

ITEM FOR FINANCE COMMITTEE

2017-18 JUDICIAL SERVICE PAY ADJUSTMENT

Members are invited to approve, with effect from 1 April 2017, an increase in pay by 2.95% for judges and judicial officers.

PROBLEM

We need to adjust the pay scales for judges and judicial officers (JJOs)¹ in accordance with the decision of the Chief Executive (CE) in Council.

PROPOSAL

2. We propose that, with effect from 1 April 2017, the dollar value of the pay points for JJOs be increased by 2.95%.

Encl. 3. Upon approval of the proposal in paragraph 2 above, the judicial service pay scale (JSPS) will be revised as set out at Enclosure.

/JUSTIFICATION

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

JUSTIFICATION

Judicial Service Pay Mechanism

4. Judicial remuneration is determined according to a mechanism separate from that of the civil service. Specifically, judicial remuneration is determined by the CE in Council after considering the recommendations of the independent Standing Committee on Judicial Salaries and Conditions of Service (Judicial Committee)². The mechanism comprises an annual salary review and a regular Benchmark Study which seeks to check whether judicial pay is kept broadly in line with the movements of legal sector earnings over time. In arriving at the recommendation, the Judicial Committee adopts a balanced approach, taking into account the basket of factors as approved by the CE in Council in May 2008, the principle of judicial independence and the position of the Judiciary. The basket of factors includes the following –

- (a) responsibility, working conditions and workload of judges vis-à-vis those of lawyers in private practice;
- (b) recruitment and retention in the Judiciary;
- (c) retirement age and retirement benefits of JJOs;
- (d) benefits and allowances enjoyed by JJOs;
- (e) unique features of the judicial service, such as the security of tenure, the prestigious status and high esteem of the judicial offices;
- (f) prohibition against return to private practice in Hong Kong;
- (g) overseas remuneration arrangements;
- (h) cost of living adjustments;
- (i) general economic situation in Hong Kong;
- (j) budgetary situation of the Government;
- (k) private sector pay levels and trends; and
- (l) public sector pay as a reference.

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² The Judicial Committee is appointed by the CE. At present, it is chaired by Professor Wong Yuk-shan. Other members are Mr T C Chan, Mr Alfred Chan, Ms May Tan, Ms Melissa Wu, Mr Dieter Yih and Mr Benjamin Yu.

The 2017 Judicial Remuneration Review

5. In conducting the 2017 judicial remuneration review (JRR), the Judicial Committee examined the basket of factors listed in paragraph 4 above, and exercised its best judgment in analysing and balancing all relevant considerations in formulating its recommendation on whether and, if so, how judicial pay should be adjusted in 2017-18.

6. In considering private sector pay levels and trends, the Judicial Committee continues to make reference to the Pay Trend Indicators (PTIs) from the annual Pay Trend Survey (PTS)³, which reflect the overall year-on-year change of private sector pay. As the gross PTIs include merit and in-scale increment in the private sector, the Judicial Committee considers it appropriate to subtract the cost of increments for JJOs from the gross PTI for the upper salary band to arrive at a private sector pay trend indicator suitable for comparison with judicial pay. Accordingly, the private sector pay trend indicator as adjusted by the consolidated cost of increments (CCOI) for JJOs is +2.45% in 2017 (i.e. the relevant gross PTI at 2.53% less the CCOI for JJOs at 0.08%).

7. The Judicial Committee notes that there is no comprehensive or representative pay trend survey on the legal sector. It also considers direct comparison between judicial pay and legal sector pay inappropriate having regard to the uniqueness of judicial work. The Judicial Committee takes the view that a Benchmark Study on the level of earnings of legal practitioners should be conducted on a regular basis to check whether judicial pay was kept broadly in line with the movements of legal sector earnings over time. The Judicial Committee decided in 2009 that a Benchmark Study should in principle be conducted every five years, with its frequency subject to periodic reviews. Since then, the

/Judicial

³ 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 the three salary ranges. Using the 2017 PTS as an example, the ranges of the three salary bands are as follows –

- (i) Lower Salary Band covering employees in the salary range below \$21,255 per month;
- (ii) Middle Salary Band covering employees in the salary range of \$21,255 to \$65,150 per month; and
- (iii) Upper Salary Band covering employees in the salary range of \$65,151 to \$132,580 per month.

In the absence of a comprehensive or representative pay trend survey on the legal sector, the PTI for the Upper Salary Band in the PTS is considered as a suitable reference for comparison with judicial salaries which start at Point 1 of the JSPS, currently at \$82,150.

Judicial Committee has completed two Benchmark Studies in 2010 and 2015⁴ respectively. The next Benchmark Study will be conducted in 2020, subject to review nearer the time.

8. The judicial pay adjustment mechanism is delinked from that of the civil service. Public sector pay is only one of the factors for consideration under the balanced approach in determining judicial pay. In the 2017 JRR, the Judicial Committee made reference to the decision of the CE in Council in June 2017 to increase the pay for civil servants in the directorate and Upper Salary Band by 1.88% (equal to the net PTI for the Upper Salary Band (1.38%) plus 0.5%) with effect from 1 April 2017. The Judicial Committee also notes that a Pay Level Survey (PLS) is conducted every six years for civil servants to assess whether civil service pay is broadly comparable with that of the private sector at a particular reference point in time⁵. 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 in accordance with the existing mechanism for the determination of judicial remuneration as mentioned in paragraph 7 above.

Judicial Independence

9. Apart from considering the basket of factors summarised above, the Judicial Committee continues to premise its deliberations on the need to uphold the principle of judicial independence. In particular, the Judicial Committee considers it essential to ensure that judicial remuneration is sufficient to attract and retain talents 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.

The Position of the Judiciary

10. The Judicial Committee has also considered the Judiciary's views. The Judiciary sought a pay increase of 2.95% for the judicial service in 2017-18 (i.e. the relevant gross PTI at 2.53% less the CCOI for JJOs at 0.08% plus 0.5%).

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⁴ The Judicial Committee has considered the 2015 Benchmark Study alongside the basket of factors in the 2016 JRR.

⁵ The last PLS was conducted in 2013.

It considered that if the civil service pay adjustment is based on the net PTI plus 0.5%, the same approach should be adopted for the judicial pay adjustment in 2017. If the “plus 0.5%” would not be adopted for the judicial pay adjustment in 2017, it would put the position of judicial remuneration in a less favourable position when compared to the public sector pay adjustment as a whole. The Judiciary also reiterated its position that there should not be any reduction in judicial pay as a matter of principle.

Recommendation of the Judicial Committee

11. Having considered the above factors, the Judicial Committee submitted its report to the CE on 24 July 2017, recommending a 2.95% increase in the pay for JJOs for 2017-18.

Judicial Service Pay Adjustment Rate

12. After consideration of the Judicial Committee’s recommendation and the Judiciary’s position, the CE in Council decided on 3 October 2017 that the pay for JJOs for 2017-18 should be increased by 2.95% with effect from 1 April 2017.

13. The review of judicial pay is a regular exercise conducted on an annual basis. It has been the established practice that the proposed annual adjustment, if any, will take effect from 1 April (i.e. the beginning of a financial year). As approved by the Finance Committee (FC) on 11 February 2017, the last pay adjustment for 2016-17 took effect from 1 April 2016⁶.

FINANCIAL IMPLICATION

14. The financial implication arising from the proposed 2.95% pay increase for JJOs in 2017-18 is \$12.12 million.

15. We have not made extra provision in Head 80 – Judiciary in the 2017-18 Estimates for the proposed pay adjustment. We expect that the Judiciary’s savings in the current financial year should be sufficient to cover the additional

/expenditure

⁶ The FC approved at the same time the increase in pay for Judges at the Court of First Instance of the High Court (CFI) level and above by 6% and for JJOs below the CFI level by 4% with effect from 1 September 2016 taking account of the 2015 Benchmark Study.

expenditure arising from the proposed pay adjustment in 2017-18. On 9 March 1983 (vide Item B170), FC delegated to the Financial Secretary (FS) the authority to approve supplementary provision without limit in personal emoluments subheads, provided that the supplementary provision is required for salaries in accordance with approved pay scales in respect of approved posts. Subject to FC's approval of the proposal, FS shall approve under delegated authority the supplementary provisions for 2017-18, if required by the Judiciary.

PUBLIC CONSULTATION

16. We briefed the Legislative Council Panel on Administration of Justice and Legal Services on the 2017-18 judicial service pay adjustment at its meeting held on 30 October 2017. Members had no objection to the proposed pay adjustment and noted that we would seek approval from FC.

Administration Wing
Chief Secretary for Administration's Office
November 2017

Judicial Service Pay Scale

Point	(As at 31.3.2017)	(w.e.f. 1.4.2017)
	\$	\$
19	340,250	350,300
18	330,850	340,600
17	298,250	307,050
16	284,250	292,650
15	230,500	237,300
	(223,000)	(229,600)
	(216,550)	(222,950)
14	210,200	216,400
	(208,850)	(215,000)
	(202,850)	(208,850)
13	197,000	202,800
	(179,850)	(185,150)
	(174,650)	(179,800)
12	169,450	174,450
	(165,450)	(170,350)
	(160,900)	(165,650)
11	156,100	160,700
	(151,500)	(155,950)
	(147,000)	(151,350)
10	142,800	147,000
9	132,575	136,485
8	129,475	133,295
7	126,385	130,115
6	97,060	99,925
5	92,560	95,290
4	88,265	90,870
3	86,205	88,750
2	84,160	86,645
1	82,150	84,575

Note Figures in brackets represent increments.
