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Paper for the House Committee meeting on 28 May 2004

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

Purpose

This paper seeks the views of members on the procedure for endorsement of removal 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 and the Chief Judge of the High Court.
3. On 16 May 2003, the House Committee endorsed the following procedure for endorsement of appointment of judges of the Court of Final Appeal and the Chief Judge of the High Court by LegCo, as recommended by the Panel -
 - (a) the Administration advises the House Committee of the Chief Executive's acceptance of the recommendation of Judicial Officers Recommendation Commission and provides sufficient information on the recommended judicial appointee(s) to LegCo (this should take place before the Chief Executive makes any public announcement of his acceptance of the recommendation);
 - (b) the House Committee 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 the House Committee;
 - (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, the Chief Executive makes the appointment.

4. In the course of its deliberation, the Panel had invited the views of the Committee on Rules of Procedure (CRoP) of LegCo on the procedure set out in paragraph 3 above. One of the suggestions made by CRoP was that the procedure for endorsement of judicial appointments by LegCo, if adopted, should also apply to endorsement of removal of judges.

Basic Law provisions

5. In dealing with the issue of removal of judges, it is necessary to comply with the requirements set out in BL89 and BL90(2).

6. BL89 provides for the removal of judges as follows -

"A judge of a court of the Hong Kong Special Administrative Region may only be removed for inability to discharge his or her duties, or for misbehaviour, by the Chief Executive on the recommendation of a tribunal appointed by the Chief Justice of the Court of Final Appeal and consisting of not fewer than three local judges.

The Chief Justice of the Court of Final Appeal of the Hong Kong Special Administrative Region may be investigated only for inability to discharge his or her duties, or for misbehaviour, by a tribunal appointed by the Chief Executive and consisting of not fewer than five local judges and may be removed by the Chief Executive on the recommendation of the tribunal and in accordance with the procedures prescribed in [the Basic Law]."

7. BL90(2) provides for the removal of judges as follows -

"In the case of removal of judges of the Court of Final Appeal and the Chief Judge of the High Court of the Hong Kong Special Administrative Region, the Chief Executive shall, in addition to following the procedures prescribed in Article 89 of the Basic Law, obtain the endorsement of the Legislative Council and report such removal to the Standing Committee of the National People's Congress for the record."

Proposed procedure for endorsement of removal of judges by LegCo under BL73(7)

8. With the exception of step (a) which reflects the relevant provisions of the Basic Law on removal of judges, the following proposed procedure for endorsement of removal of judges by LegCo is essentially the same as the existing procedure for endorsement of appointment of judges by LegCo (paragraph 3 above) -

- (a) the Administration advises the House Committee of the Chief Executive's acceptance of the recommendation of the tribunal appointed by the Chief Justice of the Court of Final Appeal on the removal of a judge, or the recommendation of the tribunal appointed by the Chief Executive on the removal of the Chief Justice of the Court of the Final Appeal, as appropriate. The Administration should provide sufficient information on the recommendation to LegCo before the Chief Executive makes any public announcement of his acceptance of the recommendation;
- (b) the House Committee 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 the House Committee;
- (e) the Administration gives notice of a motion to seek the endorsement of LegCo of the recommended removal;
- (f) the motion is moved, debated and voted on at a Council meeting; and
- (g) if the motion is passed by LegCo, the Chief Executive removes the judge.

9. The comments of the Administration, the Judiciary Administration and the two legal professional bodies have been sought on the proposed procedure. The Administration, the Judiciary Administration and The Hong Kong Bar Association are agreeable to the proposed procedure. The Law Society of Hong Kong raises doubt as to the need for a subcommittee of the House Committee to discuss the recommendation of the relevant tribunal to remove a senior judge after the Chief Executive has accepted the recommendation. The Law Society considers that in the event that the Chief Executive has accepted the recommendation of the relevant tribunal, the Administration should give notice of a motion to seek the endorsement of LegCo of the recommendation. The motion will then be moved, debated and voted on at a Council meeting.

10. The Panel has noted the view of the Law Society of Hong Kong about the need for a subcommittee to consider the recommendation of the relevant tribunal to remove a senior judge. The Panel is of the view that the proposed procedure for endorsement of removal of judges (paragraph 8 above) should mirror the procedure for endorsement of appointment of judges endorsed by the House Committee (paragraph 3 above), and under step (b) of the two sets of procedure, it is for the House Committee to decide whether a subcommittee should be formed to consider the recommended appointment or removal of a senior judge, having regard to the particular circumstances of the case.

11. The Panel recommends that the proposed procedure in paragraph 8 above be adopted by LegCo for endorsement of removal of judges under BL73(7).

Advice sought

12. Members are invited to endorse the proposed procedure set out in paragraph 8 above.

Council Business Division 2
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