

CSO/ADM CR 8/4/3222/85(03)  
CB2/PL/AJLS

23 April 2004

*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**

**Meeting on 26 April 2004 at 4:30 p.m.**

**Item VI – Procedure for endorsement of removal of judges by the Legislative Council under Article 73(7) of the Basic Law**

Thank you for your letter of 24 March, advising us that the Panel will consider at its coming meeting the proposed procedure for endorsement of removal of judges by the Legislative Council under Article 73(7) of the Basic Law (“the proposed procedure”). You have also advised that the Bar Association is agreeable to the proposed procedure and attached the comments made by the Law Society for our reference.

As our comments on the proposed procedure are already set out in full in our letter of 24 February, we do not consider it necessary for the Administration to be represented at the coming meeting. Nonetheless, the Administration would like to provide the following observations on two points raised by the Law Society: -

- (a) **Whether the CE can refuse to accept the recommendation of the tribunal**

The Law Society states that presumably, the CE can refuse to accept the recommendations of the tribunal appointed by the Chief Justice (“CJ”) as to the removal of a judge or otherwise.

Article 89 of the Basic Law provides that a judge “**may** only be removed ... by the CE on the recommendation of a tribunal” and that the CJ “**may** be removed by the CE on the recommendation of the tribunal” (see also Section III of Annex I to the Joint Declaration [JD 65] – “a judge may only be removed for inability ...”). This is couched in discretionary terms, in contrast with the mandatory terms in Article 90(2) of the Basic Law which provides that “the CE **shall**, in addition to following the procedures prescribed in Article 89 of the Basic Law, obtain the endorsement of the LegCo and report such ... removal to the Standing Committee of the National People’s Congress (“NPCSC”) for the record”. (See also Section III of Annex I to the Joint Declaration [JD 66] – “... removal of principal judges ... **shall** be made by the CE with the endorsement of the HKSAR legislature and reported to the NPCSC for the record”.)

As such, the Administration considers that the CE may remove a judge from office only if the relevant tribunal so recommends. However, the CE is not obliged by the Basic Law to accept the tribunal’s recommendation for removal of a judge.

**(b) Whether it is appropriate for the CE to make announcement of his acceptance of the recommendation of the tribunal where LegCo’s endorsement is required under Article 90(2) of the Basic Law**

The Law Society considers it inappropriate for the CE to make any announcement of his acceptance of the recommendation of the tribunal when the matter has been referred to the LegCo.

A distinction should be drawn between the CE’s acceptance of the relevant tribunal’s recommendation to remove a senior judge (i.e. judges of the Court of Final Appeal or the Chief Judge of the High Court) and the final decision to remove the judge from office. If the CE does not accept the recommendation, there is little relevance in referring the matter to the LegCo under Article 90(2) of the Basic Law. On the other hand, a final removal decision will be made only upon the LegCo’s endorsement of the recommendation. When seeking the LegCo’s endorsement, the Administration is expected to indicate to the LegCo whether the CE has accepted the tribunal’s recommendation. Such indication will likely be publicized by the media even if the CE makes no specific announcement of his

acceptance of the recommendation. Unless there were any overriding public interest to make the whole removal process (including the LegCo's endorsement phase) confidential, we believe that such announcement would increase the transparency of the removal process.

Yours sincerely,

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

cc     Judiciary Administrator     (Attn: Miss Emma Lau)  
       Department of Justice     (Attn: Mr Peter H H Wong)