

**For information**

**Legislative Council Panel on  
Administration of Justice and Legal Services**

**Procedures and working timetable to fill the  
anticipated vacancy of the Chief Justice  
of the Court of Final Appeal**

**PURPOSE**

This paper sets out the procedures and working timetable to fill the anticipated vacancy of the Chief Justice of the Court of Final Appeal (“CJ”).

**PROCEDURES**

2. The Basic Law (“BL”), the Hong Kong Court of Final Appeal Ordinance (Cap. 484) and the Judicial Officers Recommendation Commission Ordinance (Cap. 92) provide for the following major steps in filling the vacancy of the CJ.

**Recommendation by the Judicial Officers Recommendation Commission**

3. Pursuant to Article 88 of the Basic Law (“BL 88”), the CJ shall be appointed by the Chief Executive (“CE”) on the recommendation of an independent commission composed of local judges, persons from the legal profession and eminent persons from other sectors. The Judicial Officers Recommendation Commission (“JORC”) is the statutory body constituted by the JORC Ordinance to perform the functions of the independent commission referred to in BL 88.

4. Section 6 (1) of the Hong Kong Court of Final Appeal Ordinance provides that the CJ shall be appointed by the CE acting in accordance with the recommendation of the JORC. Section 3 of the JORC Ordinance stipulates that the JORC shall consist of the CJ as the Chairman, the Secretary for Justice and seven other members appointed by the CE (comprising two judges, one barrister appointed after consultation with the Bar Council of the Hong Kong Bar Association, one solicitor appointed after consultation with the Council of the Law Society of Hong Kong and three persons not connected with the practice of law).

5. In making its recommendation to the CE, the JORC will follow the requirements of the BL and other relevant legal provisions. BL 92 stipulates that judges shall be chosen on the basis of their judicial and professional qualities. Regarding the professional requirements, section 12(1) of the Hong Kong Court of Final Appeal Ordinance provides that a person shall be eligible to be appointed as the CJ if he is (a) a permanent judge of the Court of Final Appeal; (b) the Chief Judge of the High Court, a Justice of Appeal of the Court of Appeal of the High Court, or a Judge of the Court of First Instance of the High Court; or (c) a barrister who has practised as a barrister or solicitor in Hong Kong for a period of at least 10 years. Regarding the nationality requirement, BL 90 and section 6(1A) of the Hong Kong Court of Final Appeal Ordinance stipulate that the CJ shall be a Chinese citizen who is a permanent resident of the Hong Kong Special Administrative Region with no right of abode in any foreign country. The recommendation<sup>1</sup> made by the JORC in respect of the filling of the vacancy of the CJ will be communicated to the CE once available.

### **Acceptance of the JORC's Recommendation by the Chief Executive**

6. Upon receipt and acceptance of the recommendation of the JORC, the CE will, in accordance with BL 90 and section 7A(1) of the Hong Kong Court of Final Appeal Ordinance, seek the endorsement of

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<sup>1</sup> Section 3(3A) of the JORC Ordinance provides in effect that a resolution is not effective if there are more than two votes not in favour.

the Legislative Council (“LegCo”) for the appointment of the CJ. Once LegCo’s endorsement is obtained, the CE will make the appointment and report it to the Standing Committee of the National People’s Congress for the record.

### **Endorsement by the Legislative Council**

7. BL 73(7) confers on the LegCo the power and function to endorse the appointment of the CJ. As mentioned in paragraph 6 above, upon the acceptance of the JORC’s recommendation, the CE shall seek the endorsement of the LegCo for the appointment of the CJ. In this regard, the House Committee of the LegCo agreed on 16 May 2003 to adopt the following procedures for endorsement of judicial appointments under BL 73(7) -

- (a) the Administration advises the House Committee of the CE’s acceptance of the recommendation of the JORC and provides sufficient information on the recommended judicial appointee(s) to the LegCo (this should take place before the CE makes any public announcement of his acceptance of the recommendation);
- (b) the House Committee refers the matter to a subcommittee for discussion<sup>2</sup>;
- (c) the subcommittee discusses the matter as soon as possible;
- (d) the subcommittee reports its deliberation to the House Committee;
- (e) the Administration gives notice of a motion to seek the endorsement of the LegCo of the recommended appointment;

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<sup>2</sup> It would be for the House Committee to decide whether or not a subcommittee should be formed.

- (f) the motion is moved, debated and voted on at a Council meeting; and
- (g) if the motion is passed by the LegCo, the CE makes the appointment.

8. The above procedures had been adopted in respect of the appointment of three non-permanent Court of Final Appeal (CFA) judges from other common law jurisdictions and the Chief Judge of the High Court in July 2003; two non-permanent CFA judges from other common law jurisdictions in May 2006; and three non-permanent CFA judges from other common law jurisdictions in January 2009.

## **WORKING TIMETABLE**

9. In anticipation of the incumbent's retirement, the CE has asked the Judiciary to activate the procedures to fill the anticipated vacancy of the CJ in accordance with the Basic Law and other relevant legal provisions. We understand from the Judiciary that the JORC aims to make a recommendation to the CE as soon as practicable within the first quarter of 2010. Subject to JORC adhering to its planned schedule and the CE accepting its recommendation, we plan to seek the LegCo's endorsement of the appointment as early as possible, tentatively around the second quarter of 2010, in accordance with the procedures agreed by the House Committee as detailed in paragraph 7 above. We hope that the LegCo's endorsement can be obtained within the current legislative session so that the appointment of the new CJ can be effected in time to tie in with the retirement of the incumbent on 31 August 2010.

Administration Wing  
Chief Secretary for Administration's Office  
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