

APPOINTMENT OF THE CHIEF JUDGE OF THE HIGH COURT

INTRODUCTION

Pursuant to Article 90 of the Basic Law of the Hong Kong Special Administrative Region (HKSAR), the Administration intends to give notice in due course to move a motion, to obtain the endorsement of the Council for the appointment of Mr Justice Leong as the Chief Judge of the High Court. The curriculum vitae of Mr Justice Leong is at Annex 1.

BACKGROUND

The High Court

2. The High Court of the HKSAR consists of the Court of First Instance and the Court of Appeal. The High Court is a court of unlimited civil and criminal jurisdiction.

3. The Court of First Instance consists of:

- (a) The Chief Judge of the High Court;
- (b) Such judges as the Chief Executive may appoint;
- (c) Such recorders as the Chief Executive may appoint; and
- (d) Such deputy judges as the Chief Justice may appoint.

4. The Court of Appeal consists of:

- (a) The Chief Judge of the High Court; and
- (b) Such Justices of Appeal as the Chief Executive may appoint.

5. The Chief Judge of the High Court is the court leader of the High Court. He is also the President of the Court of Appeal. Mr Justice Patrick Chan filled the post of Chief Judge of the High Court from 1 July 1997 until 30 August 2000. Since 1 September 2000, the post has been left vacant upon the appointment of Mr Justice Chan as a permanent judge of the Court of the Final Appeal (CFA).

6. As at 31.10.2000, there are 9 Justices of Appeal, 21 judges of the Court of the First Instance, 8 recorders of the High Court and 11 deputy judges of the High Court.

Legal and Constitutional Provisions and Framework

(a) Judicial Officers Recommendation Commission

7. Pursuant to Article 88 of the Basic Law and the Judicial Officers Recommendation Commission Ordinance (Cap.92), the Judicial Officers Recommendation Commission (“JORC”) is entrusted with the function to make recommendations to the Chief Executive regarding the appointment of judges. The JORC consists of the Chief Justice as the Chairman, the Secretary for Justice and 7 other members appointed by the Chief Executive (2 judges, 1 barrister (appointed after consultation with the Bar Council), 1 solicitor (appointed after consultation with the Council of the Law Society) and 3 persons not connected with the practice of law). Under section 3(3A) of the JORC Ordinance, a resolution is not effective if there are more than 2 votes not in favour. The recommendation of the JORC is then communicated to the Chief Executive.

8. In accordance with Article 88 of the Basic Law, the Chief Judge of the High Court shall be appointed by the Chief Executive on the recommendation of the JORC.

(b) The Chief Executive

9. Article 48(6) of the Basic Law confers on the Chief Executive the power and function to appoint judges in accordance with legal procedures. Article 88 of the Basic Law provides that judges shall be appointed by the Chief Executive on the recommendation of the JORC. In the case of the appointment of the Chief Judge of the High Court, Article 90 of the Basic Law provides that the Chief Executive shall, in addition to following the procedures prescribed in Article 88, obtain the endorsement of the Legislative Council. The Chief Executive shall also report such appointment to the Standing Committee of the National People's Congress for the record under Article 90.

(c) The Legislative Council

10. Article 73(7) confers on the Legislative Council the power and function to endorse the appointment of CFA judges and the Chief Judge of the High Court. Article 90 of the Basic Law provides that the Chief Executive shall obtain the endorsement of the Legislative Council for the appointment of CFA Judges and the Chief Judge of the High Court.

11. Thus, the system of judicial appointment by the Chief Executive acting in accordance with the recommendation of an independent commission, the JORC, as laid down in Article 88 of the Basic Law, together with the additional requirement of endorsement by the Legislative Council for the appointment of CFA judges and the Chief Judge of the High Court under Article 90 of the Basic Law, provides the necessary checks and balances, and reinforces the constitutional guarantee of the independence of the judiciary stipulated in Article 85 of the Basic Law.

Eligibility Requirements for the Post

(a) Basic Law Requirements

12. Article 92 of the Basic Law stipulates that judges of the Hong Kong SAR shall be chosen on the basis of their judicial and professional qualities. Moreover, Article 90 of the Basic Law provides that the Chief Judge of the High Court shall be a Chinese citizen with no right of abode in any foreign country.

13. The professional qualifications for the Chief Judge of the High Court are the same as those for a Judge of the High Court. These are stipulated in section 9 of the High Court Ordinance (Cap.4). See Annex 2.

CURRENT APPOINTMENT EXERCISE

The Appointment of the Chief Judge of the High Court

14. In accordance with the Basic Law, the JORC has recommended the appointment of Mr Justice Leong as the Chief Judge of the High Court. This recommendation has been communicated to the Chief Executive.

15. In accordance with Articles 88 and 90 of the Basic Law, the Chief Executive has accepted the recommendation of the JORC on the appointment of Mr Justice Leong as the Chief Judge of the High Court, and subject to the endorsement of the Legislative Council, will make the recommended appointment.

16. In exercising his power pursuant to Article 88 of the Basic Law, the Chief Executive noted the background to the need for the

appointment following the coming into effect of the appointment of Mr Justice Chan as a permanent judge of the CFA. The Chief Executive noted that since the post of the Chief Judge of the High Court has been left vacant since 1 September 2000, it is desirable for the appointment of Mr Justice Leong, subject to the endorsement of the Legislative Council, to take effect on completion of necessary constitutional procedures.

Procedures and Considerations

17. In this exercise, six JORC members are eligible to be appointed as the Chief Judge of the High Court. The Chief Executive noted that while section 3(5B) and 3(5C) of the Judicial Officers Recommendation Ordinance provides for the declaration of interest in respect of the selection of Chief Justice and permanent judges of the CFA, there is no similar provision for the selection of the Chief Judge of the High Court. Section 3(5B) of the JORC Ordinance provides that a member who is or may reasonably be regarded as a candidate for the post of the Chief Justice or a permanent judge of the CFA shall disclose whether or not, if he were to be selected, he is willing to accept appointment, and that disclosure shall be recorded in the minutes of the Commission. Section 3(5C) of the JORC Ordinance provides that a member who discloses a willingness to accept an appointment shall not take part in the deliberation of the

Commission with respect to that appointment and shall not vote on any question concerning the same. The Chief Executive however noted that in order to avoid any potential conflict of interest, the same procedure as stipulated under section 3(5B) and 3(5C) was applied administratively and properly complied with in this exercise.

18. The Chief Executive was satisfied that a quorum as required by section 3(3) of the JORC Ordinance was present at the meeting at which the appointment was considered.

19. The Chief Executive noted that in considering the appointment of the Chief Judge of the High Court, JORC decided to adopt the following procedure:

- (a) JORC would first note the responsibilities of the Chief Judge of the High Court;
- (b) JORC would then consider the qualities required of the Chief Judge of the High Court;

- (c) JORC would then come up with a short list of candidates, having regard to (a) & (b) above and taking into account the eligibility requirements as stipulated under the Basic Law and the High Court Ordinance;
- (d) JORC would then give detailed consideration to the suitability of the shortlisted candidates;
- (e) JORC would decide on the person to be recommended for appointment as the Chief Judge of the High Court; and
- (f) The Chief Justice would confirm with the recommended candidate that he/she is able and willing to serve and to comply with the eligibility requirements including the Chinese nationality requirement before a submission would be made to the Chief Executive.

20. The Chief Executive noted that the responsibilities of the Chief Judge of the High Court are as follows:

- (a) As court leader of the High Court, the person has to lead the High Court both judicially and administratively;
- (b) The person will have to preside in the Court of Appeal and is expected to deal with the important appeals before that court;

- (c) The person is responsible overall for the administration of the High Court and is accountable to the Chief Justice who is the Head of the Judiciary and is charged with the administration of the Judiciary. See section 6(2) of the Court of Final Appeal Ordinance. The person would have to ensure the smooth operation of the High Court and the efficient utilization of judicial resources and court time and to advise the Chief Justice on policies, legislation and practices relating to the High Court; and
- (d) The person has statutory powers and responsibilities under various Ordinances. The main one is the power to admit barristers and solicitors under the Legal Practitioners Ordinance.

21. The Chief Executive noted that JORC then considered the qualities required of the Chief Judge of the High Court, having regard to the responsibilities as described at para. 20 above. The Chief Executive noted that JORC considered the following to be the required qualities:

- (a) As the court leader of the High Court, the person must command respect both within and outside the Judiciary;
- (b) As the Chief Judge of the High Court has to preside in the

Court of Appeal and deal with the important appeals, the person must be able to be a good judge, with integrity, competence in the law and judicial temperament;

- (c) Having regard to the Chief Judge's responsibility for the administration of the High Court, the person must have the potential to be a good administrator. This requires commonsense, fairness, sound judgment and good interpersonal skills, with the person being able to get on with the other judges and staff; and
- (d) Preferably, the person should have the knowledge, understanding and experience as a judge in the High Court of how the High Court is administered and how the judges function and the pressures and problems they face.

22. The Chief Executive noted that a long list of over 50 eligible persons comprising serving judges, practising barristers, practising solicitors and public officials were put before JORC by the secretary in consultation with the Chairman. The Chief Executive also noted that not all eligible persons meeting the minimum statutory requirements were put forward. Instead, the candidates on the long list are all experienced judges, barristers, solicitors and public officials. The Chief Executive noted that JORC considered whether it was necessary to add further names to the

long list and decided not to do so. After some deliberations, JORC then came up with a shortlist of six candidates for the post, having regard to the responsibilities of the Chief Judge of the High Court and the qualities required of the office holder and taking into account the eligibility requirements as stipulated under the Basic Law and the High Court Ordinance.

23. The Chief Executive was informed of the considerations leading to JORC's recommendation on the appointment of Mr Justice Leong as the Chief Judge of the High Court which was decided on after detailed discussion on the suitability of the shortlisted candidates.

24. The Chief Executive noted that Mr Justice Leong would reach his retirement age of 65 on 14 July 2001. The Chief Executive noted that JORC was of the view that in order for Mr Justice Leong to function effectively as the Chief Judge of the High Court, he should be asked to hold the post for about two and a half years. The Chief Executive noted that accordingly JORC had recommended that Mr Justice Leong's term of office, under section 11A of the High Court Ordinance, be extended to 13 July 2003 so that Mr Justice Leong can serve as the Chief Judge of the High Court for about two and a half years until he reaches 67.

25. The Chief Executive noted that after JORC had decided to make the recommendation, Mr Justice Leong had confirmed to the Chief Justice that he is able and willing to serve until 13 July 2003, and to comply with the eligibility requirements including the Chinese nationality requirement.

26. From the written communication from the secretary to the JORC, the Chief Executive was satisfied that the recommendation of the appointment made by JORC was effective and the procedure was proper and in order. The Chief Executive therefore accepted the recommendation of JORC, and subject to the endorsement of the Legislative Council will make the recommended appointment, and will also extend the term of office of Mr Justice Leong until 13 July 2003.

Administration Wing
Chief Secretary for Administration's Office
November 2000

**Biographical Note of
The Hon Mr Justice Arthnr LEONG Shin-chung**

Date of Birth: 14 July 1936

Place of Birth: Hong Kong

Education: The Honourable Society of the Middle Temple, London (1963-1966)

Professional Qualification: Called to the Bar, Middle Temple (1965)

Career:	1954-1963	Government Service	
	1966-1969	Assistant Crown Counsel) Legal Department
	1969-1973	Crown Counsel)
	1973-1978	Magistrate	
	1978-1982	Presiding Officer	
	1982-1991	District Judge	
	1991-1997	Judge of the High Court (now the Court of First Instance)	
	1997-present	Justice of Appeal of the Court of Appeal of the High Court	

Other Activities:

1994-2000 Chairman, Administrative Appeals Board

1990-1999 Chairman, Municipal Services Appeal Boards

1993-2001 Chairman, Long Term Prisoners Sentences Review Board

1995-1998 Member, Advisory Committee on Post Retirement Employment

1998-2002 Chairman, Advisory Committee on Post Retirement Employment

2000-present Chairman, The Society for the Rehabilitation of Offenders, Hong Kong

2000-present Chairman, The China Congregational Church, Hong Kong

Married with two sons