

CSO/ADM CR
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By Fax [2509 9055]

Mrs Percy Ma
Clerk to the Panel on Administration
of Justice and Legal Services
Legislative Council Building
8 Jackson Road
Hong Kong

Dear Mrs Ma,

Panel on Administration of Justice and Legal Services (“AJLS Panel”)

**Procedure for endorsement of appointment and removal of judges by the
Legislative Council under Article 73(7) of the Basic Law**

Thank you for your letter dated 27 May, seeking our views as to whether the procedure for endorsement of judicial appointments by LegCo as set out in paragraph 16 of the AJLS Panel’s report to the House Committee (“the Report”) should also apply to endorsement of removal of judges. We understand that you have written to seek the view of the Judiciary on the matter separately.

In relation to the removal of judges, Article 89 of the Basic Law provides as follow –

“A judge of a court of the HKSAR may only be removed for inability to discharge his or her duties, or for misbehaviour, by the Chief Executive on the recommendation of a tribunal appointed by the Chief Justice of the Court of Final Appeal and consisting of not fewer than three local judges.

The Chief Justice of the Court of Final Appeal of the HKSAR may be investigated only for inability to discharge his or her duties, or for misbehaviour, by a tribunal appointed by the Chief Executive and consisting of not fewer than five local judges and may be removed by the Chief Executive on the recommendation of the tribunal and in accordance with the procedures prescribed in [the Basic Law].”

Under Article 90(2) of the Basic Law, in the case of removal of judges of the Court of Final Appeal and the Chief Judge of the High Court of the HKSAR, the Chief Executive shall, in addition to following the procedures prescribed in Article 89 of the Basic Law, obtain the endorsement of the Legislative Council and report such removal to the Standing Committee of the National People’s Congress for the record.

Therefore, in dealing with the issue of removal of judges, it is necessary to comply with the requirements as set out in Articles 89 and 90(2) of the Basic Law.

Against this background, we see no objection to the Panel’s suggestion that the procedure for endorsement of judicial appointment by the Legislative Council under Article 73(7) of the Basic Law (as outlined in para. 16 of the Report) should apply to endorsement of removal of judges. The process will be triggered by the Administration advising the House Committee of the Chief Executive’s acceptance of the recommendation of the tribunal, instead of the Judicial Officers Recommendation Commission, on the removal of judges.

Yours sincerely,

(Chan Yum-min, James)
for Director of Administration