

Supplemental Response of the Bar Council of the Hong Kong Bar Association to the  
Consultation Paper on Process of Appointment of Judges

1. The Bar refers to paragraphs 13 and 14 of its papers dated 15 April 2002 submitted to the AJLS Panel. The Bar gave as the majority view that the SJ or a representative of the DOJ should be a member of JORC broadly for reasons given for her inclusion as set out in paragraph 3.8 of the Consultation Paper. We were also of the view that given that the SJ would become a political appointee, it was more appropriate to have a representative of DOJ, rather than the SJ herself, as a member of JORC.
2. The Bar has revisited the issue in the light of the details of the accountability system announced by the Chief Executive since. In this exercise, the Bar made special reference to Article 88 of the Basic Law. The Article provides that judges of the HKSAR shall be appointed by the Chief Executive on the recommendation of an **independent** commission composed of local judges, person from the legal profession and eminent persons from other sectors.
3. Arguably “independent” means being wholly independent from the executive authorities of the HKSAR. Indeed, one can regard section 4(1) of the Judicial Officers Recommendation Commission Ordinance (Cap 92), which bars members of the Legislative Council and holders of a pensionable office (except judges) from appointment to JORC, as indicative of the requirements of such independence.
4. Having thus revisited the subject, the Bar concludes that SJ should not be a member of JORC. A representative chosen amongst government lawyers, who is not holder of a pensionable office, can represent views of government lawyers in the DOJ on JORC.

Dated 31 May 2002