

CSO/ADM CR 6/3221/93

6 December 2000

***By Fax [2509 9055]***

Mrs Percy Ma  
Clerk to the Panel on Administration  
of Justice and Legal Services  
Legislative Council  
3<sup>rd</sup> Floor, Citibank Tower  
3 Garden Road, Hong Kong

Dear Mrs Ma,

**Appointment of the Chief Judge of the High Court**

At the meeting of the Panel on the Administration of Justice and Legal Services on 28 November, a Member asked whether any extension of the term of office of the Chief Judge of the High Court would necessitate a further appointment exercise.

The Department of Justice advises that the Basic Law deals with the appointment and removal from office of the Chief Judge of the High Court and stipulates that appointment or removal requires the endorsement of the Legislative Council. The Basic Law makes no provision for the appointee of the Chief Judge of the High Court to vacate office on attaining a specified retiring age. There is no constitutional requirement for the Chief Judge of the High Court to retire and the appointment and its endorsement by the Legislative Council are not limited in duration by the Basic Law itself. The limitation arises under the High Court Ordinance (Cap. 4) which, under section 11A(3)(b), specifies a retirement age of 65 as well as a mechanism by which in effect that age may be raised in a particular case.

The extension of term of office of the Chief Judge of the High Court beyond the retiring age is therefore not a fresh appointment. It follows that an extension of term of office does not require the endorsement of LegCo under Article 90 of the Basic Law. Nor does it require to be reported to the Standing Committee of the National People's Congress for the record.

### **Current Appointment Exercise**

With regard to the two other questions raised by Members relating to the current exercise, I have been informed by the Secretary to JORC that not all eligible persons meeting the minimum statutory requirements of the Chief Judge of the High Court were put forward. Instead, 54 candidates, including highly experienced serving judges, barristers, solicitors and public officials, were selected on the long list. I have also been informed by the Secretary to JORC that having regard to the responsibilities particularly that set out in paragraph 20(c) of the paper submitted to LegCo, the qualities required particularly those set out in paragraphs 21(c) and (d) of the same paper, and the Chinese nationality requirement specified in the Basic Law, JORC had come to the view that Mr Justice Leong is the best candidate for the job and that his term of office should be extended exceptionally on operational ground, i.e. for him to hold the office for 2-1/2 years.

Yours sincerely,

( Andrew H Y Wong )  
Director of Administration

c.c. The Hon Margaret Ng, Chairman of the Panel  
on Administration of Justice and Legal Services

6 December 2000

Mrs Percy Ma  
Clerk to LegCo Panel on Administration  
of Justice and Legal Services  
Legislative Council  
Legislative Council Building  
8 Jackson Road  
Central  
HONG KONG

Dear Mrs Ma,

**AJLS Panel meeting on 28 November :**  
**Appointment of the Chief Judge of the High Court**

Further to the Panel's discussion on the captioned subject, I am writing to provide some further information on the general workings of the Judicial Officers' Recommendation Commission (JORC) in judicial appointments, and I hope members would find such background information useful in considering the current appointment exercise.

- (i) The first point relates to how a list of candidates is being drawn up for JORC's consideration. As I have briefly explained to Members at the meeting, judicial vacancies at or below the District Court level are advertised and qualified persons interested in joining the Judiciary can apply. Interview Boards would then be convened and assessments of candidates would be reported to JORC for consideration.

/ .....

As to vacancies at High Court and above, no advertisement is made. As only eligible persons of the highest standing will be considered for appointment, such persons are generally well known to the Judiciary, the legal profession and members of JORC. It is normal practice that the undersigned (in the capacity as the secretary to JORC) would in consultation with the Chairman put up a list of candidates for JORC's consideration. In coming up with the proposed list, a number of steps are taken:

- (a) first, the pool of all potential qualified candidates who may be able to comply with the minimum legal requirements for the post would be identified;
- (b) having regard to the size of the pool of potential candidates, and the responsibilities and the qualities required of the post holder, the Chairman may advise that only those highly experienced candidates should be put to the JORC for consideration, instead of all candidates that meet the minimum legal requirements.

It should be pointed out that the proposed list submitted, apart from containing a sufficiently large number of candidates, is not meant to be exhaustive, and that the list can be revised and other potential candidates added by JORC.

After deliberation, JORC would then come up with a shortlist of candidates having regard to the responsibilities and the qualities required of the post holder.

- (ii) As regards questions relating to how a particular recommendation on judicial appointment was made by JORC, I could only reiterate that JORC decides on all recommendations after thorough consideration, and deliberation on the suitability of the shortlisted candidates.

/ .....

- (iii) Finally, on extension of service beyond statutory retirement age, JORC's policy is that each case is considered on its merits and extension can be granted exceptionally on operational grounds. During the past few years, JORC did recommend the extension of the terms of office of a number of judges and judicial officers on operational grounds at various levels.

( Wilfred Tsui )  
Judiciary Administrator

c.c. The Hon Margaret Ng, Chairman of the Administration of  
Justice and Legal Services Panel  
D of Admin