

# **STANDING COMMITTEE ON JUDICIAL SALARIES AND CONDITIONS OF SERVICE**

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Report on Judicial Remuneration Review 2011

June 2011

司法人員薪俸及服務條件常務委員會  
Standing Committee on Judicial Salaries and Conditions of Service

30 June 2011

The Honourable Donald Tsang, GBM  
The Chief Executive  
Hong Kong Special Administrative Region  
People's Republic of China  
Government House  
Hong Kong

Dear Sir,

On behalf of the Standing Committee on Judicial Salaries and Conditions of Service, I have the honour to submit our report containing our findings and recommendation in the Judicial Remuneration Review 2011, which is conducted in accordance with the mechanism and methodology for the determination of judicial remuneration approved by the Chief Executive-in-Council in May 2008.

Yours sincerely,



(Bernard Chan)  
Chairman  
Standing Committee  
on Judicial Salaries and Conditions of Service

# **STANDING COMMITTEE ON JUDICIAL SALARIES AND CONDITIONS OF SERVICE**

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# Contents

<b>Chapter</b>		<b>Page</b>
1	Introduction	1
2	Mechanism for Judicial Remuneration Review	4
3	Judicial Remuneration Review 2011 – Annual Review	7
4	Conclusion and Recommendation	19

## **Acknowledgements**

## **Appendix**

- A Terms of Reference of the Standing Committee on Judicial Salaries and Conditions of Service
- B Membership of the Standing Committee on Judicial Salaries and Conditions of Service
- C Judicial Service Pay Scale
- D Levels of Court and Judicial Ranks
- E Caseloads in Different Levels of Court between 2008 and 2010

# Chapter 1

## Introduction

1.1 This Report sets out the findings and recommendation of the Standing Committee on Judicial Salaries and Conditions of Service (the Judicial Committee) in the Judicial Remuneration Review 2011. 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)<sup>1</sup>. 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 Kong in 2005<sup>2</sup> (the 2005 Report). With the approval of the Chief Executive, the Judicial Committee's terms of reference and membership

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<sup>1</sup> Judges refer to officers in the grades of Chief Justice, Court of Final Appeal; Judge, Court of Final Appeal; Judge of the High Court; and Judge of the District Court. Judicial Officers refer to officers in the grades of Registrar, High Court; Registrar, District Court; Member, Lands Tribunal; Magistrate; Presiding Officer, Labour Tribunal; Adjudicator, Small Claims Tribunal; Coroner; and Special Magistrate.

<sup>2</sup> The 2005 Report can be found in the website [http://www.jsscs.gov.hk/en/publications/reports\\_jscs.htm](http://www.jsscs.gov.hk/en/publications/reports_jscs.htm).

were expanded. Its 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. It enables the court to adjudicate cases in a fair and impartial manner by ascertaining the facts objectively and applying the law properly. In discharging its functions, the Committee has to ensure that judicial remuneration is 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 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 rendering advice to the Chief Executive on matters concerning judicial remuneration.

## **Judicial Remuneration Review 2011**

1.6 In conducting the Review in 2011, the Committee invited the Judiciary and the Administration to provide relevant data and views pertaining to the basket of factors. The 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 should be increased by 4.22% in 2011-12.

## **Chapter 2**

### **Mechanism for Judicial Remuneration Review**

#### **Mechanism**

2.1 The mechanism for Judicial Remuneration Review, 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 The Judicial Committee reaffirms its view that a benchmark study on the level of earnings of legal practitioners should be conducted on a regular basis, in order to ascertain their earning levels, monitor such trends and review judicial salaries where appropriate.

2.3 The Judicial Committee conducted a pilot study on earnings of legal practitioners in Hong Kong in the last quarter of 2005. Through the pilot study, the Committee confirmed the feasibility of such benchmark study and noted the then relativities between judicial salaries and earnings of legal practitioners. The Committee has decided that a benchmark study should in principle be conducted every five years, with its frequency subject to periodic review.

2.4 As the last benchmark study (though a pilot) was conducted five years ago in 2005, the Judicial Committee considered it appropriate to embark on a benchmark study in the latter part of 2010. In September 2010, the Committee commissioned a Consultant (the Hay Group Limited) to conduct the 2010 Benchmark Study on Earnings of Legal Practitioners in Hong Kong (the 2010 Study).

2.5 The Committee reaffirmed its recommendation in the 2005 Report 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 made<sup>3</sup>.

2.6 Private sector pay levels and trends are amongst the basket of factors<sup>4</sup> for the Judicial Committee to deliberate under the established mechanism in the annual Judicial Remuneration Review (JRR). Given the objectives of the 2010 Study, the Committee decided that its findings as set out in the Consultant's Survey Report, accessible at the Joint Secretariat's website at <http://www.jsscs.gov.hk>, would be considered alongside other relevant factors in the JRR 2011.

### ***Annual Review***

2.7 The Committee has agreed that an annual review on judicial remuneration should be conducted, including in the year when a benchmark study is carried out. This will enable the Committee to take a holistic view on the year-on-year changes in relation to the basket of factors, in conjunction with the findings of the regular benchmark study. During the review, the Committee will consider whether and, if so, how judicial pay should be adjusted.

## **Balanced Approach**

2.8 Consistent with its recommendations in the 2005 Report as approved by the Chief Executive-in-Council, the Committee adopts a

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<sup>3</sup> The 2005 Report, paragraph 3.26.

<sup>4</sup> The basket of factors which the Judicial Committee takes into account in reviewing judicial remuneration are set out in paragraphs 2.8 and 2.9.

balanced approach in reviewing judicial remuneration by taking into account a basket of factors. The basket of factors include 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;
- (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.

2.9 In addition to the above, the Committee also agrees to take into account the following factors suggested by the Administration –

- (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**

### **Judicial Remuneration Review 2011 – Annual Review**

#### **The Annual Review**

3.1 This is the third year for the Judicial Committee to conduct the annual review of judicial salary in accordance with the mechanism for JRR as set out in Chapter 2. In conducting the Review, instead of applying a mechanical formula, the Committee continued to adopt a balanced approach taking into account the basket of factors and the views of the Judiciary.

#### **Responsibility, Working Conditions and Workload**

3.2 On the basis of the latest information provided by the Judiciary, the Committee did not observe any major change in the responsibility and working conditions of JJOs. Members of the Judiciary continued 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 remained the same as set out in **Appendix D**.

3.3 As regards workload, the total caseloads of the Judiciary as a whole remained steady in the past few years. In 2010, there was a noticeable increase in the number of confidential miscellaneous proceedings in the criminal jurisdiction of the Court of First Instance (CFI) of the High Court, and a significant increase in the number of cases at the Obscene Articles Tribunal. On the other hand, there was a considerable reduction in the number of cases in the civil jurisdiction of the CFI of the High Court and the Labour Tribunal. Details are shown in **Appendix E**.

3.4 The Committee recognised that caseload figures alone did not fully reflect workload, and the complexity of cases was also an important element. The Judicial Committee maintains the view that the nature of judicial work is unique. The responsibility and working conditions of JJOs are different from those of legal practitioners, rendering any direct comparison between the two inappropriate.

## Recruitment and Retention

3.5 With the completion of the last round of open recruitment exercises of JJOs for various levels of court in 2010-11, a total of 36 judicial appointments had been made by February 2011, comprising 11 CFI Judges, 12 District Judges and 13 Permanent Magistrates. Specifically, two newly appointed CFI Judges reported duty in 2010-11. The Committee noted that the successful recruitment of a substantial number of JJOs in the past two years had enhanced the substantive judicial manpower position in 2010-11. Meanwhile, eight JJOs had retired during the period. The establishment and strength of JJOs as at 31 March 2011 are in **Table 1** below –

**Table 1: Establishment and strength of JJOs**

Levels of Court	As at 31.3.2011		Net change in strength over 31.3.2010
	Establishment	Strength	
Court of Final Appeal <sup>5</sup>	4	4 (4)*	0
High Court <sup>6</sup>	53	43 (45)	-2
District Court <sup>7</sup>	39	34 (36)	-2
Magistrates' Courts and Specialised Tribunals/Court <sup>7</sup>	93	74 (76)	-2
<b>Total</b>	<b>189</b>	<b>155 (161)</b>	<b>-6</b>

\* Figures in brackets denote position as at 31.3.2010.

<sup>5</sup> The figures exclude one Permanent Judge post created for Non-Permanent Judge (NPJ) of the Court of Final Appeal (CFA). In practice, an NPJ is invited to sit in the CFA as required in accordance with the Hong Kong CFA Ordinance, Cap. 484.

<sup>6</sup> For Senior Deputy Registrar and Deputy Registrar vacancies in the Masters' Office of the High Court, the functions are now carried out by some District Judges and some Magistrates who are appointed as temporary Deputy Registrars.

<sup>7</sup> For judicial offices in the Masters' Office of the District Court and at the Labour Tribunal, Small Claims Tribunal and the Coroner's Court, the functions are 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 serve operational needs.

3.6 According to the Judiciary and as suggested by the above statistics, it has not encountered any undue recruitment and retention problem in recent years. Arising from the retirement and elevation of a number of JJOs at different levels of court, the Judiciary plans to launch another round of open recruitment exercises in 2011-12. Meanwhile, the Judiciary has continued to engage temporary judicial resources to help relieve workload, including internal/external deputy and temporary or acting JJOs. In the past year, the number of external deputy/temporary JJOs increased from a total of 20 as at 31 March 2010 to 27 as at 31 March 2011.

## **Retirement**

3.7 The statutory normal retirement age for JJOs is 60 or 65, depending on the level of court. Beyond that, extension of service may be approved up to the age of 70 or 71, depending on the level of court and subject to consideration on a case-by-case basis. 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.

3.8 Retirement is the main source of wastage among JJOs. The anticipated retirement will be 12 (or 7.7% of current strength) in 2011-12, going down to 4 (or 2.6% of current strength) in 2012-13, and increasing to 14 (or 9% of current strength) in 2013-14. As mentioned in paragraph 3.6 above, arising from the retirement of JJOs, among others, the Judiciary plans to launch recruitment exercises in 2011-12. One of the challenges for the Judiciary is to continue to attract new blood and to groom and retain existing talent.

## **Benefits and Allowances**

3.9 JJOs are entitled to a range of benefits and allowances in addition to salary. The scope of their benefits and allowances is largely

similar to that available in the civil service, with some adaptations having regard to the unique characteristics of the judicial service.

3.10 The Committee noted that there was no change to the package of fringe benefits and allowances for JJOs in the past year, except that the rates of Leave Passage Allowance<sup>8</sup>, Home Financing Allowance and Non-accountable Cash Allowance<sup>9</sup> were revised following similar revisions in the civil service. The Judiciary did not propose any changes to the benefits and allowances for JJOs in the past year.

3.11 The existing package of benefits is an integral part of judicial remuneration, and is an important component that has helped attract capable legal practitioners to join the bench. The Committee will continue to keep the situation under review.

## **Unique Features of the Judicial Service**

### ***Prohibition against Return to Private Practice***

3.12 The Judiciary is unique in many aspects. A prominent feature is the prohibition against return to private practice. Judges at the District Court level and above must give an undertaking not to practise in future as barristers or solicitors in Hong Kong without the permission of the Chief Executive. The Chief Justice and Judges of the Court of Final Appeal 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<sup>10</sup> and high esteem, which may be seen as attractions for legal

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<sup>8</sup> Leave Passage Allowance is an allowance to reimburse eligible officers (and their eligible family members, where applicable) their travel-related expenses, e.g. air fares, accommodation and car hire and related expenses.

<sup>9</sup> Both Home Financing Allowance and Non-accountable Cash Allowance are two different types of housing allowance offered to JJOs.

<sup>10</sup> 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 Court of Final Appeal 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.

practitioners joining the bench. The Committee noted that these were all long established arrangements and nothing was changed during the annual salary review in 2011.

### ***Cost of Increments for JJOs***

3.13 JJOs are remunerated on the JSPS as set out in **Appendix C**. Save for the Special Magistrate and Magistrate ranks, which are on a pay scale of JSPS 1-6 and JSPS 7-10 respectively, pay progression in the other (and majority) levels of JJOs is limited. Only a small number of incremental creeps are granted to JJOs at JSPS 10-14 upon satisfactory completion of two or five years of service. JJOs serving on JSPS 15 and above have no increment. The consolidated cost of increments (CCOI) as a percentage of total payroll cost for all JJOs in the past three years based on information from the Judiciary is set out in **Table 2** below –

**Table 2 : Consolidated Cost of Increments for JJOs (2008-09 to 2010-11)**

<b>Year</b>	<b>CCOI for JJOs</b>
2008-09	0.24%
2009-10	0.34%
2010-11	0.16%

3.14 The Judicial Committee considered that adopting a CCOI for all JJOs would avoid over-complicating the system, and would also be similar to the established practice adopted for the calculation of cost of increments for the civil service. Moreover, it would help maintain the established internal relativities of judicial pay at various ranks. The Judiciary also agreed to this arrangement.

### **Overseas Remuneration Arrangements**

3.15 The Committee continued to keep track of major development, if any, on judicial remuneration in six overseas common law jurisdictions, namely, Australia, Canada, New Zealand, Singapore, the United Kingdom and the United States. There was no change to the judicial remuneration systems in these jurisdictions in the past year.

The jurisdictions took different, but generally prudent, actions in their latest annual salary reviews for judges. Some jurisdictions continued the pay freeze and deferral of pay adjustment for judges, while some had a pay rise at an increased rate as compared to the previous year. A key consideration behind their respective action appeared to be the prevailing state of economy of the respective jurisdiction.

## **General Economic Situation and Cost of Living Adjustments in Hong Kong**

3.16 The Administration has provided detailed information on Hong Kong's economic and fiscal indicators for the Committee's reference. The overall growth rate for Hong Kong's Gross Domestic Product (GDP) in real terms in 2010 was 7.0%. The Hong Kong economy sustained a strong momentum in the first quarter of 2011. Having achieved a full-fledged upturn in 2010, our GDP leapt by 7.2% in real terms over a year earlier. Although the external environment has held up well so far this year, uncertainties remain abound. The economy is poised for a real growth of 5-6% for 2011 as a whole. The year-on-year changes in GDP in real terms are shown in **Table 3** below –

**Table 3 : Changes in Gross Domestic Product in real terms**

<b>Year</b>	<b>Quarter</b>	<b>GDP year-on-year % change</b>
2010	Q1	+8.0%
	Q2	+6.7%
	Q3	+6.9%
	Q4	+6.4%
2011	Q1	+7.2%*

Source: Figures published by the Census and Statistics Department.

\* Preliminary figure.

3.17 Hong Kong's labour market further improved in 2011, benefiting substantially from the sustained vibrant economic growth since early 2010. The seasonally adjusted unemployment rate dropped to 3.5% in March to May 2011, as compared to 4.6% in the same period in 2010.



3.18 On changes in cost of living, the underlying<sup>11</sup> Composite Consumer Price Index<sup>12</sup> in May 2011 was 5.1%. With domestic and external factors both adding to local inflation in the near term, the forecast rate of the underlying consumer price inflation in 2011 as a whole is 5.5%.

## **Budgetary Situation of the Government**

3.19 Based on the information from the Administration, the Government had a consolidated surplus of \$75.1 billion in 2010-11 and the fiscal reserves stood at \$595.4 billion as at end March 2011. For 2011-12, a deficit of \$8.8 billion and a surplus of \$0.3 billion are estimated for the Operating Account and Capital Account respectively, which will result in a deficit of \$8.5 billion in the Consolidated Account, equivalent to 0.5% of our GDP.

3.20 The annual staff cost of the Judiciary in 2011-12 is estimated at about \$831 million, which is roughly 0.27% of the Government's total operating expenditure of \$305 billion in the 2011-12 Estimates.

## **Private Sector Pay Levels and Trends**

### ***2010 Study***

3.21 As mentioned in paragraph 2.6, the Judicial Committee took into account the findings of the 2010 Study in considering whether and how adjustments to judicial pay should be made in the context of the JRR 2011. The Committee considered that there would be strong arguments for proposing adjustments to judicial pay if the survey findings demonstrated a clear trend of widening differentials between

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<sup>11</sup> Underlying rates net out the effects of all one-off relief measures implemented by the Government.

<sup>12</sup> Composite Consumer Price Index reflects the impact of consumer price change on the household sector as a whole.

judicial pay and earnings of legal practitioners, or if the Judiciary encountered recruitment and retention difficulties, or if there were obvious changes in perception and attitude from survey respondents that remuneration had become an important factor in considering judicial appointment.

3.22 The Committee noted from the Consultant's Survey Report that no clear trend on the differentials between judicial pay and legal sector earnings could be established, with some widening, some narrowing in different ranges. The interviews with the survey respondents had reaffirmed that remuneration was not an important factor in considering judicial appointment. Meanwhile, the Judicial Committee noted that the Judiciary had successfully completed the last round of open recruitment exercises of JJOs by 2010-11, and had not encountered any undue recruitment and retention problem in recent years.

3.23 In the light of the above, the Committee considered that there were no strong arguments for proposing adjustments to judicial pay based on the findings of the 2010 Study.

3.24 Having completed the 2010 Study, the Committee reaffirmed its view that a benchmark study should in principle be conducted every five years to monitor the changes in the pay differentials between the levels of judicial pay and those of legal practitioners. Nevertheless, the Committee maintained the view that the findings of such benchmark study should not be translated into precise figures for determining the levels of judicial salaries due to the uniqueness of judicial work, rendering any direct comparison between the pay levels of JJOs and legal practitioners inappropriate. Under the new mechanism, apart from the findings of the benchmark study, the Judicial Committee also has to consider private sector pay trend, which is among the basket of factors.

### *Private Sector Pay Trend*

3.25 The Committee noted 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, direct comparison between judicial pay and legal sector pay is inappropriate having regard to the uniqueness of judicial work. Such being the case, the Committee continued to make reference to the gross Pay Trend Indicators (PTIs) from the annual Pay Trend Survey (PTS)<sup>13</sup>, which reflected the overall private sector pay trend, and captured, among others, the general market changes, cost of living, merit and in-scale increment in the private sector. However, taking into account the uniqueness of the Judiciary, direct comparison using the gross PTIs would not be appropriate. As mentioned in paragraph 3.13 above, some JJOs have incremental creeps at certain intervals. The gross PTIs already included merit and in-scale increment in the private sector. In order to have a fair and suitable comparison with the private sector, the CCOI for JJOs should be subtracted from the relevant gross PTI to reflect the private sector pay trend suitable for comparison in the context of the JRR.

3.26 The gross PTI of employees in the highest salary range as reflected from the PTS was -4.79% in 2009, +2.2% in 2010 and +7.90% in 2011. The private sector pay trends for JRR purpose (i.e. calculated

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<sup>13</sup> The annual Pay Trend Survey (PTS) measures the year-on-year average pay movements of full-time employees in the private sector over a twelve-month period from 2 April of the previous year to 1 April of the current year. The Pay Trend Indicators (PTIs) derived from the PTS are divided into three bands, reflecting the average pay movements of private sector employees in three salary ranges, i.e. –

- (i) Lower Band covering employees in the salary range below \$15,875 per month;
- (ii) Middle Band covering employees in the salary range of \$15,875 to \$48,670 per month; and
- (iii) Upper Band covering employees in the salary range of \$48,671 to \$96,885 per month (the range was \$48,401 to \$95,360 per month in the 2010 PTS, and \$48,401 to \$97,545 per month in the 2009 PTS).

In the absence of a comprehensive or representative pay trend survey on the legal sector, the PTI for the Upper Band in the PTS is considered as a suitable reference for comparison with judicial salaries, which start at JSPS 1, currently at \$59,495 in dollar terms.

by subtracting the CCOI for JJOs from the gross PTI) in 2009 to 2011 are set out in **Table 4** below –

**Table 4 : Private sector pay trends for JRR purpose from 2009 to 2011**

Year	Gross PTI for highest salary range (A)	CCOI for JJOs (B)	Private Sector Pay Trend for JRR Purpose (A) – (B) = (C)
2009	-4.79%	+0.24%	-5.03%
2010	+2.20%	+0.34%	+1.86%
2011	+7.90%	+0.16%	+7.74%

3.27 As judicial salary remained unchanged in 2009 and 2010 as recommended by the Committee, i.e. it has not been adjusted since 2008 in line with movements in the private sector pay trend of -5.03% and +1.86% in the past two years, it would be appropriate for the Committee to take into account the cumulative effect of the private sector pay trends in 2009, 2010 and 2011 in succession. Assuming private sector pay was 100 in 2008, the cumulative effect of the private sector pay trend for JRR purpose in 2009, 2010 and 2011 would mean that private sector pay has increased to 104.22<sup>14</sup>, i.e. exceeding the 2008 pay by +4.22%.

3.28 The Committee also made reference to other private sector pay indicators. Private sector remuneration generally went up in 2010, as the market picked up, sustaining the uptrend evident since late 2009.

## **Public Sector Pay as a Reference**

3.29 Historically, there was an informal linkage between judicial salaries and senior civil service salaries before the implementation of the new mechanism for determining judicial remuneration. As concluded in the 2005 Report, while some reference to public sector pay was beneficial, 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 had also

<sup>14</sup>  $100 \times (100 - 5.03)\% \times (100 + 1.86)\% \times (100 + 7.74)\% = 104.22$

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 collective bargaining process on annual pay adjustment which the Administration has established with the civil service unions and staff associations<sup>15</sup>. Public sector pay is hence one of the factors under the balanced approach for determining judicial remuneration.

3.30 The Judicial Committee believed that the experience in 2009 and 2010, including how public sector pay was taken as a reference, would shed light on future exercises. Moreover, the Committee considers that the arrangement in 2007 and 2008 would be a good arrangement for reference in future reviews on judicial remuneration.

3.31 In the context of the 2011 annual review, the Committee has made reference to the following –

- (a) The pay for civil servants in the Upper Band and above was reduced by 5.38% in 2009-10 and increased by 1.6% in 2010-11. During the same period, judicial salaries remained unchanged following the Chief Executive-in-Council's acceptance of the Judicial Committee's recommendations in the JRRs 2009 and 2010; and
- (b) In June 2011, the Chief Executive-in-Council decided that the pay for civil servants in the Upper Band and above should be increased by 7.24% with retrospective effect from 1 April 2011, subject to the approval from the Finance Committee of the Legislative Council. With this adjustment, the pay for civil servants in the Upper Band and above should have been restored to and exceeded the level before the pay reduction in 2009.

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<sup>15</sup> The 2005 Report, paragraph 3.14.

## **The Judiciary's Position**

3.32 The Judiciary considered that any percentages of adjustment accumulated since 2009 as indicated from the gross PTIs less the CCOI for JJOs that were not applied to the judicial service should be taken into account in subsequent judicial pay adjustment exercises. Taking into account the cumulative effect of the gross PTIs less the CCOI for JJOs in 2009, 2010 and 2011, the Judiciary sought a pay increase of 4.23%<sup>16</sup> for the judicial service in 2011-12. The Judiciary reiterated its position that, in any case, there should not be any reduction in judicial pay as a matter of principle.

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<sup>16</sup> The Judiciary applied the private sector pay trend for JRR purpose to each of the interim years and rounded up the result each year, instead of applying the private sector pay trend for JRR purpose three years in succession without any break in the interim years. The difference from applying the private sector pay trend for JRR purpose three years in succession was 0.01%.

## Chapter 4

### Conclusion and Recommendation

4.1 The Committee noted that the information pertaining to the Judiciary had remained more or less unchanged. With the successful completion of the last round of open recruitment exercises in 2010-11, the substantive manpower position at various levels of court had improved, indicating that the Judiciary had not encountered any undue recruitment and retention problem at the present level of remuneration.

4.2 The Committee noted that there was no systemic change to the judicial remuneration systems in all the jurisdictions to which it had made reference. Different jurisdictions tended to adopt different approaches in their annual reviews of judicial salaries, having regard to, among others, their prevailing state of economy.

4.3 In Hong Kong, the economy achieved a full-fledged upturn in 2010, and sustained a strong momentum in the first quarter of 2011. However, uncertainties remained abound in the external environment. The forecast real growth in GDP for 2011 as a whole is 5-6%.

4.4 As regards private sector pay trend, by subtracting the annual CCOI for JJOs from the relevant gross PTIs in 2009, 2010 and 2011 to reflect the private sector pay trend suitable for comparison in the JRR context, the Committee noted that the cumulative effect of three years in succession was that private sector pay had exceeded its level prior to 2009 by 4.22%.

4.5 As regards public sector pay, subject to the implementation of the adjustment in 2011-12 (i.e. a pay increase of 7.24%), together with the pay increase of 1.60% for the civil service Upper Band and above in 2010-11, civil service pay for the Upper Band and above should have

been restored to and exceeded its level before the pay reduction of 5.38% in 2009-10.

4.6 The Judiciary indicated its position as set out in paragraph 3.32.

4.7 Taking into account the basket of factors and having balanced all considerations, the Judicial Committee **recommends** that judicial salaries should be increased by 4.22% in 2011-12.

4.8 For future reviews, the Judicial Committee would continue to adopt a balanced approach taking into account the basket of factors. Among others, we would closely monitor the private sector pay trends as reflected in the gross PTIs, the changes in the cost of increments for JJOs, and other pay indicators in surveys conducted by other agencies. Looking ahead, the Judicial Committee would also take into account the experience in the past JRRs conducted under the approved mechanism.



## **Acknowledgements**

We would like to express our sincere gratitude to both the Administration and the Judiciary for providing us with comprehensive and valuable information. Their contribution is most useful in facilitating our deliberation on the basket of factors under the approved mechanism for the determination of judicial remuneration. Our appreciation also goes to the Secretary General and the Joint Secretariat for their assistance in this review.

We would also like to record our thanks to all parties who have contributed to the conduct of the 2010 Benchmark Study, including the Bar Association, the Law Society and individual barrister/solicitor respondents and participating organisations of the survey.

Last but not least, we would like to record our appreciation of Mr Christopher Cheng Wai-chee, GBS, JP, for his outstanding leadership of the Committee in the past seven years.

## **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**

**Chairman**

Mr Bernard Chan, GBS, JP (since 1 January 2011)

**Members**

Professor Chan Yuk-shee, BBS, JP

Sir C K Chow

Mr Lester Garson Huang, JP

Ms Jacqueline Pamela Leong, SC

Mr Brian David Li Man-bun

Ms Ayesha Macpherson (since 1 January 2011)

**Judicial Service Pay Scale**  
(with effect from 1 April 2008)

Judicial Service Pay Scale (JSPS)		Rank
Point	\$	
19	241,750	✧ Chief Justice, Court of Final Appeal
18	235,100	✧ Permanent Judge, Court of Final Appeal ✧ Chief Judge of the High Court
17	211,900	✧ Justice of Appeal of the Court of Appeal of the High Court
16	202,000	✧ Judge of the Court of First Instance of the High Court
15	166,900	✧ Registrar, High Court ✧ Chief Judge of the District Court
14	(161,500)	✧ Senior Deputy Registrar, High Court ✧ Principal Family Court Judge, District Court
	(156,800)	
	152,200	
13	(151,200)	✧ Deputy Registrar, High Court ✧ Judge of the District Court ✧ Chief Magistrate
	(146,950)	
	142,700	
12	(130,300)	✧ Assistant Registrar, High Court ✧ Member, Lands Tribunal
	(126,500)	
	122,700	
11	(119,900)	✧ Registrar, District Court ✧ Principal Adjudicator, Small Claims Tribunal ✧ Principal Magistrate ✧ Principal Presiding Officer, Labour Tribunal
	(116,550)	
	113,100	
10	(109,700)	✧ Adjudicator, Small Claims Tribunal ✧ Coroner ✧ Deputy Registrar, District Court ✧ Presiding Officer, Labour Tribunal
	(106,400)	
	103,400	
10	(109,700)	✧ Magistrate
	(106,400)	
	103,400	
9	96,015	
8	93,770	
7	91,530	

Judicial Service Pay Scale (JSPS)		Rank
Point	\$	
6	70,295	◇ Special Magistrate
5	67,035	
4	63,925	
3	62,430	
2	60,955	
1	59,495	

Note: Figures in brackets (for JSPS 10 – 14) represent increments under which the 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.

### 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
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

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\* There is at present no post in the rank of Assistant Registrar, High Court.

## Caseloads in Different Levels of Court between 2008 and 2010

No. of Cases Level of Court	2008	2009	2010
<b>Court of Final Appeal</b>			
– application for leave to appeal	158	136	148
– appeals	42	33	31
– miscellaneous proceedings	2	2	2
<b>Court of Appeal of the High Court</b>			
– criminal appeals	439	486	498
– civil appeals	385	285	284
<b>Court of First Instance of the High Court</b>			
– criminal jurisdiction			
• criminal cases	311	425	444
• confidential miscellaneous proceedings	64	64	96
• appeals from Magistrates' Courts	1 125	1 043	980
– civil jurisdiction	21 514	26 564	16 581
– probate cases	13 339	14 676	14 350
<b>District Court</b>			
– criminal cases	1 250	1 449	1 404
– civil cases	28 527	27 329	23 260
– divorce jurisdiction	18 364	19 616	21 218
<b>Magistrates' Courts</b>	337 442	327 439	318 551
<b>Lands Tribunal</b>	5 228	5 046	5 310
<b>Labour Tribunal</b>	7 199	7 758	4 670
<b>Small Claims Tribunal</b>	59 246	59 797	57 837
<b>Obscene Articles Tribunal</b>	44 464	13 507	38 348
<b>Coroner's Court</b>	151	182	190
<b>Total</b>	<b>539 250</b>	<b>505 837</b>	<b>504 202</b>

