

**Paper for the
LegCo Panel on Administration of Justice and Legal Services**

Background

On 5 June 2000, the clerk to the LegCo Panel on Administration of Justice and Legal Services ("the Panel") wrote to the secretary of Judicial Officers Recommendation Commission ("JORC"), seeking information from JORC ("the Panel's letter").

2. On 10 June 2000, the secretary of JORC replied as directed by the Chief Justice who is Chairman of JORC, stating that subject to the constraints of confidentiality under which JORC operates, he would be pleased to provide information to the Panel concerning the workings of JORC relating to the appointment of Court of Final Appeal (CFA) judges generally outside the context of particular judicial appointments. A paper was enclosed. The reply and the paper have already been provided to Members. In his reply, the secretary of JORC also stated that there are legal and constitutional reasons why JORC should not go beyond the information provided.

3. With the permission of the Chief Executive, the Administration is furnishing this paper in order to supply the Panel with additional information, relating to the current exercise of the appointment of the seven CFA judges.

The Current Appointment Exercise of the Seven CFA Judges

4. In this exercise, three JORC members were eligible to be appointed as permanent judges. The Chief Executive was satisfied that they duly made the statutory disclosure under Section 3(5B) of the JORC Ordinance as to whether they were willing to accept appointment if selected, and that Section 3(5C) was properly complied with.

5. The Chief Executive was satisfied that a quorum as required by Section 3(3) of the JORC Ordinance was present at the meeting at which these appointments were considered.

6. In this exercise, the Chief Executive noted that the names of a large number of eligible persons were put before JORC by the secretary in consultation with the Chairman. The seven appointees were among those put forward.

7. In this exercise, the Chief Executive was satisfied that the appointees fulfilled the statutory legal qualifications.

8. In this exercise, the Chief Executive noted that JORC based the criteria of selection on Article 92 of the Basic Law which requires judges to be chosen on the basis of their judicial and professional qualities.

9. The Chief Executive also noted that JORC took into account the following matters relating to non-permanent judges:

- (a) Before the current exercise, there was a total of 17 (11 non-permanent Hong Kong judges and 6 non-permanent common law judges). With five appointees, the total number of non-permanent judges will be 22, well below the legal maximum of 30;
- (b) The need to have more non-permanent common law judges to give more flexibility for dealing with CFA's caseload as some retired non-permanent judges have commitments such as part time judicial commitments overseas, inquiries and arbitrations and the serving non-permanent judges have judicial commitments overseas;
- (c) The likely availability of non-permanent common law judges to sit;
- (d) The desirability of having two of the first bench of permanent judges to serve as non-permanent Hong Kong judges, having regard to their experience on the CFA itself; and
- (e) The expertise, experience and prestige that non-permanent judges will bring to the Court.

10. Accordingly, the Chief Executive was satisfied that the recommendations of the seven appointments were in order.

11. In accordance with Articles 88 and 90 of the Basic Law and Sections 7, 7A, 8 and 9 of the CFA Ordinance, the Chief Executive has accepted the recommendations of the JORC on these appointments and the Legislative Council's endorsement of these appointments will be sought on 21 June 2000.

Chief Secretary for Administration's Office
Administration Wing
June 2000