

# **立法會**

## ***Legislative Council***

LC Paper No. CB(2)2059/02-03

Ref : CB2/PL/AJLS

### **Paper for the House Committee meeting on 16 May 2003**

#### **Report of the Panel on Administration of Justice and Legal Services on procedure for endorsement of appointment of judges by the Legislative Council under Article 73(7) of the Basic Law**

#### **Purpose**

This paper reports on the recommendation of the Panel on Administration of Justice and Legal Services (AJLS Panel) on the procedure for endorsement of appointment of judges by the Legislative Council (LegCo) under Article 73(7) of the Basic Law (BL73(7)).

#### **Background**

2. BL73(7) confers on LegCo the power to endorse the appointment and removal of judges of the Court of Final Appeal (CFA) and the Chief Judge of the High Court.

3. Since 1 July 1997, LegCo has exercised its power to endorse the appointment of judges under BL73(7) on two occasions. In June 2000, LegCo endorsed seven CFA appointments. In December 2000, LegCo endorsed the appointment of the Chief Judge of the High Court. Details of the two appointment exercises are set out in **Appendix I**.

#### **Views and recommendations of the AJLS Panel on the process of appointment of judges**

##### Working Group under the AJLS Panel and the Consultation Paper

4. Having gone through the two appointment exercises, the AJLS Panel formed a Working Group to study -

- (a) how LegCo could properly discharge its constitutional duty under BL73(7); and

- (b) how the system of appointment of judges may be improved to achieve greater transparency and accountability while ensuring judicial independence.

5. The Working Group proposed three options on the procedure for LegCo to endorse judicial appointments under BL73(7). The Working Group also identified a number of issues for review. These included the information required to be provided by the Administration to LegCo on a judicial nominee; the membership, accountability and operation of the Judicial Officers Recommendation Commission (JORC); and the desirability and feasibility of establishing a mechanism for handling complaints against judges. The Working Group recommended that the views of the public, in particular the legal community, should be sought.

6. In December 2001, the AJLS Panel published the Consultation Paper on Process of Appointment of Judges. The consultation period expired on 15 March 2002. A copy of the Consultation Paper was issued to all Members vide LC Paper No. CB(2)662/01-02 on 12 December 2001.

#### Recommendations of the AJLS Panel

7. At its meeting on 22 July 2002, the AJLS Panel considered the views received during the consultation exercise and deliberated the relevant issues. The deliberations and recommendations of the AJLS Panel were detailed in the Report on Process of Appointment of Judges issued to all Members vide LC Paper No. CB(2)2798/01-02 on 20 September 2002.

8. Taking into account the views from the legal professional bodies, the Judiciary and the Administration on the procedure for LegCo to endorse judicial appointments under BL73(7), the AJLS Panel recommended the following steps be adopted -

- (a) the Administration advises the House Committee (HC) of the Chief Executive's (CE's) acceptance of the recommendation of JORC on a judicial appointment (this should take place before CE makes any public announcement of his acceptance of the recommendation);
- (b) HC refers the matter to the AJLS Panel or some other Panel(s) or committee(s) for discussion;
- (c) the Panel(s)/committee(s) discusses the matter as soon as possible at a meeting to which all LegCo Members are invited to attend;
- (d) the Panel(s)/committee(s) reports its discussion to HC;
- (e) the Administration gives notice of a motion to seek the endorsement of LegCo of the recommended appointment;

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

9. The AJLS Panel decided to invite the Committee on Rules of Procedure (CRoP) to study whether the existing rules are adequate for implementing the procedure set out in paragraph 8 above, in particular, whether LegCo has sufficient time to consider the endorsement motion under existing rules.

10. The AJLS Panel also recommended that in seeking LegCo's endorsement of a judicial appointment under BL73(7), the information provided by the Administration should include as many as possible of the items contained in the questionnaire set by the United States Senate Judiciary Committee and the application form for appointment as Justice of the High Court in the United Kingdom (**Appendices II and III**). The Judiciary had agreed that in future appointment exercises, JORC would be asked to consider the appropriate information that should be supplied to CE, to enable CE to supply sufficient information to LegCo.

### **Views of CRoP**

11. CRoP discussed the matter at its meeting on 6 March 2003. On the question of whether LegCo's existing rules are adequate for implementing the procedure recommended by the AJLS Panel for LegCo to endorse judicial appointments under BL73(7), CRoP's views are as follows -

- (a) Part G of RoP governing "Motions" should be applicable to the endorsement resolution for the appointment of the judges concerned;
- (b) RoP need not be amended since HC could refer the proposed appointment to a subcommittee for discussion under Rule 75 of RoP; and
- (c) as proposals for the appointment of judges are not policy matters that could be referred to Panels for discussion, should HC wish to refer these proposals to a Panel, be it the AJLS Panel or any other Panel, RoP would have to be amended in order that the Panel might consider such proposals.

12. Regarding paragraph 11(c) above, members may wish to note that in the two previous appointment exercises as detailed in Appendix I, the AJLS Panel discussed issues relating to the appointment of judges, and not the proposed judicial appointments per se.

13. Some CRoP members consider that it would be more preferable for HC to refer appointment proposals to a subcommittee, instead of a Panel, for discussion.

14. CRoP also suggests that the AJLS Panel might consider whether the procedure for endorsement of judicial appointments by LegCo, if adopted, should also apply to endorsement of removal of judges.

**Modified procedure for endorsement of appointment of judges by LegCo under BL73(7)**

15. Having regard to the views of CRoP in paragraphs 11 and 13 above, the AJLS Panel has no objection to HC referring proposals on appointment of judges to a subcommittee, instead of a Panel, for discussion.

16. The recommended procedure for appointment of judges will therefore be modified as follows -

- (a) the Administration advises HC of CE's acceptance of the recommendation of JORC and provides sufficient information on the recommended judicial appointee(s) to LegCo as per paragraph 10 above (this should take place before CE makes any public announcement of his acceptance of the recommendation);
- (b) HC refers the matter to a subcommittee for discussion;
- (c) the subcommittee discusses the matter as soon as possible;
- (d) the subcommittee reports its deliberation to HC;
- (e) the Administration gives notice of a motion to seek the endorsement of LegCo of the recommended appointment;
- (f) the motion is moved, debated and voted on at a Council meeting; and
- (g) if the motion is passed by LegCo, CE makes the appointment.

**Procedure for endorsement of removal of judges by LegCo under BL73(7)**

17. Regarding the suggestion of CRoP that the AJLS Panel might consider whether the procedure for endorsement of judicial appointments by LegCo should also apply to endorsement of removal of judges (paragraph 14 above refers), the views of the AJLS Panel has been sought by circulation of paper. Although members of the Panel have no objection to the suggestion, the Chairman of the Panel considers that the matter should be discussed by the Panel at a future meeting before a recommendation can be made.

**Advice sought**

18. Members are invited to endorse the procedure for LegCo to endorse the appointment of judges under BL73(7), as recommended by the AJLS Panel in paragraph 16 above.

Council Business Division 2  
Legislative Council Secretariat  
14 May 2003

### The two appointment exercises

#### First exercise - Appointment of seven judges of the Court of Final Appeal (CFA)

At 5:00 pm on 10 May 2000, the Administration and the Judiciary issued press statements announcing the appointment of Mr Justice Patrick Chan and Mr Justice Ribeiro as permanent judges of CFA; Mr Justice Litton and Mr Justice Ching as non-permanent Hong Kong judges of CFA; and Sir Gerard Brennan, Sir Thomas Eichelbaum and Lord Millett as non-permanent judges from other common law jurisdictions. Copies of the press statements together with the curricula vitae of the seven appointees were issued to Members.

2. The Administration gave notice on 10 May 2000 to move a motion at the Council meeting on 31 May 2000 to seek the Legislative Council's (LegCo's) endorsement of the seven appointments under section 7A of the Hong Kong Court of Final Appeal Ordinance.

3. At its meeting on 16 May 2000, the Panel on Administration of Justice and Legal Services (the AJLS Panel) decided to invite the Administration to brief the Panel on the legal and administrative matters relating to the appointment of CFA judges. On the Panel's request, the House Committee asked the Administration to withdraw its notice of moving the motion at the Council meeting on 31 May 2000, pending discussion of the matter by the Panel. The Administration withdrew the notice of the motion on 22 May 2000.

4. The Panel held three special meetings on 3, 13 and 17 June 2000 to discuss issues relating to the appointment of the CFA judges. One of the issues raised was the approach adopted by the Administration in seeking the endorsement of LegCo on the motion scheduled to be moved on 31 May 2000. Members expressed concern that contrary to the existing practice of consulting Panels on major legislative and financial proposals, the Administration had not done so before giving notice for the proposed motion. In addition, the Administration had neither provided a LegCo Brief on the motion nor a draft speech of the mover of the motion for Members' reference. Members considered that the Administration had not provided sufficient information to facilitate LegCo's consideration of the motion. The Administration acknowledged members' concerns and agreed that improvements would be made in future exercises.

5. The Chairman of the AJLS Panel made a verbal report to the House Committee on 9 and 16 June 2000 on the progress of discussions of the Panel.

6. With the agreement of the AJSL Panel, the Administration gave notice on 5 June 2000 to move the motion to seek LegCo's endorsement of the seven appointments at the Council meeting on 21 June 2000. The Administration also provided a LegCo Brief on the motion for Members' reference. The motion was passed by the Council.

## Second exercise - Appointment of Chief Judge of the High Court

7. In a letter dated 10 November 2000 to the Chairman of the House Committee, the Director of Administration advised that the Chief Executive (CE) had accepted the recommendation of Judicial Officers Recommendation Commission (JORC) to appoint Mr Justice Authur LEONG Shiu-chung as the Chief Judge of the High Court. CE would announce his acceptance of the recommendation of JORC in the afternoon on that day. The Administration would be happy to provide additional information and/or meet with Members to answer questions which Members might have. A copy of the press statement and a paper on the appointment were attached to the letter. Members were requested to respect the confidentiality of the issue, pending CE's public announcement. The Chairman of the House Committee made arrangements for the letter to be copied to all Members.

8. At the request of the Chairman of the AJLS Panel, at the Panel meeting held on 28 November 2000, the Administration briefed the Panel on the process and considerations pertaining to the appointment. A copy of the wording of the motion to seek the endorsement of LegCo of the appointment was tabled at the meeting for members' reference.

9. On 29 November 2000, the Chief Secretary for Administration gave notice of her intention to move the endorsement motion. The motion was moved and passed at the Council meeting on 20 December 2000.





**Questionnaire set by the Senate Judiciary Committee in the United States**

**(Extract from "Report of the Commission on the Selection of Federal Judges  
1996, Miller Center Commission No. 7, May 1996")**

A. GENERAL PERSONAL QUESTIONS

- I.1. Full name and any former names used.  
IV.1
- I.2. Address (current residence and office).  
IV.2
- I.3. Date and place of birth.
- I.4. Marital status and spouse's name/maiden name (if applicable), occupation and employer's name/address.
- I.5. Education (list each college, law school and date of degree).
- I.6. Employment record (list by year each business or other enterprise since college).
- I.7. Military service (list dates, service, rank, serial number and type of discharge).
- I.8. Honors and Awards of interest to the Committee.
- I.13 What is present state of your health and when was your last physical exam?

B. LEGAL EXPERIENCE AND BACKGROUND

- I.9. Bar Associations (list all legal or judicial committees or conferences with titles and dates).
- I.10 Other memberships in organizations which lobby public bodies.
- I.11 All courts in which admitted to practice with dates and list any lapses. Same information for administrative bodies requiring special admission.

- I.12 List of all publications with copies of material not readily available and speeches on constitutional law or legal policy with readily available press reports about such speeches.
- I.14 State chronologically any judicial offices held with description.
- I.15 Provide citations for your ten most important opinions (if applicable), same for all appellate opinions reversing or criticizing your rulings, and your significant opinions on state or federal constitutional issues with related appellate rulings (if not readily available, provide copies of these).
- I.16 State any other public offices held with terms of service and descriptions, and list chronologically other candidacies.
- II.6. Ever play a role in a political campaign? If so, identify particulars, including candidate, dates, and your title/responsibilities.
- I.17 Describe chronologically your legal career including :
- a.1 - Clerkships.
  - a.2 - Solo practice.
  - a.3 - Law firms, companies, and government agencies.
  - b.1 - Describe general character of your practice.
  - b.2 - Describe former clients and specialities.
  - c.1 - Frequency of appearances in court? If this varied, give by date.
  - c.2 - Percentage of appearances in (a) federal, (b) state, and (c) other courts.
  - c.3 - Percentage of (a) civil and (b) criminal.
  - c.4 - Number of cases tried to conclusion and state your role.
  - c.5 - Percentage of cases (a) jury and (b) non-jury.

C. FINANCIAL DATA AND CONFLICT OF INTEREST

- II.1. Sources, amounts and dates of all anticipated receipts from business relationships. Describe arrangements for any future compensation.
- II.2. Explain how you will resolve potential conflicts of interest and identify likely areas which may initially pose conflicts.

I.18 Describe ten most significant litigated matters you personally handled. Give citation, summary, identify client, detail nature of your participation. Also : (a) date of representation. (b) name of court and judge. (c) names, addresses and phone numbers of co-counsel and principal counsel for other parties.

I.19 Describe the most significant legal activities you pursued (non-trial or non-litigation). Describe the nature of your participation (unless privileged).

II.3. Do you have plans to pursue outside employment with or without pay if confirmed? If so, explain.

II.4. List all sources of income received in the calendar year prior to nomination.

II.5. FINANCIAL STATEMENT REQUIRED

D. INVOLVEMENT IN LEGAL PROCEEDINGS/TAX AUDITS/OTHER CONFIDENTIAL

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IV.3. Ever been discharged or resigned due to impending discharge?

IV.4. Have you and your spouse paid all back taxes? Any tax payments made prior to your nomination? If so, detail.

IV.5. Tax lien or collection procedure ever instituted against you? If so, detail.

IV.6. You or spouse ever subject of any tax audit or inquiry? If so, detail.

IV.7. You or spouse ever declared bankruptcy? If so, give particulars.

IV.8. Have you or any organization you belonged to ever been under investigation for violating any law or regulation? If so, detail.

IV.9. Have you ever been the subject of a complaint to any group, agency or court for breach of ethics or rule of conduct? If so, give particulars.

IV.10 Ever been a party to any litigation?

IV.11 Please advise the Committee of any other adverse information that may affect your nomination.

E. GENERAL/OTHER

III.1. Describe your work to provide those disadvantaged with legal services.

- III.2. Any membership in a discriminatory organization? If so, what efforts did you make to try to change such policies?
- III.3. Selection committee in your jurisdiction to recommend nominations? If so, did they recommend you? Describe the entire process you underwent.
- III.4. Did anyone involved in your selection discuss any legal case or issue seeking to learn how you might rule? If so, explain fully.
- III.5. Discuss your views on a criticism of judicial activism.

LORD CHANCELLOR

Application for appointment as  
**Justice of the High Court**

**Restricted - Appointments**

Please complete this form in type or write clearly in **black** ink. If there is insufficient space on the form please feel free to continue on a separate sheet. **You should complete all parts of this form, even if you have previously supplied some of the details requested.** This will help to ensure that our records are up to date.

Please read the guidance notes before completing this form.

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## Section A - Personal details

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Title (tick as applicable)      Mr ☐ Mrs ☐ Miss ☐ Ms ☐ Other (please state)

Professional surname

Private surname (if different from professional surname)

Forenames in full  
(please underline the name by which you prefer to be known)

Date of birth

Decorations/honours

Professional address

Postcode  
Telephone  
Email

Private address

Postcode  
Telephone  
Email

Please indicate which address is to be used for correspondence relating to this application

☐ Professional      ☐ Private

Please tick one or more as appropriate to indicate whether you are a :

☐ Barrister      ☐ Solicitor      ☐ Queen's Counsel  
☐ Holder of full-time judicial office

Please indicate with a tick the Division(s) of the High Court to which you would prefer to be assigned, if appointed :

☐ Queen's Bench      ☐ Chancery      ☐ Family

Nationality

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## Section B - Educational and professional history

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### 1 Further and/or Higher Education

Dates	Colleges and/or Universities attended	Degrees/diplomas/certificates Awarded (please state class of Any degrees)

### 2 Legal training

#### Barristers

Month and year of call to the Bar

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Inn of Court

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Circuit membership (if any)

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Specialist Bar Association (if any)

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Year Silk taken (if applicable)

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#### Solicitors

Month and year of admission as a solicitor

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Specialist Solicitors' Association (if any)

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Higher courts (Civil)

Date granted

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Higher courts (Criminal)

Date granted

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Higher courts (All Proceedings)

Date granted

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Year Silk taken (if applicable)

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**All applicants**

Please give dates of pupillage and name(s) and address(es) of pupil-master(s) and/or dates of articles and name(s) and address(es) of principal(s) and firm(s) or other organisation(s) (eg local authorities) with whom articles were undertaken, **starting with the earliest.**

Dates	Name of pupil-master or principal and firm or other organisation	Address

**All applicants**

Please give details of your professional experience since completing pupillage or articles, **starting with the earliest.** Please include dates, addresses (including where appropriate, the name of the Head of Chambers). Please include under 'Particulars' the type of work done.

Dates	Chambers, firm or other organisation and address	Particulars



## Barristers and Solicitors

Please give a general indication of the type of your present practice by entering, against each appropriate category below, the approximate percentage of your working time that you spend on that type of work.

%

Administrative and Public Law (including Judicial Review)
Arbitration
Banking and Financial Services
Chancery
Commercial and Admiralty
Common Law - Contract, Sale of Goods
Common Law - Personal Injury
Common Law - Product Liability
Common Law - Professional Negligence
Common Law - Other
Company Law
Conveyancing
Criminal
Defamation
Disciplinary
Employment and industrial relations
European and International
Family
Housing
Human Rights
Immigration
Insolvency
Intellectual Property
Landlord and Tenant
Parliamentary, Planning and Local Government (including Rating)
Practice Management
Restrictive practice and monopolies
Revenue
Technology and Construction
Other (please specify):

If you are no longer in active practice as a barrister or a solicitor, on what date and in what circumstances did you cease to practise?

## 3 Fees

Please state your personal gross income from practice (exclusive of VAT) in each of the last three completed accounting years, beginning with the most recent (to the nearest £1,000)

Income

Accounting year ending

£

to

£

to

£

to

If you consider that the level of your fees or earnings have been affected by the nature of your or your firm's practice or extraneous factors, please give details in this section

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## Section C - Judicial experience

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Do you now hold, or have you held in the past,  
any judicial appointment?  
(including part-time appointment)

☐ No

☐ Yes (please state which and give the  
date(s) of appointment in the  
space below)

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If you currently hold a judicial appointment,  
please state where you now sit, naming the  
court(s) or hearing centre(s).

Please state any locations at which you have  
sat in the last 3 years and the court(s) or  
hearing centre(s) at which you have sat in that  
time.

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If you hold or have held any judicial appointment, please describe the work you have done as a holder of  
judicial office, including the number of sitting days completed and the jurisdictions exercised.

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## Section D - General

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### Character

Have you ever been convicted of, or cautioned for, any criminal offence, other than a minor road traffic offence such as parking, or are any such proceedings pending? No ☐ Yes ☐ (please give details, including dates, below)

Please note that applicants for judicial appointment are not protected by sections 4(2) and 4(3) of the Rehabilitation of Offenders Act 1974, and convictions which would normally be regarded as 'spent' within the meaning of the Act should therefore be declared. [Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975]

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Have you ever been adjudged bankrupt, made a composition with your creditors, or been sued to judgement for any debt, or are any such proceedings pending? No ☐ Yes ☐ (please give details, including dates, below)

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Have you ever had proceedings brought against you, or paid a penalty, or made a composition in respect of failure to pay, or any other default relating to, VAT or any other form of tax or rates, or are any such proceedings pending? No ☐ Yes ☐ (please give details, including dates, below)

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Have you ever had an action brought against you for professional negligence without the matter being dismissed, or are any such proceedings pending? If you are a solicitor and such an action has been brought or is pending against your firm in respect of a matter under your supervision, answer 'yes'. No ☐ Yes ☐ (please give details, including dates, below)

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Are you, or have you ever been, subject to the disciplinary proceedings of the Bar or The Law Society (including the Bar's and The Law Society's procedures in respect of complaints about inadequate professional services or "shoddy work") in respect of a matter involving you personally or under your supervision, without the matter having been dismissed, or are any such proceedings pending? No ☐ Yes ☐ (please give details, including dates, below)

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Are you aware of anything in your private or professional life which would be a source of embarrassment to yourself or the Lord Chancellor if it became known in the event of your appointment as a High Court Judge? No ☐ Yes ☐ (please give details below or, if you prefer, contact a member of Judicial Group staff as mentioned in the 'Guide for Applicants')

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### **Consultation**

You may include here the name(s) and address(es) of up to three members of the judiciary and/or profession who you consider will be able to comment on your qualities and experience. (The arrangements for consultation are outlined in the 'Guide for Applicants': this is an opportunity to name those who would not otherwise be consulted.)

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### **Further information**

Please provide any other information which you consider may be relevant to your application, including any matters you wish the Lord Chancellor to be aware of in considering your application. Please assess your own suitability for appointment to the High Court Bench, against the criteria (legal knowledge and experience, skills and abilities, and personal qualities; these are described in more detail in the Guide). You should provide examples of significant achievements to support your assessments. Continue on a separate sheet if necessary.

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I declare that the information which I have given on this form is true to the best of my knowledge and belief.

Signature

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Date

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