

Provisions in the Basic Law

The relevant articles in the Basic Law include –

- (a) Article 48(6) confers on the Chief Executive the power and functions to appoint judges of the courts at all levels in accordance with legal procedures;
- (b) Article 88 provides that judges of the courts of the Hong Kong Special Administrative Region (HKSAR) shall be appointed by the Chief Executive on the recommendation of an independent commission. The Judicial Officers Recommendation Commission (JORC) is the statutory body constituted by the Judicial Officers Recommendation Commission Ordinance (JORC Ordinance) (Cap. 92) to perform the functions of the independent commission;
- (c) Article 92 stipulates that judges and other members of the judiciary of the HKSAR shall be chosen on the basis of their judicial and professional qualities and may be recruited from other common law jurisdictions;
- (d) Article 90 stipulates that the Chief Justice of the Court of Final Appeal and the Chief Judge of the High Court of the HKSAR shall be Chinese citizens who are permanent residents of the Region with no right of abode in any foreign country. In the case of the appointment of judges of the Court of Final Appeal and the Chief Judge of the High Court of the HKSAR, the Chief Executive shall, in addition to following the procedures prescribed in Article 88 of the Basic Law, obtain the endorsement of the Legislative Council

and report such appointment to the Standing Committee of the National People's Congress for the record; and

- (e) Article 104 stipulates that when assuming office, judges of the courts at all levels and other members of the judiciary in the HKSAR, must in accordance with law, swear to uphold the Basic Law of the HKSAR of the People's Republic of China and swear allegiance to the HKSAR of the People's Republic of China.

Provisions in the JORC Ordinance (Cap. 92)

The relevant provisions in the JORC Ordinance (Cap. 92) include –

- (a) Section 3(1) provides that JORC consists of 9 members –
- (i) the Chief Justice of the Court of Final Appeal as the Chairman;
 - (ii) the Secretary for Justice; and
 - (iii) 7 other members appointed by the Chief Executive –
two judges, one barrister appointed after consultation with the Bar Council of the Hong Kong Bar Association, one solicitor appointed after consultation with the Council of the Law Society of Hong Kong and 3 persons not connected with the practice of law;

The existing JORC membership is available on the Government's website (<https://www.info.gov.hk/cml/eng/cbc/a130.htm>);

- (b) Section 3(3) stipulates that the Chairman and no fewer than 6 other members may exercise and perform any of the functions, powers and duties of the Commission;
- (c) Section 3(3A) requires that at a meeting of the Commission, a

resolution is effective –

- (i) where 7 members are present, at least 5 vote in favour;
- (ii) where 8 members are present, at least 6 vote in favour; and
- (iii) where 9 members are present, at least 7 vote in favour;

(d) Sections 3(5B) and 3(5C) provide that where the Commission is exercising its functions in relation to the filling of vacancies in judicial offices; or in relation to the extension of the term of office of the Chief Justice of the Court of Final Appeal, a member who is or may reasonably be regarded as a candidate for selection to fill any such vacancy or whose term of office is being considered for extension shall disclose whether or not he is willing to accept appointment or the extension. If he discloses a willingness to accept an appointment or extension, he shall not take part in any deliberation of the Commission with respect to that appointment or extension as the case may be and shall not vote on any question concerning the same;

(e) Sections 3(5D) and 3(6) provide that for the purposes of any meeting of the Commission, if the Chief Justice of the Court of Final Appeal is unable to act as Chairman, those members present at that meeting may by resolution appoint any of their number to act in his place and in so acting to exercise and perform all the functions of the Chairman at that meeting. If any appointed member is absent from Hong Kong or is unable to act, the Chief Executive may appoint another person to act temporarily as a member; and

(f) Section 7 requires all JORC members to take an oath (in the form set

out in Schedule 2) to discharge their responsibilities “freely and without fear or favour, affection or ill will”.