassurance to Judges and Judicial Officers. The conclusion has also taken into account new developments that render it no longer appropriate for a direct comparison between the Judiciary and the civil service. For instance, Judges and Judicial Officers now largely come from the private sector. Public sector pay is hence only one of the factors under the balanced approach for determining judicial remuneration⁴. In this regard, the following points are pertinent –

³ Paragraph 3.20 of the Report on Judicial Remuneration Review 2009.

⁴ Paragraphs 3.13 to 3.14 of the Report on Judicial Remuneration Review 2009.

- (a) As in all common law jurisdictions, Judges and Judicial Officers are not civil servants in Hong Kong. They perform unique functions and have no equivalent ranks in the civil service. The fact that civil service pay and judicial pay were pegged in the past is a historical practice that is no longer appropriate under the new mechanism.
- (b) Judicial service is distinct from the civil service, as appointees to judicial offices are usually experienced legal practitioners at the top of their profession and career, whereas civil service recruits normally enter at the bottom rung of their career ladder. Experienced legal practitioners of high calibre are always in strong demand, and their earnings in the private sector are invariably higher than judicial pay. Coupled with the unique feature of the Judiciary to prohibit judges at District Court level and above from returning to private practice, it is inappropriate to have direct comparison between the Judiciary and the civil service.
- (c) Judicial remuneration should be determined having regard to their unique functions and responsibilities, including the adjudication of cases against the Government. Hence, an independent mechanism is needed for the determination of judicial pay. Indeed, the appointment of the Judicial Committee and the implementation of a separate mechanism for determining judicial remuneration highlight the difference between the judicial service and the civil service. Under the new mechanism, the Judicial Committee has to adopt a balanced approach having regard to a basket of factors including but not limited to public sector pay.

8. It is noted that since the submission of our Report there may be possible tightening up of post-service employment of senior civil servants in the light of the recommendations in the Report of the Committee on Review of Post-service Outside Work for Directorate Civil Servants. The recommendations are under consideration by the Administration. Whilst noting this development, the Judicial Committee is of the view that there will not be any direct bearing on the judicial remuneration in 2009.

Future Reviews

9. The 2009 Report sets out the Judicial Committee's findings and recommendations on the review of judicial remuneration in 2009. Looking ahead, the Committee will continue to adopt a balanced approach, taking into account the basket of factors and in the light of experience in 2009, in conducting future reviews on judicial remuneration⁵. The Committee believes that the experience in 2009, including how public sector pay was taken as a reference in the context of 2009, will shed light on future exercises.

10. In conducting the 2009 review, the Judicial Committee has reviewed precedents before the implementation of the new mechanism for the determination of judicial remuneration. The Committee noted that, when civil service pay was increased in 2007 and 2008, judicial pay was frozen until civil service pay caught up with and exceeded judicial pay, in which case, judicial pay was increased to the extent of the excess.

11. The above arrangement has worked smoothly and has been well-received by the Judiciary and other stakeholders. The Committee considers that this is a good arrangement for reference for future reviews. Looking ahead, the Judicial Committee will take the previous arrangement adopted in 2007 and 2008 into consideration, together with the basket of factors and the experience in 2009 in conducting future reviews on judicial remuneration.

August 2009

⁵ Paragraphs 4.5 and 4.6 of the Report on Judicial Remuneration Review 2009.