

STANDING COMMITTEE ON JUDICIAL SALARIES AND CONDITIONS OF SERVICE

Report on Judicial Remuneration Review 2020

July 2020

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Standing Committee on Judicial Salaries and Conditions of Service

31 July 2020

The Honourable Mrs Carrie Lam Cheng Yuet-ngor, GBM, GBS
The Chief Executive
Hong Kong Special Administrative Region
People's Republic of China

Dear Madam,

On behalf of the Standing Committee on Judicial Salaries and
Conditions of Service, I have the honour to submit a report containing our
findings and recommendations for the Judicial Remuneration Review 2020,
which has been 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 faithfully,



(Wong Yuk-shan)

Chairman

Standing Committee

on Judicial Salaries and Conditions of Service

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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) 2020. 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 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 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.jssc.gov.hk/en/publications/reports_jscs.htm.

Judicial Remuneration Review 2020

1.6 In conducting the Review in 2020, the Judicial Committee invited the Judiciary and the Government to provide relevant data and views pertaining to the basket of factors³. The Judicial Committee then exercised its best judgment 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 frozen in 2020-21.

³ The basket of factors which 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 made⁴.

⁴ 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 then, the Judicial Committee has completed two benchmark studies, in 2010 and 2015 respectively⁵. The Judicial Committee has decided that a benchmark study should commence this year. Preparatory work for the study is underway.

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. During the year in which a benchmark study is carried out, the Judicial Committee will take a holistic view on the year-on-year changes in relation to the basket of factors, in conjunction with the findings of the benchmark study. The Judicial Committee will then consider whether and, if so, how judicial pay should be adjusted.

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;
- (d) the benefits and allowances enjoyed by JJOs;

⁵ A pilot study was conducted by the Judicial Committee in 2005 to ascertain the feasibility of such benchmark studies.

- (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 This is the twelfth 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 Judicial Committee continues to adopt a balanced approach taking into account the basket of factors and the views of the Judiciary.

Responsibility and Working Conditions

3.2 On the basis of the latest information provided by the Judiciary, the Judicial Committee has not observed any major change in the responsibility and working conditions of JJOs. 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 have remained the same as before, and are set out in **Appendix D**.

Workload and Complexity of Judicial Work

3.3 As regards workload, there was a noticeable increase in the number of cases at different levels of court, including the CFA, the Court of Appeal (CA) of the High Court and the District Court. The Lands Tribunal and the Obscene Articles Tribunal also recorded a sharp increase of cases in 2019. The caseloads in different levels of court between 2017 and 2019 are shown in **Appendix E**.

3.4 In 2019, there was a sharp increase in the number of applications for leave to appeal that were filed with the CFA. This was mainly due to a rise of leave applications in relation to non-refoulement claim cases. For the CA of the High Court, the number of civil appeals was comparable with that of 2018 after a sharp increase in 2017. This was also mainly due to a rise of appeals in relation to non-refoulement claim cases. For the District Court, the substantial increase in the caseload of civil cases was mainly due to the increase in its civil jurisdictional limit from \$1 million to \$3 million which took effect in December 2018.

3.5 For the Lands Tribunal, there was a sharp increase of caseload in 2019. This was mainly due to an influx of appeal cases⁶. For the Obscene Articles Tribunal, the increase in caseload in 2019 was mainly due to three cases in which a total of 21 081 articles were brought up for determination. The Judicial Committee also notes that cases related to the recent social events have also started to be brought to the various levels of court.

3.6 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 quantifiable indicators in a meaningful way to reflect the increasing workload and heavier

⁶ Appeal cases refer to appeals brought under various Ordinances, namely, the Rating Ordinance (Cap. 116), the Government Rent (Assessment and Collection) Ordinance (Cap. 515) and the Housing Ordinance (Cap. 283).

responsibilities of JJOs. All the above are generally true for all levels of court but the pressure is particularly felt at the level of the High Court⁷.

3.7 Increased complexity in cases not only means longer hearing times but considerably more time is required for JJOs to conduct pre-hearing preparation and to write judgments. There are now many more lengthy trials. The high ratio of unrepresented litigants in civil cases also creates great challenges, where there are unrepresented litigants, JJOs are not properly assisted in dealing with complex legal issues. Hearings (and their preparation) take longer time as a result.

3.8 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 responsibility and working conditions of JJOs are different from those of legal practitioners, rendering any direct comparison between the two difficult. The Judicial Committee takes note that the Judiciary has been taking measures to address issues arising from the tight manpower situation and will continue to monitor any changes in workload and keep in view its manpower position to ensure provision of quality services to court users and members of the public.

Recruitment and Retention

3.9 As at 31 March 2020, against the total establishment of 218 judicial posts, 156 were substantively filled. Though the two figures are the same as those as at 31 March 2019, the strength figures at various levels of court as at 31 March 2020 are different from those as at 31 March 2019. The establishment and strength of JJOs as at 31 March 2020 are set out in **Table 1** below –

⁷ As advised by the Judiciary, for the High Court, there have been many complex trials involving complicated commercial crime, long and complicated criminal trials and important public law cases. A sharp increase in non-refoulement claim cases also has significant impact on the already heavy workload.

Table 1: Establishment and strength of JJOs

Level of court	As at 31.3.2020*		Net change in strength over 31.3.2019
	Establishment	Strength	
CFA ⁸	4 (4)	4 (4)	0
High Court ⁹	63 (63)	44 (42)	+2
District Court ¹⁰	50 (50)	45 (40)	+5
Magistrates' Courts and Specialised Tribunals/Court ¹⁰	101 (101)	63 (70)	-7
Total	218 (218)	156 (156)	0

* Figures in brackets denote position as at 31.3.2019.

3.10 On recruitment of JJOs, the Judiciary has advised that a total of 15 open recruitment exercises for filling judicial vacancies at various levels of court were conducted from 2011 to 2019. Up to 31 March 2020, a total of 119 judicial appointments were made as a result of these open recruitment exercises, of which three Judges of the Court of First Instance (CFI) of the High Court (CFI Judges), five Judges of the District Court (District Judges) and four Permanent Magistrates were appointed in 2019-20. Another ten Permanent Magistrates were subsequently appointed in April and June 2020 respectively.

3.11 The Judicial Committee notes that at the CFI level, the Judiciary has been conducting open recruitment exercises on a more regular basis in recent years, with five such exercises having been conducted since 2012. With the completion of the latest round of recruitment exercise launched in mid-2018, a total of 26 appointments have been made since 2012, including three in 2019-20. From the experience of these recruitment exercises, the Judicial Committee notes that there have been recruitment difficulties at this level of court. The

⁸ 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).

⁹ 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 who are appointed as temporary Deputy Registrars under the cross-posting policy.

¹⁰ 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 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.

Judicial Committee will keep in view the filling of available vacancies at the CFI level.

3.12 The Judicial Committee is fully aware of the persistent recruitment difficulties at the CFI level. In the context of JRR 2016, the Judicial Committee examined the findings of the 2015 Benchmark Study on the Earnings of Legal Practitioners in Hong Kong (2015 Benchmark Study) and noted a clear trend of a widening differential between judicial pay and earnings of legal practitioners. In particular, for CFI Judges, the findings clearly indicated that judicial pay had been consistently lower than legal sector earnings over the years, and the pay lag had further widened in recent years. Taking into account the then persistent recruitment difficulties and the widening pay differential, the Judicial Committee had recommended an upward pay adjustment of 6% for Judges at the CFI level and above following the 2015 Benchmark Study¹¹. In addition, in 2016, the Judicial Committee considered and supported a package of proposals to enhance certain aspects of the conditions of service for JJOs¹² which, it was hoped, could assist in addressing the difficulties. The pay adjustment and enhancement proposals were subsequently implemented in September 2016 and April 2017 respectively.

3.13 For District Judges, the Judicial Committee notes that three rounds of open recruitment exercises were completed in 2012, 2016 and 2019 respectively. A total of 36 District Judges were appointed as a result, including five in 2019-20. For Permanent Magistrates, four rounds of open recruitment exercises have been conducted since 2011. Taking into account the latest round of recruitment exercise launched in early 2019, a total of 45 Permanent Magistrates were appointed as a result, including four in 2019-20. This latest round of recruitment exercise was completed in June 2020 following the appointment of another ten Permanent Magistrates in April and June 2020.

¹¹ An upward pay adjustment of 4% for JJOs below the CFI level was also recommended following the 2015 Benchmark Study.

¹² They include housing benefits, medical and dental benefits, Local Education Allowance, Judicial Dress Allowance and transport services for leave travel.

3.14 The Judicial Committee also notes that the Judiciary is planning to conduct the next round of recruitment exercises for CFI Judges, District Judges and Permanent Magistrates in the later part of 2020-21.

3.15 Furthermore, with the support of the Government and the Judicial Committee, the legislative amendment exercise for the extension of retirement ages of JJOs has been completed. Following the passage of the Judicial Officers (Extension of Retirement Age) (Amendment) Bill 2019 by the Legislative Council (LegCo) on 27 November 2019, the new retirement age arrangements came into effect on 6 December 2019. The changes which have been introduced in relation to the extension of the retirement ages for JJOs are, simply put, as follows –

- (a) for Judges at the CFI level and above, the relevant retirement age has been extended from 65 to 70;
- (b) for District Judges, notwithstanding the relevant retirement age being maintained at 65, there would be allowance for discretionary extension of term of office beyond this age; and
- (c) for Members of the Lands Tribunal, Magistrates and other Judicial Officers at the magisterial level, the relevant retirement age has been extended from 60 to 65.

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.

3.16 The Judicial Committee will continue to keep in view the recruitment situation of JJOs, especially whether the measures mentioned in paragraphs 3.12 and 3.15 could help the Judiciary in recruiting and retaining talents.

3.17 Meanwhile, the Judiciary has continued to engage temporary judicial resources to help relieve workload, including appointing internal/external deputies and appointing temporary or acting JJOs. The number of external deputy JJOs has increased from a total of 33 as at 31 March 2019 to 41 as at 31 March 2020.

Retirement

3.18 As mentioned in paragraph 3.15, following the enactment of the Judicial Officers (Extension of Retirement Age) (Amendment) Ordinance (“Amendment Ordinance”) which came into effect on 6 December 2019, 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. 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.

3.19 Retirement is the main source of wastage among JJOs. The anticipated retirement in 2020-21 will be 10 (or 6.4% of current strength), dropping to 8 (or 5.1% of the current strength) in 2021-22 and then slightly rising to 9 (or 5.8% of the current strength) in 2022-23.

3.20 The Judicial Committee notes that under the Amendment Ordinance, certain serving JJOs may opt to transfer to the new retirement age arrangements within an option period of two years from 6 December 2019 to 5 December 2021, or before their reaching the original normal retirement age/expiry of extended term of office, whichever is the earliest.

3.21 The Judicial Committee trusts that the Judiciary will keep in view the implementation of the new retirement age arrangements as well as other challenges to the judicial manpower that may be posed by the retirement situation and continue to attract new blood and to groom and retain existing talents.

Benefits and Allowances

3.22 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.

3.23 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 Allowance¹³ and the ceiling rates of Medical Insurance Allowance¹⁴, Local Education Allowance¹⁵ and Judicial Dress Allowance¹⁶ were revised according to the established adjustment mechanisms;

¹³ Judiciary Quarters Allowance, Non-accountable Cash Allowance and Home Financing Allowance are various types of housing allowance offered to eligible JJOs.

¹⁴ Medical Insurance Allowance is an allowance to reimburse eligible JJOs and their eligible dependants the premium of their medical insurance plans.

¹⁵ 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.

¹⁶ 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.

- (b) The rates of Leave Passage Allowance¹⁷ and Home Financing Allowance¹³ 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 the CA of the High Court (JAs)¹⁸ in 2019-20 were revised concurrently with the judicial service pay adjustment for 2019-20.

3.24 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

3.25 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 (a permanent judge or a non-permanent judge) of the CFA are prohibited by statute¹⁹ 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 tenure²⁰ 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 2020.

¹⁷ 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.

¹⁸ Both EDA(R)s are payable in recognition of the higher responsibilities taken up by JAs. One is for JAs sitting as NPJs of the CFA, while the other is for JAs appointed as Vice Presidents of the Court of Appeal of the High Court.

¹⁹ Section 13 of the Hong Kong Court of Final Appeal Ordinance (Cap. 484).

²⁰ 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 LegCo and reported to the Standing Committee of the National People's Congress for the record.

Overseas Remuneration Arrangements

3.26 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 2019-20. 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

3.27 The Government has provided detailed information on Hong Kong's economic and fiscal indicators for the Judicial Committee's reference. The Gross Domestic Product (GDP) contracted sharply by a record of 8.9% year-on-year in real terms in the first quarter of 2020, as the spread of COVID-19 took a heavy toll on a wide range of economic activities in Hong Kong. Looking ahead, a still austere external environment will continue to exert pressure on Hong Kong's export performance in the near term. Meanwhile, local economic activities will take time to fully recover amid the lingering threat of the epidemic. Taking into account the high uncertainties surrounding the pandemic, the difficult global situation, but also the cushioning effects of the massive relief measures rolled out by the Government, the Hong Kong economy is projected to contract by 4% to 7% for 2020 as a whole, following a decline of 1.2% in 2019. If the epidemic can be well contained locally, Hong Kong's economic performance will hopefully improve gradually in the second half of the year. Yet uncertainties remain, depending on how the global epidemic will evolve. 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
2019	Q1	+0.7%
	Q2	+0.4%
	Q3	-2.8%
	Q4	-3.0%
2020	Q1	-8.9%

(Source: Figures published by the Census and Statistics Department on 15 May 2020)

3.28 The labour market showed sharp deterioration in the first quarter of 2020. The seasonally adjusted unemployment rate soared to 4.2% in the first quarter of 2020 from 3.3% in the preceding quarter. The figure in March – May 2020 further increased to 5.9%²¹, surpassing the peak of 5.5% in the aftermath of the global financial crisis to reach the highest in more than 15 years. The labour market will still face pressure in the near term, yet the pace of deterioration may decelerate.

3.29 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)²², went down to 2.0% in the first quarter of 2020, from 3.0% in the fourth quarter of 2019. For the 12-month period ending March 2020, headline inflation averaged at 2.8%²³. Looking ahead, inflationary pressure is likely to ease in the near term. Taking the latest developments into account, the forecast headline inflation for 2020 as a whole is 1.4%²⁴.

²¹ The seasonally adjusted unemployment rate in March – May 2019 was 2.8%.

²² CCPI reflects the impact of consumer price change on the household sector as a whole.

²³ The headline inflation is the inflation rate before netting out of all Government's one-off relief measures for the 12-month period ending March 2020. The underlying inflation is that after the netting out of all Government's one-off relief measures for the 12-month period ending March 2020 which averaged at 3.0%.

²⁴ The forecast underlying inflation for 2020 is 2.2%.

Budgetary Situation of the Government

3.30 According to the information provided by the Government, the consolidated deficit for 2019-20 is \$10.6 billion and the fiscal reserves stood at \$1,160.3 billion as at end-March 2020. For 2020-21, a deficit of \$183 billion and a surplus of \$24.4 billion are estimated for the Operating Account and Capital Account respectively. After the net proceeds from the issuance of bonds and notes of \$19.5 billion are taken into account, there is an estimated deficit of \$139.1 billion²⁵ in the Consolidated Account, equivalent to -4.8% of the GDP.

3.31 The annual staff cost of the Judiciary in 2020-21 is estimated at about \$1.59 billion, which is roughly 0.26% of the Government's total operating expenditure of about \$617.7 billion in the 2020-21 Estimates.

Private Sector Pay Levels and Trends

3.32 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

²⁵ The fiscal deficit of \$139.1 billion in 2020-21 quoted in the 2020-21 Budget announced on 26 February 2020 is estimated to increase substantially to around \$280 billion or even more, mainly as a result of lower tax and land revenues, the various relief measures under the Anti-epidemic Fund and those announced in the same Budget. The fiscal deficit in 2020-21 subsequently quoted by the Government in the 2020-21 civil service pay adjustment in June 2020 has been brought up to around \$280 billion. Please see paragraph 3.41.

the annual Pay Trend Survey (PTS)²⁶ conducted by the Pay Survey and Research Unit and commissioned by the Pay Trend Survey Committee, 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. As the gross PTIs already included merit 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.

Cost of Increments for JJOs

3.33 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 respectively²⁷. 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 –

²⁶ 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. –

- (i) lower salary band covering employees in the salary range below \$24,070 per month;
- (ii) middle salary band covering employees in the salary range of \$24,070 to \$73,775 per month; and
- (iii) upper salary band covering employees in the salary range of \$73,776 to \$147,235 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 \$93,525.

²⁷ 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.

Table 3: CCOI for JJOs (2015-16 to 2019-20)

Year	CCOI for JJOs
2015-16	0.43%
2016-17	0.08%
2017-18	0.56%
2018-19	0.16%
2019-20	0.15%

3.34 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

3.35 According to the findings of the 2020 PTS, the gross PTI for the upper salary band was 2.72% for the 12-month period from 2 April 2019 to 1 April 2020.

3.36 The Judicial Committee notes that the approach of the refined methodology as approved by the Chief Executive-in-Council in June 2019 for calculating the payroll costs of increments (PCIs) for the civil service²⁸ has been adopted for deriving the net PTI for judicial pay adjustment from 2019-20 onwards. Following the approach of the refined methodology, the average CCOI for all JJOs available from 2009-10²⁹ to 2019-20 (0.29%) or the actual CCOI for all JJOs for the year (0.15%)³⁰, whichever is the lower, should be adopted for deriving the net PTI for judicial pay for 2020-21. The private sector pay trend for JRR purpose in 2020 (i.e. net PTI for judicial pay adjustment for

²⁸ In June 2019, the Chief Executive-in-Council decided to put a cap on the PCIs to be deducted from the gross PTIs. From 2019-20 onwards, the average PCI for each salary band of the civil service from 1989-90 (i.e. the year when the PCIs deduction arrangement was first introduced) to 2019-20, or the actual PCI for the particular salary band of the civil service for the year, whichever is the lower, would be adopted for deriving the net PTI for that salary band of the civil service (“the refined methodology”).

²⁹ It is the year when the pay adjustment for JJOs was first determined under the new mechanism separate from that of the civil service.

³⁰ For the purpose of JRR 2020, the CCOI for JJOs for the year refers to the actual CCOI incurred in 2019-20 which is 0.15% as mentioned in paragraph 3.33.

2020-21, which is calculated by deducting the actual CCOI for JJOs for the year from the gross PTI for the upper salary band (i.e. 2.72%) is therefore 2.57%.

3.37 The Judicial Committee has also made reference to other private sector pay indicators. In 2019, private sector remuneration generally maintained an overall upward adjustment, but the pace of increase decelerated in the second half of the year.

Public Sector Pay as a Reference

3.38 Historically, there was an informal linkage between judicial salaries and senior civil service salaries before the implementation of the existing mechanism for determining judicial remuneration. As concluded in the 2005 Report, while some reference to public sector pay 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 associations³¹. Public sector pay is but one of the factors under the balanced approach for determining judicial remuneration.

3.39 Under the improved civil service pay adjustment mechanism endorsed in 2007, civil service pay is compared with the prevailing market situation on a regular basis 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) conducted every six years to ascertain whether civil service pay is broadly comparable with private sector pay; and (c) a

³¹ For details, please see paragraph 3.14 of the 2005 Report.

Starting Salaries Survey (SSS) which will be conducted as and when necessary in future in response to specific circumstances³². 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

3.40 On the annual civil service pay adjustment in 2020-21, 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 2020 that the pay for civil servants in all salary bands including the upper salary band and above should be frozen with effect from 1 April 2020.

3.41 The Judicial Committee further notes that although the net PTIs for the civil service and the headline CCPI are in the positive, Hong Kong's economy and the Government's fiscal position are hit hard by the social events and COVID-19. The real GDP contracted sharply by a record 8.9% year-on-year in the first quarter of 2020, and the fiscal deficit is estimated to increase substantially to around \$280 billion or even more in 2020-21³³. Having fully and thoroughly considered all relevant factors under the established annual civil service pay adjustment mechanism³⁴, the Chief Executive-in-Council made the decision to freeze civil service pay for 2020-21.

³² 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.

³³ The details of the general economic situation in Hong Kong and the budgetary situation of the Government are set out in paragraphs 3.27 and 3.30.

³⁴ The factors are the net PTIs, the state of Hong Kong's economy, the Government's fiscal position, changes in the cost of living, the pay claims of the staff side and civil service morale.

Pay Level Survey

3.42 The Judicial Committee notes that a PLS is meant to be conducted at six-yearly intervals for civil servants to assess whether civil service pay level is broadly comparable with that of the private sector at a particular reference point in time. The last PLS was conducted in 2013. The Judicial Committee notes that the Standing Commission has recently accepted the Government's invitation to conduct the next PLS and will consult relevant stakeholders including the civil service staff side in the course of the exercise. 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 Judicial Committee has decided that a benchmark study will commence this year, and preparatory work for the study is underway.

The Judiciary's Position

3.43 The Judiciary has taken note that the Chief Executive-in-Council decided that the pay for the civil service should be frozen in 2020-21 despite the positive net PTIs for the civil service and taking into account all relevant factors including the effect of the COVID-19 epidemic in recent months and the worsening of the general economic conditions.

3.44 The Judiciary indicates that it has no objection to freezing judicial salaries for 2020-21 despite the positive net PTI for judicial pay adjustment at 2.57%³⁵. The Judiciary states that this has no adverse implication for judicial independence and is to demonstrate to the community that the Judiciary understands and is prepared to share the

³⁵ Detailed calculation of the net PTI for judicial pay adjustment for 2020-21 is set out in paragraphs 3.35 and 3.36.

impact of the adverse economic situation. The Judiciary further considers that any percentages of adjustment accumulated since 2020-21 as indicated from the net PTI for judicial pay adjustment that were not applied to the judicial service should be taken into account in subsequent judicial pay adjustment exercises. The Judiciary also reiterates that as a matter of principle, judicial pay should not be reduced 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 2020-21 annual adjustment.

4.2 The Judicial Committee considers that the prevailing economic environment warrants a prudent approach in determining adjustments to judicial remuneration. In the private sector, the labour market deteriorates sharply with wages and earnings growing at a decelerated pace. In the public sector, the pay for civil servants in the upper, middle and lower salary bands and the directorate will be frozen in 2020-21. Taking into account the basket of factors as well as the Judiciary's position on the 2020-21 judicial pay adjustment and having balanced all considerations, the Judicial Committee **recommends** that judicial salaries should be frozen with effect from 1 April 2020.

4.3 The Judicial Committee will, under the approved mechanism, 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 including the recruitment situation of the Judiciary 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

4.4 We would like to express our sincere gratitude to both the Government 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.

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 2020

Chairman

Professor Wong Yuk-shan, SBS, JP

Members

Mr Chan Tze-ching, BBS, JP

Mr Alfred Chan Wing-kin, BBS

Mr Jat Sew-tong, SBS, SC, JP

Ms May Tan Siew-boi

Ms Melissa Wu

Mr Dieter Yih Lai-tak, JP

Judicial Service Pay Scale
(with effect from 1 April 2019)

Judicial Service Pay Scale (JSPS)		Rank
Point	\$	
19	387,400	✧ Chief Justice, Court of Final Appeal
18	376,600	✧ Permanent Judge, Court of Final Appeal ✧ Chief Judge of the High Court
17	339,550	✧ Justice of Appeal of the Court of Appeal of the High Court
16	323,650	✧ Judge of the Court of First Instance of the High Court
15	262,450	✧ Registrar, High Court ✧ Chief Judge of the District Court
14	(253,900)	✧ Senior Deputy Registrar, High Court ✧ Principal Family Court Judge, District Court
	(246,550)	
	239,300	
13	(237,750)	✧ Deputy Registrar, High Court ✧ Judge of the District Court ✧ Chief Magistrate
	(230,950)	
	224,250	
12	(204,750)	✧ Assistant Registrar, High Court ✧ Member, Lands Tribunal
	(198,850)	
	192,950	
11	(188,400)	✧ Registrar, District Court ✧ Principal Adjudicator, Small Claims Tribunal ✧ Principal Magistrate ✧ Principal Presiding Officer, Labour Tribunal
	(183,150)	
	177,700	
10	(172,450)	✧ Adjudicator, Small Claims Tribunal ✧ Coroner ✧ Deputy Registrar, District Court ✧ Presiding Officer, Labour Tribunal
	(167,350)	
	162,550	
10	(172,450)	✧ Magistrate
	(167,350)	
	162,550	
9	150,930	
8	147,400	
7	143,885	

Judicial Service Pay Scale (JSPS)		Rank
Point	\$	
6	110,500	◇ Special Magistrate
5	105,375	
4	100,485	
3	98,140	
2	95,815	
1	93,525	

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.

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.

Caseloads in Different Levels of Court between 2017 and 2019

No. of Cases Level of Court	2017	2018	2019
Court of Final Appeal			
– application for leave to appeal	112	194	493
– appeals	26	40	16
– miscellaneous proceedings	0	0	0
Total	138	234	509
Court of Appeal of the High Court			
– criminal appeals	420	388	376
– civil appeals	298	611	597
– miscellaneous proceedings	83	204	321
Total	801	1 203	1 294
Court of First Instance of the High Court			
– criminal jurisdiction			
• criminal cases	449	421	424
• confidential miscellaneous proceedings	382	402	340
• miscellaneous proceedings (criminal)	374	789	684
• appeals from Magistrates' Courts	659	620	603
– civil jurisdiction	17 719	18 605	19 050
Sub-total	19 583	20 837	21 101
– probate cases	20 477	20 797	21 005
Total	40 060	41 634	42 106
Competition Tribunal	2	3	1
District Court			
– criminal cases	1 156	1 188	961
– civil cases	20 550	21 453	25 942
– family cases	23 634	23 345	22 386
Total	45 340	45 986	49 289

Level of Court	No. of Cases	2017	2018	2019
Magistrates' Courts		338 977	340 612	332 746
Lands Tribunal		4 653	4 299	5 721
Labour Tribunal		4 015	3 955	4 323
Small Claims Tribunal		51 012	55 007	55 879
Obscene Articles Tribunal		174	9 240	21 163
Coroner's Court		131	167	117

