

Translation

LEGCO QUESTION No. 11
(Written Reply)

Asked by : Hon Ma Lik

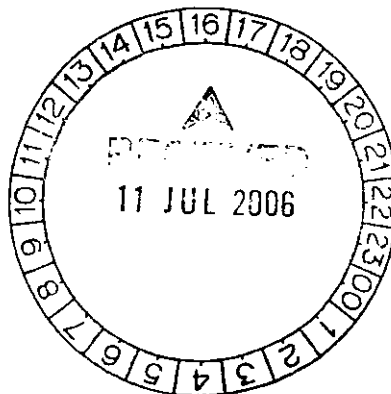
Date of meeting : 12 July 2006

Replied by : Chief Secretary
for Administration

Question:

Article 48(6) of the Basic Law stipulates that "the Chief Executive of the Hong Kong Special Administrative Region...to appoint or remove judges of the courts at all levels in accordance with legal procedures"; and Article 88 stipulates that "judges of the courts of the Hong Kong Special Administrative Region shall be appointed by the Chief Executive on the recommendation of an independent commission composed of local judges, persons from the legal profession and eminent persons from other sectors". In this connection, will the Government inform this Council:

- (a) in relation to the "judges" referred to in the above provisions, of the existing part-time and full-time judicial officers in the Court of Final Appeal, the High Court, district courts, magistrates' courts and other special courts in the Hong Kong Special Administrative Region who are included and excluded respectively in the context; and
- (b) of the legal basis for such differentiation?



Reply:

President,

- (1) The Basic Law distinguishes between judges whose appointment and removal are provided for under Articles 88 and 89 of the Basic Law and other members of the judiciary.
- (2) Article 88 provides that judges of the courts of the Hong Kong Special Administrative Region shall be appointed by the Chief Executive on the recommendation of an independent commission. This is the Judicial Officers Recommendation Commission ("JORC"), established under the Judicial Officers Recommendation Commission Ordinance (Cap. 92). The Chief Executive's power to appoint is also referred to in Article 48(6). Consistently with Article 88, various statutory provisions provide for their appointment. The judges referred to in Article 88 are the full time judges of the District Court and the High Court and the judges of the Court of Final Appeal. They may only be removed from office on the grounds, and in accordance with the procedures, described in Article 89 and Article 90 (where applicable).
- (3) Article 91 of the Basic Law provides that the previous system of appointment and removal of members of the judiciary other than judges shall be maintained. The members of the judiciary referred to in Article 91 include -
 - (a) full time judicial officers apart from the judges referred to in (2) above, such as permanent magistrates; and
 - (b) part time judges and judicial officers, such as Recorders and deputy judges and judicial officers appointed on a temporary basis, who are drawn from practising barristers and solicitors.

Consistently with Article 91, various statutory provisions provide for their appointment. In accordance with the statutory provisions, appointments of full time judicial officers referred to in (a) and appointments of Recorders are made by the Chief Executive on the recommendation of the JORC; appointments of deputy judges and judicial officers on a temporary basis are made by the Chief Justice.

- (4) The legal basis for the differentiation between judges appointed under Article 88 of the Basic Law and members of the judiciary other than such judges is contained in the Basic Law, particularly Articles 88 and 91, and in the relevant statutory provisions. Article 81(2), which provides that the judicial system previously practised in Hong Kong shall be maintained except for those changes consequent upon the establishment of the Court of Final Appeal, is also relevant.