

STANDING COMMITTEE ON JUDICIAL SALARIES AND CONDITIONS OF SERVICE

Report on Judicial Remuneration Review 2022

September 2022

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

5 September 2022

The Honourable John KC Lee, GBM, SBS, PDSM, PMSM
The Chief Executive
Hong Kong Special Administrative Region
People's Republic of China

Dear Sir,

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 2022,
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) 2022. 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.jsscs.gov.hk/en/publications/reports_jscs.htm.

Judicial Remuneration Review 2022

1.6 The Judicial Committee has invited the Judiciary and the Government to provide relevant data, information and views pertaining to the basket of factors³ for the purpose of carrying out the Review in 2022. 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 be increased by 2.5% in 2022-23.

³ The basket of factors that the Judicial Committee takes into account in reviewing judicial remuneration are set out in paragraphs 2.5 and 2.6.

Chapter 2

Mechanism for Judicial Remuneration Review

Mechanism

2.1 The mechanism for JRR, as approved by the Chief Executive-in-Council in May 2008, comprises two components: a regular benchmark study and an annual salary review.

Benchmark Study

2.2 In its 2005 Report, the Judicial Committee took the view that a benchmark study on the levels of earnings of legal practitioners should be conducted on a regular basis in order to ascertain their earnings levels, monitor such trends and review judicial salaries where appropriate. The Judicial Committee also recommended that the information or data collected in the benchmark study should be analysed and compared with judicial remuneration in Hong Kong, with a view to checking whether judicial pay was kept broadly in line with the movements of legal sector earnings over time. The data collected should not be translated into precise figures for determining the levels of judicial salaries. Rather, the pay relativities between selected judicial positions and the corresponding legal sector positions should be systematically recorded to show whether the pay relativities were widening or narrowing over time. The data would facilitate the Judicial Committee in monitoring the private sector pay trends and considering whether and how adjustments to judicial pay should be 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 then⁵, the Judicial Committee has completed three benchmark studies (in 2010, 2015 and 2020). The next benchmark study is tentatively scheduled for 2025, and the Judicial Committee will consider the timing to commence the next study in due course.

Annual Review

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

Balanced Approach

2.5 Consistent with its recommendations in the 2005 Report as approved by the Chief Executive-in-Council, the Judicial Committee adopts a balanced approach in reviewing judicial remuneration by taking into account a basket of factors. The basket of factors includes the following –

- (a) the responsibility, working conditions and workload of judges vis-à-vis those of lawyers in private practice;
- (b) recruitment and retention in the Judiciary;

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

- (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.

2.6 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 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 relevant information is set out in **Appendix D**.

Workload and Complexity of Judicial Work

3.3 As regards workload, owing to the Judiciary's adjustments to court business and social distancing measures in response to the COVID-19 epidemic, the number of cases filed in 2020 at various levels of court has fallen by varying magnitudes, mostly by less than 20% with a few types of proceedings by about 25%, when compared with 2019. With the full resumption of court business from February 2021, the total

caseload in 2021 has increased by around 11% when compared with that in 2020, reverting to a caseload largely comparable to that in 2019 before the onset of the COVID-19 epidemic. The caseloads in different levels of court between 2019 and 2021 are shown in **Appendix E**.

3.4 The Judicial Committee notes that the Judiciary has been faced with the influx and upsurge of caseloads relating to non-refoulement claims since 2017. The number of related applications for leave to appeal filed with the CFA, civil appeals filed with the Court of Appeal of the High Court and related applications for leave to apply for judicial review filed with the Court of First Instance (CFI) of the High Court remained high in 2021. The Judiciary also states that the rapid and substantial upsurge in cases relating to the social events in 2019 and the National Security Law has posed mounting challenges to it in terms of judicial manpower, staffing support, competing use of court premises and the provision of suitable media and security arrangements.

3.5 The Judicial Committee notes that in 2021, there were a general decrease of civil jurisdiction cases and civil cases filed with the CFI of the High Court and the District Court respectively, but an increase of caseload filed with the Magistrates' Courts. The Judiciary states that there was a decrease in caseload for bankruptcy and winding up in the High Court whereas there was a decrease in caseload for the District Court for civil actions and distress for rent. As for the Magistrates' Court, there was an upsurge of caseload for summons and fixed penalty notices.

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, for instance, reflect the complexity of the cases, which directly affects the amount of time and efforts required of JJOs to deal with the cases. It is also very difficult to devise meaningful quantifiable indicators to reflect the increasing workload and heavier responsibilities of JJOs. All the above are generally true for all

levels of court but the pressure is particularly felt at the levels of the High Court and the District Court⁶.

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

3.8 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 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 2022, against the total establishment of 222 judicial posts, 160 were substantively filled. This establishment and strength position represents a net decrease of two in the strength of JJOs as compared with the position as at 31 March 2021. This reduction in strength is mainly due to retirement, partially offset by judicial appointments to vacancies. The establishment and strength of JJOs as at 31 March 2022 are set out in **Table 1** below –

⁶ As advised by the Judiciary, for the High Court, there have been many complex trials involving complicated commercial crime cases, long and complicated criminal trials and important public law cases. A sharp increase in non-refoulement claim cases also has a significant impact on the already heavy workload. As for the District Court, its imminent and major challenge in the coming years is to cope with social event cases.

Table 1: Establishment and strength of JJOs

| Level of court | As at 31.3.2022* | | Net change in strength over 31.3.2021 |
|--|------------------|------------------|---------------------------------------|
| | Establishment | Strength | |
| CFA ⁷ | 4 (4) | 4 (3) | +1 |
| High Court ⁸ | 64 (64) | 42 (41) | +1 |
| District Court ⁹ | 53 (53) | 42 (45) | -3 |
| Magistrates' Courts and Specialised Tribunals/Court ⁹ | 101 (101) | 72 (73) | -1 |
| Total | 222 (222) | 160 (162) | -2 |

* Figures in brackets denote position as at 31.3.2021.

3.10 On recruitment of JJOs, the Judiciary has advised that a total of 18 open recruitment exercises for filling judicial vacancies at various levels of court have been conducted since 2011. Up to 31 March 2022, a total of 133 judicial appointments have been made as a result of these open recruitment exercises, and of the appointments, three CFI Judges and one District Judge were appointed in 2021-22. Another four District Judges were subsequently appointed between April and July 2022.

3.11 The Judicial Committee notes that at the CFI level, the Judiciary has conducted six open recruitment exercises since 2012. Taking into account the latest round of the recruitment exercise launched in November 2020, a total of 29 CFI Judges have been appointed as a result, including three who were appointed in 2021-22. Further offers of appointment will be made in due course.

3.12 For District Judges, the Judicial Committee notes that four rounds of open recruitment exercises have been conducted since 2011.

⁷ 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).

⁸ For Senior Deputy Registrar and Deputy Registrar vacancies in the Masters' Office of the High Court, the functions are now mostly carried out by District Judges (and Principal Magistrates/Magistrates) who are appointed as temporary Deputy Registrars under the cross-posting policy.

⁹ For judicial offices in the Masters' Office of the District Court and at the Labour Tribunal, Small Claims Tribunal and Coroner's Court, the functions are now mostly carried out by Principal Magistrates or Magistrates under the cross-posting policy. The cross-posting policy provides greater flexibility in the posting of judicial officers between various courts to meet operational needs.

Taking into account the latest round of the recruitment exercise launched in March 2021, a total of 41 judicial appointments were made as a result, including one in 2021-22 and another four between April and July 2022. Further offers of appointment will be made in due course. For Permanent Magistrates, five rounds of open recruitment exercises have been conducted since 2011. A total of 55 Permanent Magistrates have been appointed as a result. The latest round of recruitment exercise was launched in August 2021 and is now in progress.

3.13 The Judicial Committee is fully aware of the persistent recruitment difficulties at the CFI level, and has previously recommended a spectrum of measures to address such difficulties. These measures include tracking the earnings levels of legal practitioners regularly through benchmark studies and proposing adjustment to judicial pay after considering the findings of the benchmark studies¹⁰, and reviewing the conditions of service for JJOs at the invitation of the Government¹¹. Besides, the Judicial Committee notes that the Judiciary is planning to work with the legal profession to promote judicial career

¹⁰ The Judicial Committee completed three benchmark studies (the 2010, 2015 and 2020 Benchmark Studies) under the approved mechanism for JRR. The findings of the studies and the recommendations of the Judicial Committee are set out as follows –

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

¹¹ In 2016, the Judicial Committee considered and supported a package of proposals to enhance five aspects of the conditions of service for JJOs (i.e. housing benefits, medical and dental benefits, Local Education Allowance, Judicial Dress Allowance and transport services for leave travel) at the invitation of the Government. The enhancement proposals were implemented on 1 April 2017.

through measures such as career seminars in order to provide legal practitioners with information on the different types of judicial work, the career pathways and remuneration packages, with a view to promoting the opportunities and attracting more potential candidates to join the bench¹². The Judicial Committee hopes that the above measures could help the Judiciary recruit talents to fill judicial vacancies at various levels of court, especially at the CFI level.

3.14 Furthermore, following the enactment of the Judicial Officers (Extension of Retirement Age) (Amendment) Ordinance (Amendment Ordinance) on 6 December 2019, the new retirement age arrangements for JJOs came into effect on the same date. The changes introduced in relation to the extension of the retirement ages for JJOs are essentially as follows –

- (a) for Judges at the CFI level and above, the relevant retirement age has been extended from 65 to 70¹³;
- (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 age¹⁴; 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 65¹³.

¹² This is an initiative in response to a Judicial Committee’s suggestion arising from the 2020 Benchmark Study.

¹³ Before the enactment of the Amendment Ordinance, the term of office for CFA Judges may be extended by no more than two periods of three years; and for other JJOs, a period of not exceeding five years in aggregate.

¹⁴ After the enactment of the Amendment Ordinance, the discretionary extension of term of office has been extended to District Judges with an extension period of not exceeding five years in aggregate.

3.15 Under the Amendment Ordinance, certain JJOs may opt to transfer to the new retirement age arrangements within the two-year option period (which ended in December 2021), or before reaching the original normal retirement age/expiry of extended term of office, whichever is the earliest. The Judiciary advises that with over 80% of eligible JJOs opting for the new retirement age arrangements by the deadline, the retirement ages of Judges at the CFI level and above as well as Judicial Officers at the magisterial level have generally been extended for five years to 70 and 65 respectively. 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 3.13 to 3.15 could help the Judiciary in recruiting and retaining talents.

3.17 Meanwhile, the Judiciary has continued to engage temporary judicial resources where appropriate to help relieve workload, including appointing internal/external deputies and appointing temporary or acting JJOs. The Judicial Committee notes that the number of external deputy JJOs has increased from a total of 35 as at 31 March 2021 to 45 as at 31 March 2022.

Retirement

3.18 As mentioned in paragraph 3.14, following the enactment of the 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 2022-23 will be 7 (or 4.4% of current strength), rising to 12 (or 7.5% of the current strength) in 2023-24 and then dropping to 10 (or 6.3% of the current strength) in 2024-25.

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

Benefits and Allowances

3.21 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.

3.22 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 Allowance¹⁵ and the ceiling rates of Medical Insurance Allowance¹⁶, Local Education Allowance¹⁷ and Judicial Dress Allowance¹⁸ were revised in accordance with the established adjustment mechanisms;
- (b) The rates of Leave Passage Allowance¹⁹ and Home Financing Allowance¹⁵ 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 Court of Appeal of the High Court (JAs)²⁰ remained unchanged in 2021-22 in tandem with the pay freeze of judicial salaries in 2021-22.

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

¹⁵ Judiciary Quarters Allowance, Non-accountable Cash Allowance and Home Financing Allowance are various types of housing allowance offered to eligible JJOs.

¹⁶ Medical Insurance Allowance is an allowance to reimburse eligible JJOs and their eligible dependants the premium of their medical insurance plans.

¹⁷ 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.

¹⁸ 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.

¹⁹ 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.

²⁰ 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.

Unique Features of the Judicial Service

3.24 The Judiciary is unique in many aspects. A prominent feature is the prohibition against return to private practice. Judges at the District Court and High Court levels must give an undertaking not to practise in future as barristers or solicitors in Hong Kong unless the Chief Executive permits. The Chief Justice and Judges (including permanent and non-permanent judges) of the CFA are prohibited by statute²¹ 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 tenure²² 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 2022.

Overseas Remuneration Arrangements

3.25 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 2021-22. 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.

²¹ Section 13 of the Hong Kong Court of Final Appeal Ordinance (Cap. 484).

²² 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.

General Economic Situation and Cost of Living Adjustments in Hong Kong

3.26 The Government has provided detailed information on Hong Kong's economic and fiscal indicators for the Judicial Committee's reference. The Hong Kong economy staged a visible recovery in 2021. After a marked deterioration in the first quarter of 2022, the economy improved in overall terms in the second quarter of 2022, but the extent of improvement was weaker than expected. The real Gross Domestic Product (GDP) expanded by 6.3% in 2021, the fastest pace since 2010 after a contraction of 1.7% in 2019 and 6.5% in 2020, then contracted by 3.9% in the first quarter of 2022, followed by a decrease at a moderated pace of 1.3% in the second quarter of 2022. Hong Kong's economic performance saw some improvement in the second quarter, thanks to the revival of domestic economic activities as the local epidemic situation generally improved and social distancing measures were relaxed in tandem. The Government's various support measures also helped support domestic demand. Yet, the momentum softened in the latter part of the second quarter of 2022 amid the increase in the number of COVID-19 cases and tightened financial conditions. Looking forward, the markedly deteriorating external environment will weigh heavily on Hong Kong's export performance in the remainder of the year. Domestically, economic activities should revive further provided that the local epidemic situation remains under control. Taking into account the worse-than-expected economic performance in the first half of 2022 and the sharp deterioration of global economic prospects, the GDP growth forecast for 2022 is revised down to -0.5% to 0.5% according to the forecast announced in August 2022, from 1% to 2% as announced in May 2022. 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 |
|------|-------------|---------------------------|
| 2021 | Q1 | 8.0% |
| | Q2 | 7.6% |
| | Q3 | 5.4% |
| | Q4 | 4.7% |
| 2022 | Q1 | -3.9% |
| | Q2 | -1.3% |

(Source: Figures published by the Census and Statistics Department on 12 August 2022)

3.27 The labour market improved continuously through 2021, with the seasonally adjusted unemployment rate falling successively from the peak of 7.2% in December 2020 – February 2021 to 4.0% in the fourth quarter of 2021. The labour market was under severe pressure entering 2022, but then improved alongside the revival of domestic economic activities. The seasonally adjusted unemployment rate went up to 5.4% in February – April 2022, before declining to 4.3% in May – July 2022²³. Looking ahead, labour market conditions should continue to improve in the rest of 2022 alongside the expected further revival of domestic economic activities, although the extent of improvement will be dependent on the pace of economic revival amid the tightened financial conditions.

3.28 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)²⁴, went down from 2.0% in the fourth quarter of 2021 to 1.5% in the first quarter of 2022 and remained at 1.5% in the second quarter of 2022. For the 12-month period ending June 2022, headline consumer price inflation averaged 1.8%²⁵. Looking ahead, price pressures on external front are expected to remain notable in view of elevated inflation in some major import sources. Yet, overall inflation should remain moderate in the near term as domestic cost pressures stay mild. Taking the latest developments into account, the forecast headline inflation for 2022 as a whole is 2.1% according to the forecast announced in August 2022, same as that as announced in May 2022²⁶.

²³ The seasonally adjusted unemployment rate in May – July 2021 was 4.9%.

²⁴ CCPI reflects the impact of consumer price change on the household sector as a whole.

²⁵ The headline consumer price inflation includes the effect of the Government's relevant one-off relief measures while the underlying consumer price inflation excludes the effect of these measures. The underlying consumer price inflation for the 12-month period ending June 2022 averaged 1.4%.

²⁶ The forecast underlying inflation for 2022 is 2.0% according to the forecast announced in August 2022, also same as that as announced in May 2022.

Budgetary Situation of the Government

3.29 According to the information provided by the Government, the consolidated surplus for 2021-22 is \$29.4 billion and the fiscal reserves stood at \$957.2 billion as at end-March 2022. For 2022-23, a deficit of \$125.6 billion and a surplus of \$34.2 billion are estimated for the Operating Account and Capital Account respectively. After proceeds from the issuance of bonds and notes of \$35.1 billion are taken into account, there is an estimated deficit of \$56.3 billion in the Consolidated Account, equivalent to 1.9% of the GDP.

3.30 The annual staff cost of the Judiciary in 2022-23 is estimated at about \$1.60 billion, which is roughly 0.23% of the Government's total operating expenditure of about \$682.5 billion in the 2022-23 Estimates.

Private Sector Pay Levels and Trends

3.31 The Judicial Committee notes that there was no comprehensive or representative pay trend survey on the legal sector, although there were small surveys conducted by individual recruitment agencies with limited coverage, which were of little relevance to the Judiciary. Moreover, it would be difficult to make any direct comparison between judicial pay and legal sector pay having regard to the uniqueness of judicial work. Such being the case, the Judicial Committee continues the arrangement for making reference to, among other factors in the basket, the gross Pay Trend Indicators (PTIs) from

the annual Pay Trend Survey (PTS)²⁷ commissioned by the Pay Trend Survey Committee, which reflected the overall private sector pay trend, and captured, among others, cost of living, general prosperity and company performance, general changes in market rates, merit increase and in-scale increment in the private sector. As the gross PTIs already included merit increase and in-scale increment in the private sector, it is appropriate to deduct the cost of increments for JJOs from the relevant gross PTI to arrive at a private sector pay trend suitable for reference in the context of the JRR.

Cost of Increments for JJOs

3.32 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 respectively²⁸. 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 –

²⁷ 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 \$150,915 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.

²⁸ 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 (2017-18 to 2021-22)

| Year | CCOI for JJOs |
|---------|---------------|
| 2017-18 | 0.56% |
| 2018-19 | 0.16% |
| 2019-20 | 0.15% |
| 2020-21 | 0.29% |
| 2021-22 | 0.19% |

3.33 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

3.34 According to the findings of the 2022 PTS, the gross PTI for the upper salary band was 8.30% for the 12-month period from 2 April 2021 to 1 April 2022.

3.35 In JRR 2019, the Judicial Committee agreed with the Judiciary’s proposal that the approach of the refined methodology as approved by the Chief Executive-in-Council in June 2019 for calculating the payroll cost of increments (PCIs) for the civil service²⁹ be adopted for deriving the net PTI for judicial service from 2019-20 onwards. In accordance with this approach, the average CCOI for all JJOs from 2009-10³⁰ to 2019-20 (0.29%) or the actual CCOI for all JJOs for the year (0.19%)³¹, whichever is the lower, should be adopted for deriving the net PTI for judicial service for 2022-23. As the actual CCOI for the

²⁹ In considering the 2019-20 civil service pay adjustment in June 2019, the Chief Executive-in-Council also decided to put a cap on the PCIs to be deducted from the gross PTIs. Specifically, from the 2019-20 civil service pay adjustment onwards, the average PCI from 1989-90 (i.e. the year when the PCIs deduction arrangement was first introduced) to 2019-20 for each salary band of the civil service, or the actual PCI for the particular salary band of the civil service for the year, whichever is the lower, will be adopted for deriving the net PTI for that salary band of the civil service (“the refined methodology”).

³⁰ It is the year when the pay adjustment for JJOs was first determined under the new mechanism separate from that of the civil service.

³¹ For the purpose of JRR 2022, the CCOI for JJOs for the year refers to the actual CCOI incurred in 2021-22 which is 0.19% as mentioned in paragraph 3.32.

year (i.e. 0.19%) is lower than the average CCOI from 2009-10 to 2019-20 (i.e. 0.29%), the actual CCOI for the year is adopted in calculating the private sector pay trend for JRR purposes in 2022 (or the net PTI for judicial service for 2022-23) which is 8.11% (calculated by deducting the actual CCOI for the year (0.19%) from the gross PTI for the upper salary band (8.30%)).

3.36 The Judicial Committee has also made reference to other private sector pay indicators. In 2021, wages and earnings showed mild year-on-year increases, with those in the professional and business services sector showing an accelerated growth.

Public Sector Pay as a Reference

3.37 Historically, there was an informal linkage between judicial salaries and senior civil service salaries before the implementation of the present mechanism for determining judicial remuneration. As concluded in the 2005 Report, while some reference to public sector pay 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 associations³². Public sector pay is but one of the factors under the balanced approach for determining judicial remuneration.

3.38 Under the improved civil service pay adjustment mechanism endorsed in 2007, civil service pay is compared with the prevailing market situation through three different surveys, namely (a) a PTS conducted every year to ascertain the year-on-year pay movements in the private sector; (b) a Pay Level Survey (PLS) generally conducted every six years to ascertain whether civil service pay is broadly comparable with private sector pay; and (c) a Starting Salaries Survey

³² For details, please see paragraph 3.14 of the 2005 Report.

(SSS) which will be conducted as and when necessary in future in response to specific circumstances³³. 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

3.39 On the annual civil service pay adjustment in 2022-23, 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 July 2022 that the pay for civil servants in all salary bands including the lower, middle and upper salary bands and the directorate should be increased at the same rate of 2.5% across the board with retrospective effect from 1 April 2022. The pay adjustment was approved by the Finance Committee of the Legislative Council on 22 July 2022.

3.40 The Judicial Committee notes that as set out in paragraphs 3.26 to 3.28, Hong Kong's economy has been facing a complex situation in the past year. Despite the strong rebound in 2021, the economy was severely hit in the first quarter of 2022 amid the fifth wave of the epidemic. Although the business atmosphere and the employment situation have changed for the better in recent months, uncertainties in the overall economic situation remain. In view of the uncertain economic outlook and that the Government is expected to run a fiscal deficit in 2022-23, as a responsible government, there is a need to handle the civil service pay adjustment in a prudent manner. After balancing all relevant factors under the established annual civil service pay adjustment mechanism³⁴, the Chief Executive-in-Council made the decision to increase civil service pay at the same rate of 2.5% across the board for 2022-23.

³³ 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.

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

Pay Level Survey

3.41 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 embarked on the present PLS at the invitation of the Government and is now proceeding with the preparatory work. Since JJOs and civil servants are subject to different and separate mechanisms for pay adjustment since 2008, the Judicial Committee considers it appropriate to examine the levels of judicial pay vis-à-vis the levels of earnings in the private sector in the context of a benchmark study (instead of the PLS) in accordance with the existing mechanism for the determination of judicial remuneration. As mentioned in paragraph 2.3, the next benchmark study is tentatively scheduled for 2025, and the Judicial Committee will consider the timing to commence the next study in due course.

The Judiciary's Position

3.42 The Judiciary indicates that it has no objection to increasing the judicial salaries at the rate of 2.5% for 2022-23 despite the positive net PTI for judicial service at 8.11%, in the light of the Government's decision to increase the civil service pay at the same rate of 2.5% across the board for 2022-23, and taking into account all relevant factors including the prevailing economic environment and the Government's fiscal position. The Judiciary states that this has no adverse implication on judicial independence and will demonstrate to the community that the Judiciary understands and is prepared to share the impact of the economic uncertainties and the Government's fiscal position.

3.43 The Judiciary points out that despite the positive net PTI for judicial service at 2.57% in JRR 2020, the Judiciary expressed no objection to freezing judicial salaries for 2020-21. The Judiciary considers that any percentages of adjustment accumulated since 2020-21 in terms of the net PTI for judicial service that had not been 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, there should be no reduction in judicial pay even if the pay is reduced for the civil service for any reasons.

Chapter 4

Recommendation and Acknowledgements

Recommendation

4.1 During the year covered by this report, the Judicial Committee has completed the annual review and formulated its recommendation in respect of the 2022-23 annual adjustment. Taking into account the basket of factors and having balanced all considerations, the Judicial Committee **recommends** that judicial salaries be increased by 2.5% with retrospective effect from 1 April 2022.

4.2 The Judicial Committee notes the points raised by the Judiciary as set out in paragraph 3.43 and 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

4.3 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.

4.4 We would also like to record our appreciation to Mr Alfred Chan Wing-kin, BBS and Mr Dieter Yih Lai-tak, JP who retired in December 2021 from the Judicial Committee after six years of dedicated service.

Standing Committee on Judicial Salaries and Conditions of Service

Terms of Reference

I. The Committee will advise and make recommendations to the Chief Executive on –

- (a) the structure, i.e. number of levels and salary level; and conditions of service and benefits other than salary appropriate to each rank of judges and judicial officers and other matters relating thereto;
- (b) matters relating to the system, institutional structure, methodology and mechanism for the determination of judicial salary and other matters relating thereto which the Chief Executive may refer to the Committee; and
- (c) any other matter as the Chief Executive may refer to the Committee.

II. The Committee will also, when it so determines, conduct an overall review of the matters referred to in I(a) above. In the course of this, the Committee should accept the existing internal structure of the Judiciary and not consider the creation of new judicial offices. If, however, the Committee in an overall review discovers anomalies, it may comment upon and refer such matters to the Chief Justice, Court of Final Appeal.

**Standing Committee on Judicial Salaries
and Conditions of Service**

Membership in 2022

Chairman

Professor Wong Yuk-shan, SBS, JP

Members

Mr Chan Tze-ching, BBS, JP

Ms Daisy Ho Chiu-fung, BBS

Mr Stephen Hung Wan-shun

Mr Jat Sew-tong, SBS, SC, JP

Ms Miranda Kwok Pui-fong, JP

Ms Cecilia Lee Sau-wai, JP

Judicial Service Pay Scale
(with effect from 1 April 2021)

| 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 2019 and 2021

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

| Level of Court | No. of Cases | 2019 | 2020 | 2021 |
|-----------------------------------|---------------------|---------------|---------------|-------------|
| Obscene Articles Tribunal* | | 21 163 | 14 131 | 38 |
| Coroner's Court | | 117 | 98 | 154 |

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

