

CSO/ADM CR 8/4/3222/85

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2 May 2003

Urgent by Hand

The Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Chairman of the House Committee
Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear

Senior Judicial Appointments

In accordance with Article 88 of the Basic Law, the Chief Executive has accepted the recommendations of the Judicial Officers Recommendation Commission (JORC) on the following appointments -

- (a) The Rt Hon The Lord Woolf of Barnes, The Rt Hon The Lord Scott of Foscote and The Rt Hon Sir Ivor Richardson be appointed as non-permanent judges from other common law jurisdictions to the Court of Final Appeal; and
- (b) Mr Justice Geoffrey Ma, be appointed as the Chief Judge of the High Court.

The Chief Executive will announce his acceptance of the above recommendations of JORC this afternoon. An advance copy of the press statement is at Annex A for Members' information. I should be grateful if Members would respect the confidentiality of the issue, pending the Chief Executive's public announcement.

Pursuant to Article 90 of the Basic Law, the Chief Executive shall obtain the endorsement of the Legislative Council of the appointments. Matters relating to the appointments are detailed in the papers at Annex B and Annex C. Representatives of the Administration and the Secretary of JORC would be happy to provide additional information and/or meet with Members to answer questions Members may have. In this connection, Members may wish to note that it is our intention to move the motion for obtaining the endorsement of the Legislative Council on the appointments at the earliest opportunity within this legislative session.

(Andrew H Y Wong)
Director of Administration

Embargoed until 5:00 p.m. 2 May 2003

**Press Statement on Senior Judicial Appointments to be issued
by the Administration on 2 May 2003**

Senior Judicial Appointments

**Non-permanent Judges from Other Common Law Jurisdictions to the
Court of Final Appeal**

The HKSAR Chief Executive, Mr. Tung Chee Hwa, has accepted the recommendations of the Judicial Officers Recommendation Commission (JORC) on the appointment of The Right Honourable The Lord Woolf of Barnes, The Right Honourable The Lord Scott of Foscote and The Right Honourable Sir Ivor Richardson as non-permanent judges from other common law jurisdictions to the Court of Final Appeal, and subject to the endorsement of the Legislative Council, will make the appointments under Article 88 of the Basic Law.

Mr. Tung said, "I am pleased to accept the JORC's recommendations on the appointment of The Right Honourable The Lord Woolf of Barnes, The Right Honourable The Lord Scott of Foscote and The Right Honourable Sir Ivor Richardson as non-permanent judges from other common law jurisdictions to the Court of Final Appeal. The 3 judges have eminent standing and reputation and their appointment will be a great asset to the Court of Final Appeal."

Chief Judge of the High Court

The HKSAR Chief Executive, Mr. Tung Chee Hwa, has also accepted the recommendation of JORC on the appointment of Mr. Justice Ma as the Chief Judge of the High Court, and subject to the endorsement of the Legislative Council, will make the appointment under Article 88 of the Basic Law.

Mr. Tung said, "I am pleased to accept the JORC's recommendation on the appointment of Mr. Justice Ma as the Chief Judge of the High Court. Mr. Justice Ma, currently a Justice of Appeal of the High Court, is highly respected by members of the Judiciary and by the profession for his integrity, competence in law and judicial temperament."

Mr. Justice Ma is recommended to succeed Mr. Justice Leong as the Chief Judge of the High Court, who will retire in July 2003.

“Mr. Justice Leong, the current Chief Judge of the High Court, will have completed his term of office on 13 July 2003. Mr. Justice Leong has made an invaluable contribution to the Judiciary and I wish him a happy retirement,” said Mr. Tung.

Article 90 of the Basic Law provides that the Chief Executive shall obtain the endorsement of the Legislative Council on the appointment of the judges of the Court of Final Appeal and the Chief Judge of the High Court.

The Chief Secretary for Administration will seek the endorsement of the Legislative Council of the recommended appointments in due course.

Subject to the endorsement of the Legislative Council, the Chief Executive will make the appointments.

The curriculum vitae of the recommended appointees are attached.

APPOINTMENT OF NON-PERMANENT JUDGES TO THE COURT OF FINAL APPEAL

INTRODUCTION

Pursuant to Article 90 of the Basic Law and section 7A of the Hong Kong Court of Final Appeal Ordinance (Cap.484), the Administration intends to give notice in due course to move a motion, to obtain the endorsement of the Legislative Council of the appointment of The Right Honourable The Lord Woolf of Barnes, The Right Honourable The Lord Scott of Foscote and The Right Honourable Sir Ivor Richardson as non-permanent judges from other common law jurisdictions to the Court of Final Appeal (CFA). The curriculum vitae of the Judges are at the Appendix.

BACKGROUND

The Court of Final Appeal

2. The CFA is the final appellate court in Hong Kong, hearing both civil and criminal appeals.
3. The CFA consists of the Chief Justice and the permanent judges. Non-permanent judges may be invited to sit. There are two lists of non-permanent judges: (a) The list of non-permanent Hong Kong judges; and (b) The list of judges from other common law jurisdictions. The maximum number of non-permanent judges is 30.
4. When hearing and determining appeals, the CFA is constituted by 5 judges as follows:
 - (a) The Chief Justice (where he is not available to sit, he designates a permanent judge to preside);
 - (b) 3 permanent judges (where a permanent judge is not available, the Chief Justice nominates a non-permanent Hong Kong judge to sit in his place); and

- (c) 1 non-permanent Hong Kong judge or 1 non-permanent common law judge (selected by the Chief Justice and invited by the Court).

5. Under section 14(4) of the Hong Kong CFA Ordinance, a non-permanent judge shall hold office for a term of 3 years but that term may be extended for one or more periods of 3 years by the Chief Executive acting in accordance with the recommendations of the Chief Justice. There is no retirement age for a non-permanent judge.

Constitutional and Legal Provisions and Framework

Judicial Officers Recommendation Commission

6. Pursuant to Article 88 of the Basic Law and the Judicial Officers Recommendation Commission Ordinance (Cap.92), the Judicial Officers Recommendation Commission (“JORC”) is entrusted with the function of making recommendations to the Chief Executive regarding the appointment of judges. The JORC consists of the Chief Justice as the Chairman, the Secretary for Justice and 7 other members appointed by the Chief Executive (2 judges, 1 barrister appointed after consultation with the Bar Council, 1 solicitor appointed after consultation with the Council of the Law Society and 3 persons not connected with the practice of law). Under section 3(3A) of the JORC Ordinance, a resolution is not effective if there are more than 2 votes not in favour. The recommendation of the JORC is then communicated to the Chief Executive.

The Chief Executive

7. Article 48(6) of the Basic Law confers on the Chief Executive the power and function to appoint judges in accordance with legal procedures. Article 88 of the Basic Law provides that judges of the courts of the Hong Kong Special Administrative Region shall be appointed by the Chief Executive on the recommendation of the JORC. In the case of the appointment of the non-permanent judges from other common law jurisdictions, Article 90 of the Basic Law provides that the Chief Executive shall, in addition to following the procedures prescribed in Article 88, obtain the endorsement of the Legislative Council. This requirement is also stipulated in section 7A of the Hong Kong CFA Ordinance. The Chief Executive shall also report such appointment to the Standing Committee of the National People’s Congress for the record

under Article 90 of the Basic Law and section 7A of the Hong Kong CFA Ordinance.

The Legislative Council

8. Article 73(7) of the Basic Law confers on the Legislative Council the power and function to endorse the appointment of CFA judges and the Chief Judge of the High Court. Article 90 of the Basic Law provides that the Chief Executive shall obtain the endorsement of the Legislative Council for the appointment of CFA Judges and the Chief Judge of the High Court.

9. Thus, the system of judicial appointment by the Chief Executive acting in accordance with the recommendation of an independent commission, the JORC, as laid down in Article 88 of the Basic Law, together with the additional requirement of endorsement by the Legislative Council for the appointment of CFA judges and the Chief Judge of the High Court under Article 90 of the Basic Law, provides the necessary checks and balances, and reinforces the constitutional guarantee of the independence of the judiciary stipulated in Article 85 of the Basic Law.

Requirements and Qualifications for Non-Permanent Judges From Other Common Law Jurisdictions

Basic Law Requirements

10. Article 92 of the Basic Law provides that judges of the Hong Kong Special Administrative Region shall be chosen on the basis of their judicial and professional qualities and may be recruited from other common law jurisdictions.

Statutory Qualifications

11. Under section 12(4) of the Hong Kong CFA Ordinance, a person shall be eligible to be appointed as a non-permanent judge from another common law jurisdiction if he is (i) a judge or retired judge of a court of unlimited jurisdiction in either civil or criminal matters in another common law jurisdiction; (ii) a person who is ordinarily resident outside Hong Kong; and (iii) a person who has never been a judge of the High Court, a District Court or a permanent magistrate in Hong Kong.

THE CURRENT APPOINTMENT EXERCISE

The JORC's Recommendation

12. In accordance with the Basic Law, the JORC has recommended the appointment of The Right Honourable The Lord Woolf of Barnes, The Right Honourable The Lord Scott of Foscote, The Right Honourable Sir Ivor Richardson as non-permanent judges from other common law jurisdictions to the CFA. These recommendations have been communicated to the Chief Executive.

Chief Executive's Acceptance

13. In accordance with Article 88 and 90 of the Basic Law and sections 7A and 9(2) of the Hong Kong CFA Ordinance, the Chief Executive has accepted the recommendations of the JORC on the appointment of The Right Honourable The Lord Woolf of Barnes, The Right Honourable The Lord Scott of Foscote, The Right Honourable Sir Ivor Richardson as non-permanent judges from other common law jurisdictions to the CFA, and subject to the endorsement of the Legislative Council, will make the recommended appointments.

Procedures and the JORC Meeting

14. 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 the recommended appointments were considered.

15. The Chief Executive noted that in considering the recommended appointments, the JORC took note of the following matters set out in paragraphs 16 to 21 below.

16. At present, there are 20 non-permanent judges comprising 12 non-permanent Hong Kong judges and 8 non-permanent common law judges. In the view of the Judiciary, the CFA has been functioning satisfactorily. Apart from a few appeals, the Chief Justice has so far drawn the "5th judge" from the list of non-permanent judges from other common law jurisdictions for every appeal. Where a sufficient number of permanent judges are not available to hear appeals, the Chief Justice has nominated non-permanent Hong Kong judges to sit in place of permanent judges as he is obliged to do under the Hong Kong CFA Ordinance.

17. The Chief Justice's intention is to continue usually to draw a non-permanent judge from other common law jurisdictions in each appeal. The retired non-permanent judges from other common law jurisdictions are sometimes tied up in various commitments. As to the serving Law Lords, they have full time judicial commitments in England. In these circumstances, the Chief Justice invited the JORC to consider the following three appointments.

18. The Chief Executive noted that as invited by the Chief Justice, the JORC considered the appointment of the following eligible persons as non-permanent judges from other common law jurisdictions to the CFA :

- (a) The Right Honourable The Lord Woolf of Barnes, the Lord Chief Justice of England and Wales;
- (b) The Right Honourable The Lord Scott of Foscote, a Lord of Appeal in Ordinary from England; and
- (c) The Right Honourable Sir Ivor Richardson, the immediate past President of the Court of Appeal of New Zealand.

19. The Chief Executive was informed of the considerations leading to the JORC's recommendations of The Right Honourable The Lord Woolf of Barnes, The Right Honourable The Lord Scott of Foscote and The Right Honourable Sir Ivor Richardson as non-permanent judges from other common law jurisdictions to the CFA.

20. The Chief Executive also noted that these 3 Judges have agreed to their names being put forward for consideration.

21. The Chief Executive noted that the resolutions of the JORC on the recommended appointments of The Right Honourable The Lord Woolf of Barnes, The Right Honourable The Lord Scott of Foscote and The Right Honourable Sir Ivor Richardson as non-permanent judges from other common law jurisdictions to the CFA were effective in accordance with section 3(3A) of the JORC Ordinance.

The Chief Executive's Acceptance of the JORC's Recommendations

22. The Chief Executive was satisfied that the recommendations of appointment made by the JORC were effective and the procedure was

proper and in order. The Chief Executive therefore accepted the recommendations of the JORC.

ENDORSEMENT OF THE LEGISLATIVE COUNCIL

23. Subject to the endorsement of the Legislative Council, the Chief Executive will make the recommended appointments.

24. Subject to the endorsement of the Legislative Council, the recommended appointments may take effect in July 2003. The recommended appointees would be ready to take up appointment by then.

Administration Wing
Chief Secretary for Administration's Office
May 2003

The Right Honourable The Lord Woolf of Barnes

Personal Background

Lord Woolf of Barnes is a citizen of the United Kingdom. He was born on 2 May 1933. Lord Woolf is married with 3 sons.

Education

Lord Woolf was educated in Fettes College in Scotland. He obtained his LLB degree at University College London.

Legal Experience

Lord Woolf was called to the Bar at the Inner Temple in 1954. He was then commissioned in the National Service, the 15/19th Royal Hussars. In 1955 he was seconded to the Army Legal Services and became Captain. Lord Woolf started practice in 1956. He was a Recorder of the Crown Court from 1972 to 1979. He became a Bencher of the Inner Temple in 1976. He was Junior Counsel of the Inland Revenue from 1973 to 1974 and First Treasury Junior Counsel (Common Law) from 1974 to 1979.

Judicial Experience

Lord Woolf has extensive judicial experience. From 1979 to 1986, he was a Judge of the Queen's Bench Division of the High Court of Justice and was Presiding Judge of the South Eastern Circuit from 1981 to 1984. Between 1986 and 1992, he was a Lord Justice of Appeal. From 1992 to 1996, he was a Lord of Appeal in Ordinary (serving as a member of the United Kingdom's final appellate court). Between 1996 to 2000, he was Master of the Rolls (the head of the Court of Appeal in England). Since 2000, he has been the Lord Chief Justice of England and Wales.

Lord Woolf conducted an inquiry into prison disturbances in 1990. It is still regarded as being the leading report on prison reform. From 1994 to 1996, he conducted an inquiry into Access to Justice. That inquiry brought about major reforms to the civil justice system in England and Wales. The Woolf reforms to the civil justice system are well known and well respected throughout the world.

Lord Woolf's judicial experience has covered all areas of the law and in particular, public and administrative law and criminal law.

Services and Activities Related to the Legal Field

Lord Woolf was a member of the Senate, Inns of Court and Bar between 1981 and 1985. He was on the Board of Management of the Institute of Advanced Legal Studies between 1985 and 1994, and was its Chairman between 1986 to 1994. He is a member of the World Bank International Advisory Council on Law and Justice. Between 1986 to 1991, he was the Chairman of the Lord Chancellor's Advisory Committee on Legal Education. From 1986 to 1990, he was a member of the Advisory Committee on Justices of the Peace. Between 1996 and 2000, he was a member of the Lord Chancellor's Advisory Committee on Public Records. Between 1998 and 2000, he was a member of the Council of Civil Justice and the Rules Committee.

Lord Woolf had also served as the President of a number of public institutions: Association of Law Teachers (1985 to 1989); the South-West London Magistrates Association (1987 to 1993); the Association of Members of the Board of Visitors (since 1994); Public Records Society (1996 to 2000); Institute of Legal Executives (1998); LawCare (2002) and Bracton Law Society (2002/3). He has been the Vice President of the Royal Overseas League since 2001. Between 1994 and 2002 he was Pro-Chancellor of London University.

Services and Activities Not Related to the Legal Field

Lord Woolf served on the Central Council of Jewish Social Services from 1987 to 2000. He has been involved in the Butler Trust (trustee from 1991 to 1996, Chairman from 1992 to 1996 and President since 1996.) He was trustee of the Special Trustees, St. Mary's Hospital, Paddington (1993 to 1997) and of the Magna Carta Trust (1996 to 2000).

He was a Visitor of Nuffield College, Oxford from 1996 to 2000, the University College London from 1996 to 2000 and Darwin College, Cambridge 1996 to 2003. He was Governor of the Oxford Centre for Postgraduate Hebrew Studies from 1989 to 1993.

Awards

Lord Woolf was awarded Honorary Membership of the Society of Public Teachers of Law (1988). He was awarded Honorary Fellow Leeds Polytechnic (1990), British Academy (2000) and Academy of Medical Sciences (2002). He was also conferred the Honorary Degree of Doctor of Laws by the following universities: Buckingham (1992), Bristol (1992), London (1993), Anglia Polytechnic University (1994), Manchester Metropolitan (1994), Hull, Cranfield and Richmond (2001), Cambridge, Exeter, Birmingham and Wolverhampton (2002). He was

appointed Honorary Freeman of the Drapers' Company in the City of London (1999).

Publications

Publications of Lord Woolf include *Protecting the Public: the new challenge (Hamlyn Lecture in 1990)*. He edited the second edition of *Declaratory Judgment* in 1993 with Mr. J. Woolf. He was also one of the editors of the 5th edition of *De Smith Judicial Review of Administrative Action* in 1995 and *Principles of Judicial Review* in 1999.

The Right Honourable The Lord Scott of Foscote

Personal Background

Lord Scott of Foscote is a citizen of the United Kingdom. Born on 2 October 1934, he is married with 4 children.

Education

Lord Scott was educated at Michaelhouse College, Natal, South Africa. He obtained his Bachelor of Arts degree at the University of Cape Town. He then obtained his Bachelor degrees in Arts and Laws at the University of Cambridge. He was a Bigelow Fellow at the University of Chicago, USA from 1958 to 1959.

Legal Experience

In 1959, Lord Scott was called to the Bar at the Inner Temple. Between 1960 and 1983 he practised at the Chancery Bar. He was appointed Queen's Counsel in 1975. He was Attorney General (1980 – 1983) and Vice-Chancellor (1987 – 1991) of the Duchy and County Palatine of Lancaster. He became a Bencher of the Inner Temple in 1981.

Judicial Experience

Lord Scott has extensive judicial experience. Between 1983 and 1991 he served as a Judge of the High Court of Justice of the Chancery Division. He was a Lord Justice of Appeal from 1991 to 1994. Between 1994 and 2000, he was the Vice-Chancellor of the Supreme Court. From 1995 to 2000, he was Head of Civil Justice. Since 2000, he has been a Lord of Appeal in Ordinary (i.e. serving as a member of the United Kingdom's highest appellate court).

His judicial experience has covered all legal fields including in particular, trusts, company law, property and tax.

Between 1992 and 1996 he conducted an Inquiry into defence related exports to Iraq and related prosecutions. The Report of the Inquiry was published in February 1996.

Services and Activities Related to the Legal Field

Lord Scott served as the Vice-Chairman of the Bar (1981 to 1982) and Chairman (1982 to 1983). He was made an Honorary Member of both the American Bar Association and Canadian Bar Association in 1983.

Awards

He was awarded the honorary degree of Doctor of Laws by Birmingham University and Buckingham University in 1996 and 1999 respectively.

Publications

From 1996 to 2000, Lord Scott was the editor-in-chief of the Supreme Court Practice. He has also published various articles in legal journals.

The Right Honourable Sir Ivor Richardson

Personal Background

Sir Ivor Richardson is a citizen of New Zealand. Born on 24 May 1930, he is married with 3 daughters.

Education

Sir Ivor obtained his Bachelor of Laws degree at Canterbury University and his Master Degree in Laws and Doctor Degree in Juristic Science at the University of Michigan, USA.

Legal Experience

Sir Ivor was a partner in the firm Messrs Macalister Brothers, Invercargill, New Zealand from 1957 to 1963. From 1963 to 1966, he was Crown Counsel in the Crown Law Office in Wellington. He then joined the Victoria University of Wellington. He was Professor of Law, between 1967 to 1973, during which period he served as Dean of the Law Faculty from 1968 to 1971. Between 1973 and 1977, he was a partner in Messrs. Watts & Patterson in Wellington.

Judicial Experience

Sir Ivor served as a Judge for 25 years. He was appointed to the High Court of New Zealand in 1977 and to the Court of Appeal later in that year. Between 1996 and 2002, he was President of the Court of Appeal. In 1978, he was appointed to the Privy Council, and he has sat in appeals to the Judicial Committee of the Privy Council. His judicial experience has covered all areas of the law.

Sir Ivor was the Chairman of committees of inquiry into Inflation Accounting between 1975 and 1976 and into Solicitors Nominee Companies in 1983. He also chaired the Organisational Review of the Inland Revenue Department 1993-1994.

Services and Activities Related to the Legal Field

Sir Ivor was the Chairman of the Council of Legal Education from 1983 to 1992. He chaired the Royal Commission on Social Policy between 1986 and 1988. He had also served as Pro Chancellor (1979 to 1984) and Chancellor (1984 to 1986) of the Victoria University of Wellington.

Awards

He was awarded the Honorary Degree of Doctor of Laws by the University of Canterbury and the University of Victoria in 1987 and 1989 respectively. He was knighted in 1986 and awarded the Principal Companion, New Zealand Order of Merit in 2002.

Publications

Sir Ivor has written various books and articles on various legal subjects.

APPOINTMENT OF CHIEF JUDGE OF THE HIGH COURT

INTRODUCTION

Pursuant to Article 90 of the Basic Law of the Hong Kong Special Administrative Region (HKSAR), the Administration intends to give notice in due course to move a motion, to obtain the endorsement of the Legislative Council of the appointment of Mr Justice Ma as the Chief Judge of the High Court. The curriculum vitae of Mr Justice Ma is at Appendix A.

BACKGROUND

The High Court

2. The High Court of the HKSAR consists of the Court of First Instance and the Court of Appeal. The High Court is a court of unlimited civil and criminal jurisdiction.
3. The Court of First Instance consists of:
 - (a) The Chief Judge of the High Court;
 - (b) Such judges as the Chief Executive may appoint;
 - (c) Such recorders as the Chief Executive may appoint; and
 - (d) Such deputy judges as the Chief Justice may appoint.
4. The Court of Appeal consists of:
 - (a) The Chief Judge of the High Court; and
 - (b) Such Justices of Appeal as the Chief Executive may appoint.

5. The Chief Judge of the High Court is the court leader of the High Court. He is also the President of the Court of Appeal. The term of Mr Justice Leong, the current Chief Judge of the High Court, will last until 13 July 2003. The post will become vacant with effect from 14 July 2003.

6. As at 30 April 2003, there are 9 Justices of Appeal, 19 judges of the Court of First Instance, 9 recorders of the High Court and 13 deputy judges of the High Court.

Legal and Constitutional Provisions and Framework

Judicial Officers Recommendation Commission

7. Pursuant to Article 88 of the Basic Law and the Judicial Officers Recommendation Commission Ordinance (Cap. 92), the Judicial Officers Recommendation Commission (“JORC”) is entrusted with the function of making recommendations to the Chief Executive regarding the appointment of judges. The JORC consists of the Chief Justice as the Chairman, the Secretary for Justice and 7 other members appointed by the Chief Executive (2 judges, 1 barrister appointed after consultation with the Bar Council, 1 solicitor appointed after consultation with the Council of the Law Society and 3 persons not connected with the practice of law). Under section 3(3A) of the JORC Ordinance, a resolution is not effective if there are more than 2 votes not in favour. The recommendation of the JORC is then communicated to the Chief Executive.

The Chief Executive

8. Article 48(6) of the Basic Law confers on the Chief Executive the power and function to appoint judges in accordance with legal procedures. Article 88 of the Basic Law provides that judges shall be appointed by the Chief Executive on the recommendation of the JORC. In the case of the appointment of the Chief Judge of the High Court, Article 90 of the Basic Law provides that the Chief Executive shall, in addition to following the procedures prescribed in Article 88, obtain the endorsement of the Legislative Council. The Chief Executive shall also report such appointment to the Standing Committee of the National People’s Congress for the record under Article 90.

The Legislative Council

9. Article 73(7) of the Basic Law confers on the Legislative Council the power and function to endorse the appointment of Court of Final Appeal (“CFA”) judges and the Chief Judge of the High Court. Article 90 of the Basic Law provides that the Chief Executive shall obtain the endorsement of the Legislative Council of the appointment of CFA judges and the Chief Judge of the High Court.

10. Thus, the system of judicial appointment by the Chief Executive acting in accordance with the recommendation of an independent commission, the JORC, as laid down in Article 88 of the Basic Law, together with the additional requirement of endorsement by the Legislative Council of the appointment of CFA judges and the Chief Judge of the High Court under Article 90 of the Basic Law, provides the necessary checks and balances, and reinforces the constitutional guarantee of the independence of the judiciary stipulated in Article 85 of the Basic Law.

THE CURRENT APPOINTMENT EXERCISE

The JORC’s Recommendation

11. In accordance with the Basic Law, the JORC has recommended the appointment of Mr Justice Ma as the Chief Judge of the High Court. This recommendation has been communicated to the Chief Executive.

Chief Executive’s Acceptance

12. In accordance with Article 88 and 90 of the Basic Law, the Chief Executive has accepted the recommendation of the JORC of the appointment of Mr Justice Ma as the Chief Judge of the High Court, and subject to the endorsement of the Legislative Council, will make the recommended appointment.

Procedures and the JORC Meetings

13. In this exercise, six JORC members are eligible to be appointed as the Chief Judge of the High Court. The Chief Executive noted that while section 3(5B) and 3(5C) of the JORC Ordinance provides for the declaration of interest in respect of the selection of Chief

Justice and permanent judges of the CFA, there is no similar provision for the selection of the Chief Judge of the High Court. Section 3(5B) of the JORC Ordinance provides that a member who is or may reasonably be regarded as a candidate for the post of the Chief Justice or a permanent judge of the CFA shall disclose whether or not, if he were to be selected, he is willing to accept appointment, and that disclosure shall be recorded in the minutes of the JORC. Section 3(5C) of the JORC Ordinance provides that a member who discloses a willingness to accept an appointment shall not take part in the deliberation of the JORC with respect to that appointment and shall not vote on any question concerning the same. The Chief Executive however noted that in order to avoid any potential conflict of interest, the same procedure as stipulated under section 3(5B) and 3(5C) had been applied administratively and properly complied with in this exercise. All six JORC members declared that if selected they would not be willing to accept appointment.

14. The Chief Executive noted that the JORC had held 3 meetings to deal with the appointment of the Chief Judge of the High Court and he was satisfied that at each of the 3 meetings a quorum as required by section 3(3) of the JORC Ordinance was present.

The First JORC Meeting

15 The Chief Executive noted that the eligibility requirements for the post as noted by the JORC are as follows:

(a) Basic Law Requirements

16. Article 92 of the Basic Law stipulates that judges of the HKSAR shall be chosen on the basis of their judicial and professional qualities.

17. Moreover, Article 90 of the Basic Law provides that the Chief Judge of the High Court shall be a Chinese citizen who is a permanent resident of the Region with no right of abode in any foreign country.

(b) Statutory Professional Qualifications

18. The professional qualifications for the Chief Judge of the High Court are the same as those for a Judge of the High Court. These are stipulated in section 9 of the High Court Ordinance. See Appendix B.

19. The Chief Executive noted that based on the professional qualifications as stipulated in section 9 of the High Court Ordinance, potential candidates, as noted by the JORC, can broadly be classified into the following categories:

- (a) Serving Justices of Appeal and Judges of the Court of First Instance, and some District Judges and permanent magistrates who meet the requirements as prescribed under section 9(2)(b)(iv) & (v) of the High Court Ordinance;
- (b) Barristers who have practised as a barrister or solicitor in Hong Kong for a period of at least 10 years;
- (c) Solicitors who have practised as a solicitor of the High Court for a period of at least 10 years; and
- (d) Some public officials with legal experience who meet the requirements as prescribed under section 9(1), 9(1A), 9(2)(b)(vi), (viii), (ix) & (x) or 9(2A) of the High Court Ordinance.

20. The Chief Executive also noted that the responsibilities of the Chief Judge of the High Court as noted by the JORC are as follows:

- (a) As court leader of the High Court, the person has to lead the High Court both judicially and administratively;
- (b) The person will have to preside in the Court of Appeal and is expected to deal with the important appeals before that court;
- (c) The person is responsible for the administration of the High Court and is accountable to the Chief Justice who is the Head of the Judiciary and is charged with the administration of the Judiciary. See section 6(2) of the Court of Final Appeal Ordinance. The person would have to ensure the smooth operation of the High Court and the efficient utilization of judicial resources and court time and to advise the Chief Justice on policies, legislation and practices relating to the High Court; and
- (d) The person has statutory powers and responsibilities under various Ordinances. The main one is the Legal Practitioners Ordinance under which the person has various powers,

including the power to admit barristers and solicitors and various powers under the rules made under the Ordinance.

21. The Chief Executive noted that the JORC had considered the following to be the required qualities, having regard to the responsibilities as described in paragraph 20 above:

- (a) As the court leader of the High Court, the person must command respect both within and outside the Judiciary;
- (b) As the Chief Judge of the High Court has to preside in the Court of Appeal and deal with the important appeals, the person must be a good judge with integrity, competence in the law and judicial temperament;
- (c) Having regard to his responsibility for the administration of the High Court, the person must have the potential to be a good administrator. This requires common sense, fairness, sound judgment and good interpersonal skills, with the person being able to get on with the judges and staff; and
- (d) Preferably, the person should have the knowledge, experience and understanding as a judge of the High Court of how the High Court is administered and how the judges function including the pressures and problems they face.

The Second JORC Meeting

22. The Chief Executive noted that a long list of 103 persons comprising serving judges, practising barristers, practising solicitors and public officials with legal experience were put forward to the JORC by the Secretary to the JORC in consultation with the Chairman of the JORC. No further names to the long list were added by the JORC members.

23. The Chief Executive noted that the JORC came up with a shortlist of 6 candidates for detailed consideration, having regard to the responsibilities of the Chief Judge of the High Court and the qualities required of the office holder.

The Third JORC Meeting

24. The 6 shortlisted candidates were informed by the Chief Justice that they were on the shortlist after the second JORC meeting. 3 candidates indicated that they are not willing to be considered for appointments. The Chief Executive noted that 3 shortlisted candidates withdrew from the shortlist, leaving 3 candidates on the shortlist. The Chief Executive noted that the JORC had detailed discussions on the suitability of the 3 candidates remaining on the shortlist. The Chief Executive was informed of the considerations leading to the JORC's recommendation of the appointment of Mr. Justice Ma as the Chief Judge of the High Court.

25. The Chief Executive was satisfied that the resolution on the recommended appointment was effective in accordance with section 3(3A) of the JORC Ordinance.

The Chief Executive's Acceptance of the Recommendation

26. The Chief Executive noted that Mr. Justice Ma had confirmed to the Chief Justice that he is willing and able to take up the post of the Chief Judge of the High Court, and to comply with the eligibility requirements including the requirement of Chinese Nationality with no right of abode in any foreign country.

27. The Chief Executive was satisfied that the recommendation of the appointment made by the JORC was effective and the procedure was proper and in order. The Chief Executive therefore accepted the recommendation of the JORC.

OTHER MATTERS

28. It should be noted that Mr Justice Ma is the spouse of Madam Justice Yuen, Justice of Appeal. As was stated by the Judiciary when Mr Justice Ma was appointed to the Court of Appeal in November 2002, they would not sit together in the same division in the Court of Appeal. The Judiciary will state that if the recommended appointment of Mr Justice Ma as the Chief Judge of the High Court takes effect, the arrangement that Mr Justice Ma and Madam Justice Yuen will not sit together in the same division in the Court of Appeal will continue. Moreover the Judiciary will state that Mr Justice Ma will not deal with

any matter concerning Madam Justice Yuen. All matters concerning her will be dealt with by the Chief Justice.

ENDORSEMENT OF THE LEGISLATIVE COUNCIL

29. Subject to the endorsement of the Legislative Council, the Chief Executive will make the recommended appointment.

30. Subject to the endorsement of the Legislative Council, the recommended appointment may take effect from 14 July 2003.

Administration Wing
Chief Secretary for Administration's Office
May 2003

Mr Justice Geoffrey Ma Tao-li

Personal Background

Mr Justice Ma was born on 11 January 1956 in Hong Kong. He is married to Madam Justice Yuen. They have one daughter.

Education

Mr Justice Ma received education in England at a young age. He obtained his Bachelor of Laws from Birmingham University in 1977. After studying at the College of Law, he passed his Bar Finals in 1978.

Legal Experience

Mr Justice Ma was called to the English Bar at the Gray's Inn in 1978. He was admitted to the Hong Kong Bar in 1980. He was also qualified in Australia in 1983 and Singapore in 1990. He became a Queen's Counsel in 1993. He was appointed a Recorder of the High Court in November 2000.

Mr Justice Ma practiced in various areas of civil law. His main areas of practice were: arbitration, commercial [aviation, banking, conflict of laws, insurance (marine and non-marine), international sale of goods, shipping], company, chancery work, building, administrative and constitutional law.

Mr Justice Ma was also the legal consultant to Messrs. David Chong & Co., Singapore, Advocates & Solicitors. He was the head of the litigation, shipping and admiralty departments in that firm. He has practiced in Singapore.

Judicial Experience

Mr Justice Ma was appointed a Judge of the Court of First Instance in December 2001. He has heard cases involving arbitration, construction, general commercial and contract, insurance, private international law, partnership, real property and landlord and tenant law. He has also heard cases involving all procedural aspects of civil law, such as injunctions, etc.

Mr Justice Ma was appointed a Justice of Appeal in November 2002. He hears both civil and criminal appeals. In the civil field, he has heard appeals involving construction, general commercial and contract, judicial review, defamation, personal injuries, tax and all aspects of procedural

law such as applications for stay, security for costs, etc. He has also heard criminal cases involving manslaughter, arson, blackmail, dangerous drugs, false imprisonment, copyright offences, theft, burglary, fraud and dangerous driving.

Services and Activities Related to the Legal Field

Mr Justice Ma has been an associate member of the London Maritime Arbitrators Association since 1979. He was also a member of the Steering Committee for the Eleventh International Congress of Maritime Arbitrators, and member of Hong Kong International Arbitration Centre Arbitration Ordinance Review Committee. He had conducted (as counsel) a number of arbitrations in Hong Kong involving commodities, shipping, sale of goods, and building. He had also been appointed as arbitrator in arbitrations involving charter parties, sale of goods, forex dealings and syndicated loans.

Mr Justice Ma was a Member of the Civil Court Users' Committee of the Judiciary (as a barrister member from October 1993 to December 2001) and he still serves on the Committee as a judge. From February 2000 to December 2001, he was also a member of the Working Party on Civil Justice Reform appointed by the Chief Justice.

Mr Justice Ma was a member of the Bar Council of the Hong Kong Bar Association (1982 – 1984, 1992 – 1996).

Mr Justice Ma has been a Honorary Lecturer in the Department of Professional Legal Education, University of Hong Kong since 1987.

Services and Activities Not Related to the Legal Field

Mr Justice Ma was the Chairman of the Appeal Tribunal Panel (Buildings) (December 1994 – December 2001). He was the Chairman of the Environmental Impact Assessment Appeal Board Panel (April 2001 – December 2001). He was the Deputy Chairman of the Securities and Futures Appeals Panel (October 1999 – December 2001) and was also the Deputy Chairman, Securities and Futures Commission Takeovers Appeal Committee.

Mr Justice Ma was a member of the Criminal and Law Enforcement Injuries Compensation Board in Hong Kong (June 1991 – December 2001), a member of the Hong Kong Futures Exchange Disciplinary Appeals Tribunal (August 1994 - December 2001), an adjudicator of Registration of Persons Tribunal in Hong Kong (September 1987 –

February 1996), and he was a member (June 1994 – December 1998) and the Vice Chairman (December 1994 – December 1998) of the Management Committee of the Consumer Legal Action Fund. He was the Deputy Chairman of the Board of Review (Inland Revenue) (May 1997 – April 2000). And he was also the Hon Legal Advisor to the Hong Kong Society of Endocrinology, Metabolism and Reproduction Ltd.

Publications

Mr Justice Ma is a contributing Editor of Hong Kong Civil Procedure 2002. He lectured on and wrote “Litigating in the Commercial List” : 2002 Law Lectures for Practitioners. He is the Editor in Chief of Arbitration in Hong Kong : A Practical Guide (not yet published).

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Chapter:	4	Title:	HIGH COURT ORDINANCE	Gazette Number:	25 of 1998
Section:	9	Heading:	Professional qualifications of judges	Version Date:	01/07/1997

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

(1) A person shall be eligible to be appointed to be a judge of the High Court if- (Amended 25 of 1998 s. 2)

(a) he is qualified to practise as an advocate in a court in Hong Kong or any other common law jurisdiction having unlimited jurisdiction either in civil or criminal matters; or (Amended 14 of 1997 s. 2)

(b) he is qualified as mentioned in paragraph (a) and prior thereto was qualified to practise as a solicitor in such a court,

and, in either case, he has for at least 10 years practised as an advocate or solicitor in such a court.

(1A) A person shall also be eligible to be appointed to be a judge of the High Court if he is qualified to practise as a solicitor of the High Court and has for at least 10 years practised as such. (Added 52 of 1995 s. 2. Amended 25 of 1998 s. 2)

(2) A person shall also be eligible to be appointed to be a judge of the High Court if- (Amended 25 of 1998 s. 2)

(a) he is qualified to practise as an advocate in a court in Hong Kong or any other common law jurisdiction having unlimited jurisdiction either in civil or criminal matters; or (Amended 14 of 1997 s. 2)

(b) he is qualified as mentioned in paragraph (a) and prior thereto was qualified to practise as a solicitor in such a court,

and, in either case, he has, subject to subsection (3), for at least 10 years-

(i)-(iii) (Repealed 14 of 1997 s. 2)

(iv) been a District Judge appointed in accordance with section 4 or 7 of the District Court Ordinance (Cap 336);

(v) been a permanent magistrate appointed by warrant under section 5 of the Magistrates Ordinance (Cap 227);

(vi) been a legal officer as defined in section 2 of the Legal Officers Ordinance (Cap 87);

(vii) (Repealed 8 of 1993 s. 6)

(viii) been a Director, Deputy Director, Assistant Director of Legal Aid or Legal Aid Officer appointed in accordance with section 3 of the Legal Aid Ordinance (Cap 91); (Added 50 of 1976 s. 2. Amended 24 of 1983 s. 7; 39 of 1992 s. 8; 60 of 1992 s. 3)

(ix) been an Official Receiver, Assistant Official Receiver (Legal), Assistant Principal Solicitor, Senior Solicitor or Solicitor, appointed in accordance with section 75 of the Bankruptcy Ordinance (Cap 6); or (Added 39 of 1992 s. 8. Amended 60 of 1992 s. 3; 68 of 1995 s. 17)

(x) been a Director, Deputy Director or Assistant Director of Intellectual Property or a Senior Solicitor, appointed in accordance with section 3 of the Director of Intellectual Property (Establishment) Ordinance (Cap 412). (Added 60 of 1992 s. 3)

(2A) A person shall also be eligible to be appointed to be a judge of the High Court if- (Amended 25 of 1998 s. 2)

- (a) he is a solicitor of a court in Hong Kong or any other common law jurisdiction having unlimited jurisdiction either in civil or criminal matters; (Amended 14 of 1997 s. 2)
- (b) he is and has been for the previous 2 years at least, and in aggregate for at least 5 years, employed in the service of the Crown in Hong Kong on judicial or legal work; and
- (c) he has, subject to subsection (4), for at least 10 years either-
 - (i) practised as an advocate or solicitor in such a court; or
 - (ii) been employed in such service as is described in paragraph (b). (Added 44 of 1982 s. 2)

(3) For the purposes of calculating the period of 10 years referred to in subsection (2), periods of less than 10 years falling within any of paragraphs (iv) to (x) of that subsection may be combined, and there may be included in such period, any period of practice as an advocate or solicitor in any of the courts referred to in subsection (2)(a).

(Amended 50 of 1976 s. 2; 39 of 1992 s. 8; 60 of 1992 s. 3; 14 of 1997 s. 2)

(4) For the purposes of calculating the period of 10 years referred to in subsection (2A)(c) there may be included any period of less than 10 years falling within any of paragraphs (iv) to (x) of subsection (2), and periods of less than 10 years failing within subparagraphs (i) and (ii) of subsection (2A)(c) may be combined. (Added 44 of 1982 s. 2. Amended 39 of 1992 s. 8; 60 of 1992 s. 3; 14 of 1997 s. 2)

(5) For the purposes of calculating the period of 10 years under subsection (2), periods served in an office specified in the repealed Registrar General (Establishment) Ordinance (Cap 100) may be taken into account notwithstanding the repeal of that Ordinance. (Added 8 of 1993 s. 6)

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