

**For information  
on 28 February 2011**

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

**Membership of the Secretary for Justice in the  
Judicial Officers Recommendation Commission**

**PURPOSE**

This paper sets out the Administration's views on the membership of the Secretary for Justice (SJ) in the Judicial Officers Recommendation Commission (JORC).

**BACKGROUND**

2. At the meeting of the Subcommittee on Proposed Senior Judicial Appointments held on 4 May 2010, while endorsing the proposed appointments of the Chief Justice and three non-permanent Hong Kong judges to the Court of Final Appeal, Members referred the issue regarding the membership of SJ in JORC to the Panel on Administration of Justice and Legal Service for further discussion.

3. By way of background, Article 88 of the Basic Law (BL 88) stipulates that judges of the courts of Hong Kong 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. JORC is the statutory body constituted by the Judicial Officers Recommendation Commission Ordinance (JORC Ordinance)(Cap. 92) to perform the functions of the independent commission referred to in BL 88. Section 3(1) of the JORC Ordinance stipulates that JORC shall consist of the Chief Justice as the Chairman, SJ and seven other members appointed by the CE including one barrister, one solicitor, two judges and three persons who are not, in the

opinion of the CE, connected in any way with the practice of law.

## **OUR VIEW**

### **Justifications for SJ's membership in JORC**

4. We consider that SJ's membership in JORC is justified for the following reasons –

- (a) in his role as guardian of the public interest in the administration of justice and upholder of the rule of law, it is appropriate for SJ to be involved, as a member of the JORC, in judicial appointments;
- (b) as the principal adviser on legal matters to the CE, it is appropriate for SJ to be involved, as a member of the JORC, in making recommendation to the CE on judicial appointments; and
- (c) Department of Justice employs a large number of lawyers and briefs out a significant number of cases to private practitioners. It is also a major court user. As the head of the Department, SJ is in a unique position and has considerable knowledge to contribute to the JORC's deliberations in respect of judicial appointments. It would not be appropriate for the other Law Officers in the Department to take up SJ's role in JORC since each of them has his/her own role within the Department and does not have the overall responsibility for the Department as SJ does.

### **Concern on SJ's status as a political appointee**

5. On the concern of some Members that SJ's membership in JORC might undermine the independence of JORC given his status as a political appointee, we consider that there is absolutely no ground for such concern. SJ is only one of the nine members of JORC and does not have veto power in JORC. Specifically, it requires more than two dissenting votes to vote

down a resolution of JORC on a recommended appointment<sup>1</sup> and each member of JORC has equal voting power.

6. Besides, the politically appointed status of SJ does not prevent him from being able to “freely and without fear or favour, affection or ill-will, give (his) counsel and advice to the Chief Executive of Hong Kong in connexion with all such matters as may be referred to the Judicial Officers Recommendation Commission under the Judicial Officers Recommendation Commission Ordinance”, in accordance with the oath taken by him on appointment as a member of JORC<sup>2</sup>. Similarly, there is nothing in the political appointment system which would undermine the principle of exercising judicial power independently by the courts of the Hong Kong Special Administrative Region as entrenched in BL 85<sup>3</sup>, or the integrity of the judicial appointment process provided for in the Basic Law.

## CONCLUSION

7. Given the above considerations, we consider it appropriate and necessary for SJ to continue to serve on JORC.

8. The view that it is appropriate and necessary for SJ to continue to serve on JORC is shared by the Judiciary.

Administration Wing  
Chief Secretary for Administration's Office  
February 2011

---

<sup>1</sup> Section 3(3A) of the JORC Ordinance provides that a resolution at a meeting of JORC is effective if (a) where seven members are present, at least five vote in favour; (b) where eight members are present, at least six vote in favour; and (c) where nine members are present, at least seven vote in favour.

<sup>2</sup> Schedule 2 of the JORC Ordinance.

<sup>3</sup> BL 85 stipulates, inter alia, that the courts of the HKSAR shall exercise judicial power independently, free from any interference.