

**For information**

**Legislative Council  
Subcommittee on Proposed Senior Judicial Appointments**

**Purpose**

The purpose of this paper is to provide relevant information on the two matters as set out in paragraph 2 below.

**Background**

2. At the meeting of the Legislative Council Subcommittee on Proposed Senior Judicial Appointments held on 7 May 2012, Members requested the Judiciary to provide supplementary information, including –
- (a) The policy for extension of the term of office of Judges and Judicial Officers (“JJOs”) and its application in the current appointment exercise; and
  - (b) The proposed appointment of Mr. Justice Robert TANG Ching (“Mr. Justice Tang”), who has attained the age of 65, as a Permanent Judge (“PJ”) of the Court of Final Appeal.

**Relevant Statutory Provisions**

3. The tenure of office of PJs is laid down in Section 14 of the Hong Kong Court of Final Appeal Ordinance, Cap. 484 (“Cap. 484”) –

*“(1) The Chief Justice and permanent judges shall vacate their offices when they attain the retiring age.*

*(2) Notwithstanding subsection (1) –*

*(a) subject to paragraph (b) the terms of office ..... of permanent judges may be extended for not more*

*than 2 periods of 3 years by the Chief Executive acting ..... in the case of permanent judges, in accordance with the recommendation of the Chief Justice and in any such case the ..... permanent judge ..... shall accordingly be regarded as having attained the retiring age at the expiration of that extended period;*

*(b) a person who has attained the age of 65 years may be appointed ..... to be a permanent judge for a term of 3 years and that term may be extended for one period of 3 years by the Chief Executive acting ..... in the case of a permanent judge, in accordance with the recommendation of the Chief Justice.*

.....

*(11) In this section .... "retiring age" means the age of 65 years."*

## **The Policy on Extension of the Term of Judicial Office**

4. The policy of the Judicial Officers Recommendation Commission ("JORC") is that extension of the term of judicial office beyond the statutory normal retirement age should not be automatic. It should be regarded as exceptional and would not normally be approved unless:

- (a) The Judiciary has operational needs, including the need for continuity; and
- (b) The extension would not hinder the advancement of junior officers who are suitable for elevation<sup>1</sup>.

The above policy was made in September 1998 and has been applied consistently in all cases since then.

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<sup>1</sup> After a review in September 2001, the JORC resolved to add that the extension would not hinder the appointment of members of the legal profession who are well suited and available for appointment.

## **The Extension or Otherwise of the Term of Office of a PJ**

5. The Chief Justice applies the JORC policy above in considering whether the term of office of a PJ in the Court of Final Appeal should be extended or not.

6. Mr. Justice Bokhary PJ will be reaching the statutory normal retiring age of 65 years in October 2012. By then, he would have served for over 15 years as a PJ in the CFA. The Chief Justice is of the view that there is no exceptional operational need for continuity in the case of Mr. Justice Bokhary PJ. The Chief Justice is also of the view that there would be judges in the High Court suitable for elevation as PJ.

7. Having regard to the Chief Justice's views above and applying the JORC's policy on extension of the term of judicial office consistently, the question of extending Mr. Justice Bokhary PJ's term of office as a PJ does not arise. Accordingly, there is no requirement for the Chief Justice to make a recommendation under section 14(2)(a) of Cap. 484 to the Chief Executive.

## **Proposed Appointment of Mr. Justice Tang as a PJ by the JORC**

8. In view of a PJ vacancy arising on 25 October 2012 from Mr. Justice Bokhary PJ's vacating his office when he attains the normal retiring age of 65, the matter of filling the PJ vacancy was then put to the JORC in the first quarter of 2012.

9. Article 92 of the Basic Law ("BL92") stipulates that judges of the Hong Kong Special Administrative Region shall be chosen on the basis of their judicial and professional qualities. The JORC makes recommendations on judicial appointments to the Chief Executive in strict accordance with BL 92 in all cases.

10. The JORC process, deliberations and resolution in respect of the proposed appointment of Mr. Justice Tang as PJ are set out in the paper provided by the Administration to the House Committee on the proposed appointment. It is relevant to note the following:

- (a) Mr. Justice Tang is currently a serving Justice of Appeal of the Court of Appeal of the High Court. His term of office as a Justice of Appeal has been extended beyond the normal retiring age of 65 years for three years until 6 January 2015. Section 11A(3) of the High Court Ordinance, Cap. 4 provides that in such a case (i.e. where the term of office of a judge of the High Court is extended) the judge shall accordingly be regarded as having attained the retiring age at the expiration of the period of extension. Therefore, Mr. Justice Tang is regarded as no different from any other serving judge of the High Court who has not yet reached the (normal) retiring age for the purpose of his eligibility for the PJ vacancy;
- (b) JORC noted that all High Court judges (including Mr. Justice Tang) are eligible candidates for consideration. JORC then agreed that three judges of the High Court (including Mr. Justice Tang) should be placed on the shortlist. Having regard to BL 92 that judges shall be chosen on the basis of their judicial and professional qualities, the JORC then gave detailed consideration to the suitability of the three Judges having regard to the qualities required of a PJ and all relevant factors including operational requirements and considered Mr. Justice Tang was the most suitable for the PJ vacancy;
- (c) In other words, Mr. Justice Tang, a serving Justice of Appeal of the Court of Appeal of the High Court (whose full time judicial office is junior to that of a PJ), is considered to be eminently suitable for elevation to the Court of Final Appeal and appointment as a PJ. Although Mr. Justice Tang is already serving as a Non-permanent Hong Kong Judge on the Court of Final Appeal on a part-time basis, his being appointed as a PJ is still regarded as an elevation when seen against his current full-time judicial duties as a High Court judge; and
- (d) Section 14(2)(b) of Cap. 484 provides for a person who has attained the age of 65 years to be appointed as a PJ for a term of three years.

11. As a result, the JORC resolved to recommend to the Chief Executive the appointment of Mr. Justice Tang as a PJ of the Court of Final Appeal for a term of three years from 25 October 2012 to 24 October 2015.

**Advice Sought**

12. Members are requested to note the contents of this paper.

Judiciary  
May 2012