

# **Judicial Officers Recommendation Commission**

## **Contents**

### **Foreword**

| <b>Chapter</b>  | <b>Page</b> |
|---|-------------|
| 1 The Judicial Officers Recommendation Commission .....   | 1 - 5       |
| 2 Chief Justice and the Court of Final Appeal.....        | 6 - 8       |
| 3 High Court.....   | 9 - 12      |
| 4 District Court and Lands Tribunal.....                  | 13 - 16     |
| 5 Magistrates' Courts, Tribunals and Coroner's Court..... | 17 - 19     |

### **Appendices**

|  |         |
|--|---------|
| 1 Judicial Officers Recommendation<br>Commission Ordinance (Cap. 92) ..... | 20 - 28 |
| 2 Statutory Requirements for Various Judicial Offices.....                 | 29 - 41 |

## Foreword

An independent Judiciary upholding the rule of law is of cardinal importance to Hong Kong under the principle of one country two systems. It is crucial that judges<sup>1</sup> appointed have complete integrity and possess high standards of professional competence. The work in relation to judicial appointments is accordingly of great importance.

2. Under the Basic Law, 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. On 1 July 1997, the Judicial Officers Recommendation Commission was established as the independent commission contemplated by the Basic Law.

3. This publication provides an account of the Judicial Officers Recommendation Commission, covering its constitution, functions, membership and operation. This publication also contains a description of the different levels of court and the various judicial offices.

4. I hope that by reading this publication, you will have a better understanding of the work of the Commission.

Andrew Li  
Chief Justice  
Chairman of the Judicial Officers Recommendation Commission

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<sup>1</sup> The reference to “judges” includes both judges and judicial officers.

# **CHAPTER 1**

## **The Judicial Officers Recommendation Commission**

### **Constitution of JORC**

1.1 Article 48(6) of the Basic Law confers on the Chief Executive the power and function to appoint or remove judges of the courts at all levels in accordance with legal procedures. Article 88 of the Basic Law 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 composed of local judges, persons from the legal profession and eminent persons from other sectors.

1.2 The Judicial Officers Recommendation Commission (“the Commission” or “JORC”) is the independent commission contemplated by Article 88 of the Basic Law. It was established on 1 July 1997 under the Judicial Officers Recommendation Commission Ordinance (Cap. 92) (“the JORC Ordinance”) in place of the then Judicial Service Commission. The JORC Ordinance is at Appendix 1.

### **Functions of JORC**

1.3 Under the JORC Ordinance, the functions of the Commission are to advise and make recommendations to the Chief Executive regarding –

- (a) the filling of vacancies in judicial offices;
- (b) such representations from a judicial officer concerning conditions of service as may be referred to it by the Chief Executive; and
- (c) any matter affecting judicial officers which may be prescribed or which the Chief Executive may refer to the Commission.

1.4 All Judicial Offices are within the responsibility of the Commission. They are specified in Schedule 1 to the JORC Ordinance at Appendix 1.

## **Composition and Appointment of JORC**

1.5 As prescribed by the JORC Ordinance, the Commission consists of the Chief Justice as the Chairman, the Secretary for Justice and seven other members appointed by the Chief Executive, consisting of two judges, one barrister, one solicitor and three other persons who are not connected with the practice of law.

1.6 The Chief Executive is required by the JORC Ordinance to consult the Bar Council of the Hong Kong Bar Association and the Council of The Law Society of Hong Kong regarding the appointment of the barrister and the solicitor respectively. The Chief Executive may however appoint a person other than a person recommended by the respective professional bodies.

1.7 As provided by the JORC Ordinance, an appointed member may resign his office by notice in writing to the Chief Executive and shall vacate his office after two years, but shall be eligible for re-appointment.

### **Certain Persons Ineligible**

1.8 The JORC Ordinance provides that a person shall not be appointed to be a member of the Commission if he is a member of the Legislative Council; or he holds a pensionable office (other than the office of a judge) the emoluments whereof are payable wholly or partly out of public revenue, unless he is on leave prior to retirement and has already received official notification of the pension which will be payable to him for service which comprised service in the office or post of which he is the holder.

### **Membership**

1.9 The current membership is set out in the latest JORC annual report.

## **Procedure and Voting Requirements**

### **Procedure**

1.10 The procedure and voting requirements of the Commission are laid down in the JORC Ordinance. The Chairman and no fewer than six other members may exercise and perform any of the functions, powers and duties of the Commission. For the purposes of any meeting of the Commission, if the Chief Justice is unable to act as Chairman, those members present at that meeting may by resolution appoint any of their member 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.

### **Voting Requirements**

1.11 At a meeting of the Commission, a resolution is effective if –

- (a) where 7 members are present, at least 5 vote in favour;
- (b) where 8 members are present, at least 6 vote in favour; and
- (c) where 9 members are present, at least 7 vote in favour.

### **Written Resolutions**

1.12 A resolution of the Commission without a meeting may be put to the vote of the members by circulating a draft of the resolution with a voting paper; may be voted on by a member by signing the voting paper and returning it to the Secretary to the Commission; and is effective if –

- (a) where 7 members sign the voting paper, at least 5 votes are in favour;
- (b) where 8 members sign the voting paper, at least 6 votes are in favour; and
- (c) where 9 members sign the voting paper, at least 7 votes are in favour.

1.13 Notwithstanding paragraph 1.12, a resolution is not effective where any member notifies the Secretary, on the voting paper, that the resolution should be discussed at a meeting.

### **Disclosure of Interests**

1.14 The JORC Ordinance provides that where the Commission is exercising its functions in relation to the filling of vacancies in judicial offices as specified in Schedule 1 to the JORC Ordinance or to the extension of the term of office of the Chief Justice under section 14 of the Hong Kong Court of Final Appeal Ordinance (Cap. 484), 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, if he were to be selected or if the extension of his term of office were to be recommended, he is willing to accept appointment or the extension, and that disclosure shall be recorded in the minutes of the Commission's meeting. A member who discloses a willingness to accept an appointment or extension shall not take part in any deliberation of the Commission with respect to that appointment or extension and shall not vote on any question concerning the same; and shall, with respect to any deliberation of the Commission concerning that appointment or extension as the case may be and any question concerning the same, be treated as being unable to act.

### **Secretary**

1.15 Under the JORC Ordinance, the Secretary to the Commission shall be a public officer appointed by the Chief Executive. The Secretary shall not be a member of the Commission. Since the establishment of the Commission, the Chief Executive has appointed the current holder of the Judiciary Administrator post as the Secretary.

### **Statutory Provisions Relating to the Operation of JORC**

1.16 The JORC Ordinance contains the following provisions relating to the operation of the Commission –

- (a) It is an offence under the Ordinance to –

- (i) wilfully give false information to the Commission or any member (section 8);
  - (ii) publish or disclose, without the permission of the Chief Executive, to any unauthorized person or otherwise than in the course of duty the contents or any part of the contents of any document, communication or information which has come to his knowledge in the course of his duties under or in connection with the JORC Ordinance (section 11); and
  - (iii) influence or attempt to influence a decision of the Commission or any member (section 12).
- (b) Reports, statements or other communications which the Commission may in the exercise of its functions or the discharge of its duties make to the Chief Executive or to the Chief Justice shall be privileged in that its production may not be compelled in any legal proceedings (section 9).
- (c) A member of the Commission shall have the same protection and privileges in proceedings brought against him for any act done in the execution of his duty as such member as a judge has when acting in the execution of his office (section 10).

## **CHAPTER 2**

# **Chief Justice and the Court of Final Appeal**

## **Chief Justice**

### **Duties and Responsibilities**

2.1 The Hong Kong Court of Final Appeal Ordinance (Cap. 484) provides that the Chief Justice shall be the head of the Judiciary and shall be charged with the administration of the Judiciary and such other functions as may be lawfully conferred on him. Under the same Ordinance, the Chief Justice shall be President of the Court of Final Appeal.

### **Constitutional and Statutory Requirements**

2.2 Article 90 of the Basic Law and section 6 of the Hong Kong Court of Final Appeal Ordinance stipulate that the Chief Justice of the Court of Final Appeal shall be a Chinese citizen who is a permanent resident of the HKSAR with no right of abode in any foreign country.

2.3 The statutory professional qualifications for the Chief Justice are stipulated in section 12(1) of the Hong Kong Court of Final Appeal Ordinance (see Appendix 2).

### **Court of Final Appeal**

2.4 The Court of Final Appeal was established on 1 July 1997 pursuant to Article 19 of the Basic Law, which provides that the HKSAR shall be vested with independent judicial power, including that of final adjudication. It is the highest appellate court in Hong Kong and has jurisdiction in respect of matters conferred on it by the Hong Kong Court of Final Appeal Ordinance.

2.5 The Court of Final Appeal consists of the Chief Justice and three Permanent Judges. It may as required invite non-permanent Hong Kong



judges and/or non-permanent judges from other common law jurisdictions to sit in the Court (see paragraph 2.8).

2.6 Under the Hong Kong Court of Final Appeal Ordinance, an appeal shall be heard and determined by the Court of Final Appeal constituted as follows –

- (a) the Chief Justice or a permanent judge designated to sit in his place where the Chief Justice is not available for any cause to hear an appeal;
- (b) three permanent judges nominated by the Chief Justice; and
- (c) one non-permanent Hong Kong judge or one non-permanent judge from another common law jurisdiction selected by the Chief Justice and invited by the Court.

## **Permanent Judges**

### **Statutory Requirements**

2.7 The statutory professional qualifications for permanent judges are stipulated in section 12(1A) of the Hong Kong Court of Final Appeal Ordinance (see Appendix 2).

## **Non-permanent Judges**

2.8 The Hong Kong Court of Final Appeal Ordinance provides for a list of non-permanent Hong Kong judges and a list of non-permanent judges from other common law jurisdictions, and sets a ceiling of 30 on the total number of non-permanent judges.

2.9 In accordance with the Hong Kong Court of Final Appeal Ordinance, a non-permanent judge shall hold office for a term of three years but that term may be extended for one or more periods of three years by the Chief Executive acting in accordance with the recommendation of the Chief Justice.

## **Statutory Requirements**

2.10 The statutory professional qualifications for non-permanent Hong Kong judges are stipulated in section 12(3) of the Hong Kong Court of Final Appeal Ordinance (see Appendix 2).

2.11 The statutory professional qualifications for non-permanent judges from other common law jurisdictions are stipulated in section 12(4) of the Hong Kong Court of Final Appeal Ordinance (see Appendix 2).

## **Registrar, Court of Final Appeal**

2.12 In accordance with the Hong Kong Court of Final Appeal Ordinance, the Registrar, Court of Final Appeal shall be in charge of the Registry of the Court of Final Appeal.

## **Statutory Requirements**

2.13 Under section 42(2) of the Hong Kong Court of Final Appeal Ordinance, the Registrar, Court of Final Appeal shall possess the same qualifications as are required under section 37AA(1) of the High Court Ordinance (Cap. 4) for appointment as the Registrar of the High Court (see Appendix 2).

## **CHAPTER 3**

### **High Court**

#### **High Court**

3.1 The High Court comprises the Court of Appeal and the Court of First Instance. Their jurisdictions are prescribed in sections 13 and 12 of the High Court Ordinance (Cap. 4) respectively.

3.2 The Court of Appeal hears appeals in civil and criminal matters from the Court of First Instance and the District Court, as well as appeals from the Lands Tribunal. It also makes rulings on questions of law referred to it by lower courts.

3.3 The Court of First Instance has unlimited jurisdiction in both civil and criminal matters. It also operates as an appeal court for cases from Magistrates' Courts and a number of tribunals.

#### **Chief Judge of the High Court**

#### **Duties and Responsibilities**

3.4 The Chief Judge of the High Court is the Court Leader of the High Court and the President of the Court of Appeal. He is responsible for the administration of the High Court and is accountable to the Chief Justice who is the head of the Judiciary. He is responsible for ensuring the efficient utilization of judicial resources and court time, and for advising the Chief Justice on matters of policy concerning the operation and development of the High Court.

#### **Constitutional and Statutory Requirements**

3.5 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 HKSAR with no right of abode in any foreign country.

3.6 The statutory 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 2).

## **Justices of Appeal**

### **Duties and Responsibilities**

3.7 The duty of a Justice of Appeal is to hear criminal and civil appeals in the Court of Appeal. As circumstances necessitate, he may also be asked to sit as an additional Judge of the Court of First Instance of the High Court.

### **Statutory Requirements**

3.8 The statutory professional qualifications for a judge of the High Court (which includes a Justice of Appeal) are stipulated in section 9 of the High Court Ordinance (see Appendix 2).

## **Judges of the Court of First Instance**

### **Duties and Responsibilities**

3.9 A Judge of the Court of First Instance is responsible for the hearing of criminal and civil cases which are within the Court of First Instance's jurisdiction and for hearing appeals from Magistrates' Courts and Tribunals.

### **Statutory Requirements**

3.10 The statutory professional qualifications for a judge of the High Court (which includes a judge of the Court of First Instance) are stipulated in section 9 of the High Court Ordinance (see Appendix 2).

## **Recorders of the Court of First Instance of the High Court**

### **Duties and Responsibilities**

3.11 Recorders are practitioners in private practice who usually sit for a few weeks in a year. A Recorder has and may exercise all the jurisdiction, powers and privileges and perform all the duties of a judge of the Court of First Instance.

### **Statutory Requirements**

3.12 The statutory professional qualifications for appointment of Recorders are the same as those for High Court Judges as stipulated in section 9(1) or 9(1A) of the High Court Ordinance (see Appendix 2).

## **Masters of the High Court**

### **Duties and Responsibilities**

3.13 The Registrar, Senior Deputy Registrars and Deputy Registrars of the High Court exercise the civil jurisdiction of the Court of First Instance in matters such as interlocutory and summary applications in chambers and assessments of damages and interpleader trials in court. They also exercise the jurisdiction of a Taxing Master, Admiralty Registrar, Registrar of Civil Appeals and Registrar of Criminal Appeals. In addition, they have duties including taking evidence on commission, determining appeals against the decisions of the Director of Legal Aid on applications for legal aid, and supervising the service of foreign process in Hong Kong. They are also responsible for probate administration and the jury list.

3.14 In addition, the Registrar, High Court administers the High Court Suitors' Funds, the Small Claims Tribunal Suitors' Funds, the Labour Tribunal Suitors' Funds as well as the Official Administrator's Account and the Master-in-Lunacy Account in his ex officio capacity as Official Administrator and Master-in-Lunacy. He also keeps the professional Rolls of Barristers, Solicitors and Notaries Public.

## **Statutory Requirements**

3.15 The statutory professional qualifications for Registrar, Senior Deputy Registrars and Deputy Registrars of the High Court are stipulated in section 37AA of the High Court Ordinance (see Appendix 2).

## **CHAPTER 4**

### **District Court and Lands Tribunal**

#### **District Court**

4.1 The District Court is established under the District Court Ordinance (Cap. 336). It has both criminal and civil jurisdictions, including matrimonial jurisdiction. It also exercises limited appellate jurisdiction from tribunals and statutory bodies conferred on it by various ordinances. The Family Court is a specialized court within the District Court.

#### **Chief District Judge**

#### **Duties and Responsibilities**

4.2 The Chief District Judge is the Court Leader of the District Court. Apart from performing the duties of a District Judge, the Chief District Judge is responsible for the administration of the District Court and is accountable to the Chief Justice who is the head of the Judiciary. He is responsible for ensuring the efficient utilization of judicial resources and court time, and for advising the Chief Justice on matters of policy concerning the operation and development of the District Court.

#### **Statutory Requirements**

4.3 The statutory professional qualifications for the Chief District Judge are the same as those for a District Judge which are stipulated in section 5 of the District Court Ordinance (see Appendix 2).

#### **District Judges**

#### **Duties and Responsibilities**

4.4 The responsibilities of a District Judge are to adjudicate upon cases heard in the District Court which has a limited criminal and civil jurisdiction. As far as criminal jurisdiction is concerned, the maximum sentence that can be imposed by a District Judge is seven years' imprisonment. The general civil jurisdiction of the District Court was raised to \$1 million with effect from 1 December 2003.

### **Statutory Requirements**

4.5 The statutory professional qualifications for appointment as a District Judge are stipulated in section 5 of the District Court Ordinance (see Appendix 2).

### **Masters of the District Court**

#### **Duties and Responsibilities**

4.6 In June 2000, two new ranks of Registrar, District Court and Deputy Registrar, District Court were created to set up a Master system in the District Court. The Registrar and Deputy Registrar, District Court have the same power to hear and determine all interlocutory applications, transact all businesses and exercise all the authority and jurisdiction that may be transacted and exercised by a District Judge in chambers. In addition, they undertake quasi-judicial and administrative duties which include administering the District Court Suitors' Funds.

### **Statutory Requirements**

4.7 The statutory professional qualifications for appointment as Registrar and Deputy Registrars of the District Court are stipulated in section 14AA of the District Court Ordinance (see Appendix 2). However, the former is normally filled by a Principal Magistrate and the latter by Magistrates under cross-posting arrangements.

### **Lands Tribunal**



4.8 The Lands Tribunal is established under the Lands Tribunal Ordinance (Cap. 17). It has jurisdiction under various ordinances and its jurisdiction includes dealing with tenancy claims, compensation assessments when land is resumed by Government or reduced in value by development, building management matters, disputes and rating and valuation appeals. It consists of a president, presiding officers and such other members as may be appointed.

## **President, Lands Tribunal**

### **Duties and Responsibilities**

4.9 The President is the Court Leader of the Lands Tribunal. Section 9 of the Lands Tribunal Ordinance provides that for the purpose of achieving consistency in the application of the law by the Tribunal, the President shall endeavour, wherever practicable, to exercise the jurisdiction of the Tribunal in any case which, in his opinion, is likely to involve any new or difficult point of law or which, having regard to the nature or amount of the claim or any other factor, is of special importance. Apart from sitting, the President is responsible for the administration of the Lands Tribunal and is accountable to the Chief Justice who is the head of the Judiciary. He is responsible for ensuring the efficient utilization of judicial resources and court time, and for advising the Chief Justice on matters of policy concerning the operation and development of the Lands Tribunal.

### **Statutory Requirements**

4.10 Section 4(1)(a) of the Lands Tribunal Ordinance provides that the President shall be one of the Judges of the High Court and shall be appointed by the Chief Executive (see Appendix 2).

## **Presiding Officers, Lands Tribunal**

### **Duties and Responsibilities**

4.11 A Presiding Officer hears and determines matters within the jurisdiction of the Lands Tribunal.

## **Statutory Requirements**

4.12 Section 4(2) of the Lands Tribunal Ordinance provides that every District Judge and deputy District Judge shall by virtue of his office be a presiding officer (see Appendix 2).

## **Members, Lands Tribunal**

### **Duties and Responsibilities**

4.13 A member, Lands Tribunal hears and determines matters within the jurisdiction of the Lands Tribunal other than points of law, which are usually determined by the Presiding Officer.

## **Statutory Requirements**

4.14 In accordance with sections 4(3) to 4(5) of the Lands Tribunal Ordinance, a member of the Lands Tribunal may be a lawyer or a professional surveyor or valuer (see Appendix 2).

4.15 As points of law are usually dealt with by Presiding Officers, a member is usually appointed under section 4(4) of the Lands Tribunal Ordinance, i.e. a Corporate Member in the General Practice Division of The Hong Kong Institute of Surveyors or a holder of an equivalent professional qualification, with at least five years' experience in the practice of land valuation.

## **CHAPTER 5**

### **Magistrates' Courts, Tribunals and Coroner's Court**

#### **Magistrates' Courts**

5.1 The Magistrates' Courts exercise criminal jurisdiction over a wide range of indictable and summary offences. Although there is a general restriction of two years' imprisonment, and a fine of \$100,000 for indictable offence, a growing number of ordinances empower Magistrates to impose sentences up to three years' imprisonment and fines up to \$5,000,000.

#### **Tribunals and Coroner's Court**

5.2 The Labour Tribunal provides a quick, informal and inexpensive means to resolve disputes between employers and employees. There is no upper limit on the amount that may be claimed but the claim has to be over \$8,000. Legal representation is not allowed.

5.3 The Small Claims Tribunal provides a simple, inexpensive and informal procedure to deal with monetary claims not exceeding \$50,000. Legal representation is not allowed.

5.4 The Obscene Articles Tribunal has jurisdiction to determine whether an article is obscene or indecent, or whether a matter publicly displayed is indecent. It also has the power to classify an article as Class I (neither obscene nor indecent), Class II (an indecent article) or Class III (an obscene article).

5.5 Coroners are empowered to investigate reportable deaths in Hong Kong. An inquest must be held in respect of deaths in official custody, or as directed by the Court of First Instance of the High Court or requested by the Secretary for Justice.

5.6 Since 1988, vacancies in judicial offices in Tribunals and the Coroner's Court have been filled by Magistrates under cross-posting arrangements.

## **Chief Magistrate**

### **Duties and Responsibilities**

5.7 The Chief Magistrate is the Court Leader of the Magistrates' Courts, the Coroner's Court, the Labour Tribunal, the Small Claims Tribunal and the Obscene Articles Tribunal. He is responsible for the administration of such Courts and Tribunals and is accountable to the Chief Justice who is the head of the Judiciary. He is responsible for ensuring the efficient utilization of judicial resources and court time, and advising the Chief Justice on matters of policy concerning the operation and development of the courts and tribunals under his purview.

### **Statutory Requirements**

5.8 The statutory professional qualifications for the Chief Magistrate are the same as those for a Magistrate which are stipulated in section 5AA of the Magistrates Ordinance (Cap. 227) (see Appendix 2).

## **Principal Magistrates**

### **Duties and Responsibilities**

5.9 In addition to the judicial duties of a Magistrate, a Principal Magistrate has administrative responsibilities in the Magistrates' Court where he sits. Principal Magistrates are also called upon to assist the Chief Magistrate on matters relating to the administration of the Magistrates' Courts. A Principal Magistrate may be posted to act as Registrar of the District Court.

### **Statutory Requirements**

5.10 The statutory professional qualifications for a Principal Magistrate are the same as those for a Magistrate which are stipulated in section 5AA of

the Magistrates Ordinance (see Appendix 2).

## **Magistrates**

### **Duties and Responsibilities**

5.11 Magistrates are required to try cases in the Magistrates' Courts. They may also be posted to the Coroner's Court, Labour Tribunal, Small Claims Tribunal and Obscene Articles Tribunal where they will sit as Coroners, Presiding Officers, Adjudicators and Presiding Magistrates respectively, or to the Masters' Office in the District Court where they will sit as Deputy Registrar, District Court.

### **Statutory Requirements**

5.12 The statutory professional qualifications for appointment of Magistrates are stipulated in section 5AA of the Magistrates Ordinance(see Appendix 2).

## **Special Magistrates**

### **Duties and Responsibilities**

5.13 Special Magistrates are required to try relatively minor offences in the Magistrates' Courts such as illegal hawking and traffic offences. Their jurisdiction is generally limited to a maximum fine of \$50,000.

### **Statutory Requirements**

5.14 Since 1999, following a review, the possession of professional legal qualifications as a barrister or solicitor and five years' experience in a field relevant to legal or judicial work have been adopted as the minimum requirements for appointment as a Special Magistrate. The statutory professional qualifications for appointment of Special Magistrates are stipulated in section 5AB of the Magistrates Ordinance (see Appendix 2).

## Appendix 1

### Judicial Officers Recommendation Commission Ordinance (Cap. 92)

|          |    |          |  |                    |                     |
|----------|----|----------|--|--------------------|---------------------|
| Chapter: | 92 | Title:   | JUDICIAL OFFICERS<br>RECOMMENDATION<br>COMMISSION<br>ORDINANCE | Gazette<br>Number: | 79 of 1995 s.<br>50 |
|          |    | Heading: | <b>Long title</b>  | Version Date:      | 01/07/1997          |

Remarks:

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

#### HIGH COURT

(Amended 25 of 1998 s. 2)

To amend and consolidate the law relating to the constitution, jurisdiction, practice and powers of the High Court and the administration of justice therein and for matters ancillary thereto and connected therewith.

(Amended 25 of 1998 s. 2)  
[20 February 1976] *L.N. 50 of 1976*

(Originally 92 of 1975)

|          |    |          |  |                    |                     |
|----------|----|----------|--|--------------------|---------------------|
| Chapter: | 92 | Title:   | JUDICIAL OFFICERS<br>RECOMMENDATION<br>COMMISSION<br>ORDINANCE | Gazette<br>Number: | 79 of 1995 s.<br>50 |
|          |    | Heading: | <b>Long title</b>  | Version Date:      | 01/07/1997          |

To constitute a Judicial Officers Recommendation Commission.

(Amended 79 of 1995 s. 50)

[20 February 1976] *L.N. 49 of 1976*

(Originally 65 of 1975)

|          |          |          |  |                    |                     |
|----------|----------|----------|--|--------------------|---------------------|
| Chapter: | 92       | Title:   | JUDICIAL OFFICERS<br>RECOMMENDATION<br>COMMISSION<br>ORDINANCE | Gazette<br>Number: | 79 of 1995 s.<br>50 |
| Section: | <b>1</b> | Heading: | <b>Short title</b>   | Version Date:      | 01/07/1997          |

This Ordinance may be cited as the Judicial Officers Recommendation Commission Ordinance.

(Amended 79 of 1995 s. 50)

|          |    |          |  |                    |                            |
|----------|----|----------|--|--------------------|----------------------------|
| Chapter: | 92 | Title:   | JUDICIAL OFFICERS<br>RECOMMENDATION<br>COMMISSION<br>ORDINANCE | Gazette<br>Number: | 79 of 1995;<br>121 of 1997 |
| Section: | 2  | Heading: | <b>Interpretation</b>  | Version Date:      | 01/07/1997                 |

In this Ordinance, unless the context otherwise requires-

"Chief Executive (行政長官) means the Chief Executive of the Hong Kong Special Administrative Region of the People's Republic of China; (Added 121 of 1997 s. 2)

"Commission" (委員會) means the Judicial Officers Recommendation Commission established by this Ordinance; (Amended 79 of 1995 s. 50)

"commissioner for oaths" (監誓員) means a commissioner for oaths duly appointed by the Chief Justice under any enactment in force in Hong Kong; (Added 26 of 1997 s. 8)

"judicial office" (司法職位) means any judicial office specified in Schedule 1; (Amended 121 of 1997 s. 10)

"judicial officer" (司法人員) means the holder of a judicial office;

"Legislative Council" (立法會) means the Legislative Council but during the existence of the Provisional Legislative Council means the Provisional Legislative Council. (Added 121 of 1997 s. 2)

|          |    |          |  |                    |            |
|----------|----|----------|--|--------------------|------------|
| Chapter: | 92 | Title:   | JUDICIAL OFFICERS<br>RECOMMENDATION<br>COMMISSION<br>ORDINANCE | Gazette<br>Number: | 10 of 2005 |
| Section: | 3  | Heading: | <b>Judicial Officers<br/>Recommendation<br/>Commission</b>     | Version Date:      | 08/07/2005 |

(1) There is hereby established a Judicial Officers Recommendation Commission, which shall consist of- (Amended 79 of 1995 s. 50)

- (a) the Chief Justice, who shall be the Chairman;
- (b) the Secretary for Justice; and (Amended 50 of 1990 s. 2; 121 of 1997 s. 3)
- (c) 7 members appointed by the Chief Executive of whom- (Amended 121 of 1997 s. 5)
  - + (i) 2 shall be judges;
  - (ii) 1 shall be a barrister and 1 shall be a solicitor, each holding a practising certificate issued under the Legal Practitioners Ordinance (Cap 159); and
  - (iii) 3 shall be persons who are not, in the opinion of the Chief Executive, connected in any way with the practice of law. (Replaced 50 of 1990 s. 2. Amended 121 of 1997 s. 5)
- (d) (Repealed 50 of 1990 s. 2)

(1A) Before making an appointment under subsection (1)(c)(ii) the Chief Executive shall consult the Bar Council of the Hong Kong Bar Association regarding the appointment of a barrister and the Council of the Law Society of Hong Kong regarding the appointment of a solicitor. (Added 50 of 1990 s. 2. Amended 70 of 1991 s. 15; 121 of 1997 s. 5)

(1B) When consulted under subsection (1A) the Bar Council of the Bar Association may recommend any barrister to the Chief Executive for appointment and the Council of the Law Society may so recommend any solicitor, but the Chief Executive may appoint a person other than a person so recommended. (Added 50 of 1990 s. 2. Amended 70 of 1991 s. 15; 121 of 1997 s. 5)

(2) An appointed member-

(a) may resign his office by notice in writing to the Chief Executive; (Amended 121 of 1997 s. 5)

(b) shall vacate his office after 2 years, but shall be eligible for re-appointment.

(3) The Chairman and no fewer than 6 other members may exercise and perform any of the functions, powers and duties of the Commission. (Replaced 50 of 1990 s. 2)

(3A) At a meeting of the Commission a resolution is effective if-

(a) where 7 members are present, at least 5 vote in favour;

(b) where 8 members are present, at least 6 vote in favour; and

(c) where 9 members are present, at least 7 vote in favour. (Added 50 of 1990 s. 2)

(4) The Commission may authorize the Chairman to exercise and perform, either generally or in any particular case, such of the functions, powers and duties of the Commission under this Ordinance as it may specify.

(5) A resolution of the Commission without a meeting-

(a) may be put to the vote of the members by circulating a draft of the resolution with a voting paper;

(b) may be voted on by a member by signing the voting paper and returning it to the Secretary of the Commission; and

(c) is effective if-

(i) where 7 members sign the voting paper, at least 5 votes are in favour;

(ii) where 8 members sign the voting paper, at least 6 votes are in favour; and

(iii) where 9 members sign the voting paper, at least 7 votes are in favour. (Replaced 50 of 1990 s. 2)

(5A) Notwithstanding subsection (5), a resolution is not effective where any member notifies the Secretary, on the voting paper, that the resolution should be discussed at a meeting. (Added 50 of 1990 s. 2)

(5B) Where the Commission is exercising its functions- (Amended 10 of 2005 s. 130)

(a) in relation to the filling of vacancies in judicial offices under section 6(a); or

(b) in relation to the extension of the term of office of the Chief Justice under section 14 of the Hong Kong Court of Final Appeal Ordinance (Cap 484),

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, if he were to be selected or if the extension of his term of office were to be recommended as the case may be, he is willing to accept appointment or the extension and that disclosure shall be recorded in the minutes of the Commission. (Added 79 of 1995 s. 50. Amended 10 of 2005 s. 130)



(5C) A member who, under subsection (5B), discloses a willingness to accept an appointment or extension-

(a) 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; and

(b) shall, for the purposes of subsection (6), with respect to any deliberation of the Commission concerning that appointment or extension as the case may be and any question concerning the same, be treated as being unable to act. (Added 79 of 1995 s. 50)

(5D) For the purposes of any meeting of the Commission, if the Chief Justice 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. (Added 79 of 1995 s. 50)

(6) 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. (Amended 121 of 1997 s. 5)

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**Note:**

**+ please see 78 of 1997.**

|          |    |          |  |                    |                     |
|----------|----|----------|--|--------------------|---------------------|
| Chapter: | 92 | Title:   | JUDICIAL OFFICERS<br>RECOMMENDATION<br>COMMISSION<br>ORDINANCE                                 | Gazette<br>Number: | L.N. 320 of<br>1999 |
| Section: | 4  | Heading: | <b>Certain persons<br/>ineligible for<br/>appointment as<br/>members of the<br/>Commission</b> | Version Date:      | 01/01/2000          |

(1) A person shall not be appointed to be a member of the Commission if-

(a) he is a member of the Legislative Council; or

(b) he holds a pensionable office (other than the office of judge) the emoluments whereof are payable wholly or partly out of public revenue, unless he is on leave prior to retirement and has already received official notification of the pension which will be payable to him for service which comprised service in the office or post of which he is the holder. (Amended 92 of 1975 s. 59; 50 of 1990 s. 3; 121 of 1997 s. 4; 78 of 1999 s. 7)

(2) (Repealed 78 of 1999 s. 7)

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|----------|----|----------|--|--------------------|--|
| Chapter: | 92 | Title:   | JUDICIAL OFFICERS<br>RECOMMENDATION<br>COMMISSION<br>ORDINANCE | Gazette<br>Number: | 79 of 1995 s.<br>50; 121 of<br>1997 s. 5 |
| Section: | 5  | Heading: | <b>Secretary to the<br/>Commission</b>                         | Version Date:      | 01/07/1997                               |

(1) The Chief Executive shall appoint a public officer to act as Secretary to the

Commission. (Amended 121 of 1997 s. 5)

(2) The Secretary shall not be a member of the Commission.

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|----------|----|----------|--|--------------------|--|
| Chapter: | 92 | Title:   | JUDICIAL OFFICERS<br>RECOMMENDATION<br>COMMISSION<br>ORDINANCE | Gazette<br>Number: | 79 of 1995 s.<br>50; 121 of<br>1997 s. 5 |
| Section: | 6  | Heading: | <b>Functions of<br/>Commission</b>                             | Version Date:      | 01/07/1997                               |

The Commission shall advise or make recommendations to the Chief Executive regarding- (Amended 79 of 1995 s. 50)

(a) the filling of vacancies in judicial offices;

(b) such representations from a judicial officer concerning conditions of service as may be referred to it by the Chief Executive;

(c) any matter affecting judicial officers which may be prescribed or which the Chief Executive may refer to the Commission.

(Amended 121 of 1997 s. 5)

|          |    |          |  |                    |   |
|----------|----|----------|--|--------------------|---|
| Chapter: | 92 | Title:   | JUDICIAL OFFICERS<br>RECOMMENDATION<br>COMMISSION<br>ORDINANCE | Gazette<br>Number: | 79 of 1995 s.<br>50; 121 of<br>1997 s. 10 |
| Section: | 7  | Heading: | <b>Oath of Chairman and<br/>members</b>                        | Version Date:      | 01/07/1997                                |

Members appointed under section 3(1) or appointed temporarily under section 3(6) shall on first appointment take an oath or make an affirmation in the form in the Schedule 2, which shall be administered by a judge or a commissioner for oaths.

(Amended 26 of 1997 s. 9; 121 of 1997 s. 10)

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|----------|----|----------|--|--------------------|--|
| Chapter: | 92 | Title:   | JUDICIAL OFFICERS<br>RECOMMENDATION<br>COMMISSION<br>ORDINANCE | Gazette<br>Number: | 79 of 1995 s.<br>50; 121 of<br>1997 s. 6 |
| Section: | 7A | Heading: | <b>Transitional</b>  | Version Date:      | 01/07/1997                               |

(1) Notwithstanding section 7, a member appointed under section 3 and whose appointment takes effect on 1 July 1997 may take his oath or affirmation in the manner prescribed in section 7 as soon as practicable after the appointment.

(2) For the avoidance of doubt, any advice given or recommendations made shall not be invalid merely by reason of the fact that the members of the Commission had not taken the relevant oaths or affirmations as prescribed under subsection (1).

(Added 121 of 1997 s. 6)

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| Chapter: | 92 | Title: | JUDICIAL OFFICERS<br>RECOMMENDATION<br>COMMISSION | Gazette<br>Number: | 79 of 1995 s.<br>50; 121 of<br>1997 s. 5 |
|----------|----|--------|---|--------------------|--|

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|------------|----------|---|--------------------------|
| Section: 8 | Heading: | ORDINANCE<br><b>Offence of giving false information to Commission</b> | Version Date: 01/07/1997 |
|------------|----------|---|--------------------------|

Any person who, in connection with any matter on which it is the duty of the Commission to advise the Chief Executive under this Ordinance, wilfully gives to the Commission or a member thereof any information which is false in a material particular shall be guilty of an offence and shall be liable on conviction to a fine of \$2000 and to imprisonment for 2 years.

(Amended 121 of 1997 s. 5)

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|-------------|----------|--|--|
| Chapter: 92 | Title:   | JUDICIAL OFFICERS<br>RECOMMENDATION<br>COMMISSION<br>ORDINANCE                 | Gazette Number: 79 of 1995 s. 50; 121 of 1997 s. 5 |
| Section: 9  | Heading: | <b>Reports and statements or other communications of Commission privileged</b> | Version Date: 01/07/1997                           |

Any report, statement or other communication which the Commission may in the exercise of its functions or the discharge of its duties make to the Chief Executive or to the Chief Justice shall be privileged in that its production may not be compelled in any legal proceedings.

(Amended 121 of 1997 s. 5)

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| Chapter: 92 | Title:   | JUDICIAL OFFICERS<br>RECOMMENDATION<br>COMMISSION<br>ORDINANCE | Gazette Number: 79 of 1995 s. 50 |
| Section: 10 | Heading: | <b>Protection to members</b>                                   | Version Date: 01/07/1997         |

A member of the Commission shall have the same protection and privileges in proceedings brought against him for any act done in the execution of his duty as such member as a judge has when acting in the execution of his office.

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|-------------|----------|---|--|
| Chapter: 92 | Title:   | JUDICIAL OFFICERS<br>RECOMMENDATION<br>COMMISSION<br>ORDINANCE                    | Gazette Number: 79 of 1995 s. 50; 121 of 1997 s. 5 |
| Section: 11 | Heading: | <b>Publication and disclose of information to unauthorized persons prohibited</b> | Version Date: 01/07/1997                           |

(1) Any member of the Commission or other person who, without the permission of the

Chief Executive, publishes or discloses to any unauthorized person or otherwise than in the course of duty the contents or any part of the contents of any document, communication or information whatsoever which has come to his knowledge in the course of his duties under or in connection with this Ordinance shall be guilty of an offence and shall be liable on conviction to a fine of \$2000 and to imprisonment for 1 year. (Amended 121 of 1997 s. 5)

(2) If any person having any information which to his knowledge has been disclosed in contravention of this section publishes or discloses such information to any other person otherwise than for the purpose of any prosecution under this Ordinance, he shall be guilty of an offence and shall be liable on conviction to a fine of \$2000 and to imprisonment for 1 year.

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| Chapter: | 92 | Title:   | JUDICIAL OFFICERS<br>RECOMMENDATION<br>COMMISSION<br>ORDINANCE         | Gazette<br>Number: | 79 of 1995 s.<br>50 |
| Section: | 12 | Heading: | <b>Offence to influence or<br/>attempt to influence<br/>Commission</b> | Version Date:      | 01/07/1997          |

Any person who otherwise than in the course of his duty directly or indirectly by himself or by any other person in any manner whatsoever influences or attempts to influence a decision of the Commission or any member shall be guilty of an offence and shall be liable on conviction to a fine of \$4000 and to imprisonment for 2 years:

Provided that this section shall not prohibit-

- (a) any person from giving a certificate or testimonial to any applicant or candidate for appointment as a judicial officer or from supplying any information or assistance on request made by the Commission; or
- (b) any judicial officer from making representations to the Commission in such manner and to such extent as may be prescribed. (Amended 50 of 1990 s. 4)

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| Chapter: | 92 | Title:   | JUDICIAL OFFICERS<br>RECOMMENDATION<br>COMMISSION<br>ORDINANCE         | Gazette<br>Number: | 79 of 1995 s.<br>50; 121 of<br>1997 s. 5 |
| Section: | 13 | Heading: | <b>Power of Chief<br/>Executive in Council to<br/>make regulations</b> | Version Date:      | 01/07/1997                               |

(1) The Chief Executive in Council may by regulation provide for- (Amended 121 of 1997 s. 5)

- (a) the discharge by the Commission of additional functions;
- (b) the time, place and manner of the exercise by the Commission of its functions;
- (c) forms and fees in connection with applications to the Commission, reports or communications from the Commission or any other matter required by or under this Ordinance;
- (d) any matter which is to be or may be prescribed.

(2) (Repealed 50 of 1990 s. 5)

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| Chapter: | 92 | Title:   | JUDICIAL OFFICERS<br>RECOMMENDATION<br>COMMISSION<br>ORDINANCE | Gazette<br>Number: | 79 of 1995 s.<br>50; 121 of<br>1997 s. 10 |
| Section: | 14 | Heading: | <b>Amendment of Schedule 1</b>                                 | Version Date:      | 01/07/1997                                |

The Legislative Council may by resolution amend Schedule 1.

(Amended 121 of 1997 s. 10)

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| Chapter: | 92 | Title:   | JUDICIAL OFFICERS<br>RECOMMENDATION<br>COMMISSION<br>ORDINANCE | Gazette<br>Number: | 79 of 1995 s.<br>50; 121 of<br>1997 s. 7 |
| Section: | 15 | Heading: | <b>(Repealed 121 of 1997 s. 7)</b>                             | Version Date:      | 01/07/1997                               |

|           |    |          |  |                    |            |
|-----------|----|----------|--|--------------------|------------|
| Chapter:  | 92 | Title:   | JUDICIAL OFFICERS<br>RECOMMENDATION<br>COMMISSION<br>ORDINANCE | Gazette<br>Number: | 10 of 2005 |
| Schedule: | 1  | Heading: | <b>JUDICIAL OFFICE</b>   | Version Date:      | 08/07/2005 |

[section 2]

Chief Justice (Added 79 of 1995 s. 50)

Judge of the Court of Final Appeal (Added 79 of 1995 s. 50)

Chief Judge of the High Court (Added 121 of 1997 s. 8)

Justice of Appeal (Added 42 of 1984 s. 2)

Judge of the Court of First Instance

Recorder of the Court of First Instance (Added 80 of 1994 s. 12)

Chief District Judge (Added L.N. 7 of 1995)

District Judge

Coroner (Added 49 of 1980 s. 8)

Chief Magistrate (Added L.N. 7 of 1995)

Principal Magistrate (Added L.N. 268 of 1986)

Magistrate

Special Magistrate (Added L.N. 268 of 1986)

President, Lands Tribunal

Presiding Officer, Lands Tribunal (Added 49 of 1982 s. 18)

Member of the Lands Tribunal appointed under section 4(1)(c) of the Lands Tribunal Ordinance (Cap 17) (Replaced 10 of 2005 s. 131)

Principal Presiding Officer, Labour Tribunal (Added L.N. 7 of 1995)

Presiding Officer, Labour Tribunal

Principal Adjudicator, Small Claims Tribunal (Added L.N. 7 of 1995)

Adjudicator, Small Claims Tribunal (Added 79 of 1975 s. 40)

Registrar of the Court of Final Appeal (Added 10 of 2005 s. 131)  
 Registrar of the High Court  
 Senior Deputy Registrar, High Court (Added 10 of 2005 s. 131)  
 Deputy Registrar, High Court (Added L.N. 268 of 1986)  
 Assistant Registrar, High Court (Added L.N. 268 of 1986)  
 Registrar of the District Court (Added 28 of 2000 s. 45)  
 Deputy Registrar, District Court (Added 28 of 2000 s. 45)  
 Assistant Registrar, District Court (Added 28 of 2000 s. 45)

(Schedule 1 amended 121 of 1997 s. 8)

|             |          |  |                    |  |
|-------------|----------|--|--------------------|--|
| Chapter: 92 | Title:   | JUDICIAL OFFICERS<br>RECOMMENDATION<br>COMMISSION<br>ORDINANCE | Gazette<br>Number: | 79 of 1995 s.<br>50; 121 of<br>1997 s. 5 & 9 |
| Schedule: 2 | Heading: | <b>OATH OF OFFICE</b>  | Version Date:      | 01/07/1997                                   |

[section 7]  
 (Amended 121 of 1997 s. 9)

I,

having been appointed to act as member of the Judicial Officers Recommendation Commission,

do swear  
 solemnly and sincerely declare and  
 affirm

} that I will freely and without fear or  
 favour,

affection or ill-will, give my counsel and advice to the Chief Executive of Hong Kong in connexion with all such matters as may be referred to the Judicial Officers Recommendation Commission under the Judicial Officers Recommendation Commission Ordinance.

|          |                  |
|----------|------------------|
| SWORN    | this day of 19 . |
| DECLARED |                  |

Before me

.....  
 .....

(Amended 79 of 1995 s. 50; 121 of 1997 s. 5)

## **Appendix 2**

### **Statutory Requirements for Various Judicial Offices**

#### **Chief Justice of the Court of Final Appeal**

##### **Section 12(1) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) –**

- “(1) A person shall be eligible to be appointed as the Chief Justice if he is –
- (aa) a permanent judge;
  - (a) the Chief Judge of the High Court, a Justice of Appeal or a judge of the Court of First Instance; or
  - (b) a barrister who has practised as a barrister or solicitor in Hong Kong for a period of at least 10 years.”

#### **Permanent Judges of the Court of Final Appeal**

##### **Section 12(1A) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) –**

- “(1A) A person shall be eligible to be appointed as a permanent judge if he is –
- (a) the Chief Judge of the High Court, a Justice of Appeal or a judge of the Court of First Instance; or
  - (b) a barrister who has practised as a barrister or solicitor in Hong Kong for a period of at least 10 years.”

#### **Non-permanent Hong Kong Judges of the Court of Final Appeal**

##### **Section 12(3) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) –**

- “(3) A person shall be eligible to be appointed as a non-permanent Hong Kong judge if he is –
- (a) a retired Chief Judge of the High Court;
  - (b) a retired Chief Justice of the Court;
  - (c) a retired permanent judge of the Court;
  - (d) a Justice or retired Justice of Appeal; or
  - (e) a barrister who has practised as a barrister or solicitor in Hong Kong for a period of at least 10 years, whether or not he is ordinarily resident in Hong Kong.”

## **Non-permanent Judges from Other Common Law Jurisdictions**

### **Section 12(4) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) –**

- “(4) A person shall be eligible to be appointed as a judge from another common law jurisdiction if he is –
- (a) a judge or retired judge of a court of unlimited jurisdiction in either civil or criminal matters in another common law jurisdiction;
  - (b) a person who is ordinarily resident outside Hong Kong; and
  - (c) a person who has never been a judge of the High Court, a District Judge or a permanent magistrate, in Hong Kong.”

## **Registrar of the Court of Final Appeal**

### **Section 42(2) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) –**

- “(2) The Registrar shall be appointed by the Chief Executive and shall possess the same qualifications as are required under section 37AA(1) of the High Court Ordinance (Cap. 4) for appointment as the Registrar of the High Court.”

## **Judges of the High Court and Recorders of the Court of First Instance of the High Court**

### **Section 6A(1) of the High Court Ordinance (Cap. 4) –**

- “(1) The Governor<sup>2</sup> may appoint a person who is eligible to be appointed to be a judge of the High Court under section 9(1) or (1A), to be a recorder of the Court of First Instance for such period as may be specified in the instrument by which the appointment is made.”

### **Section 9 of the High Court Ordinance (Cap. 4) –**

- “(1) A person shall be eligible to be appointed to be a judge of the High Court if –
- (a) he is qualified to practise as a barrister or advocate in a court in Hong Kong or any other common law jurisdiction having unlimited jurisdiction either in civil or criminal matters; or

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<sup>2</sup> In accordance with provisions of the Hong Kong Reunification Ordinance (Cap. 2601), any reference to the Governor of Hong Kong shall be construed as a reference to the Chief Executive of the Hong Kong Special Administrative Region.



- (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 a barrister, solicitor or advocate 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.
- (2) A person shall also be eligible to be appointed to be a judge of the High Court if –
- (a) he is qualified to practise as a barrister or advocate in a court in Hong Kong or any other common law jurisdiction having unlimited jurisdiction either in civil or criminal matters; or
  - (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);
    - (iva) been the Registrar of the Hong Kong Court of Final Appeal appointed in accordance with section 42 of the Hong Kong Court of Final Appeal Ordinance (Cap. 484);
    - (ivb) been the Registrar or a senior deputy registrar, deputy registrar or assistant registrar appointed in accordance with section 37;
    - (ivc) been the Registrar of the District Court or a deputy registrar or assistant registrar of the District Court, appointed in accordance with section 14 of the District Court Ordinance (Cap. 336);
    - (v) been a permanent magistrate appointed in accordance with section 5 of the Magistrates Ordinance (Cap. 227);
    - (va) been a coroner appointed in accordance with section 3 of the Coroners Ordinance (Cap. 504);
    - (vb) been an adjudicator appointed in accordance with section 4 of the Small Claims Tribunal Ordinance (Cap. 338);
    - (vc) been a presiding officer appointed in accordance with section 4 of the Labour Tribunal Ordinance (Cap. 25);
    - (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 the Director of Legal Aid or a Deputy Director of Legal Aid, Assistant Director of Legal Aid or Legal Aid Officer, appointed in accordance with section 3 of the Legal Aid Ordinance (Cap. 91);
    - (ix) been the Official Receiver or an Assistant Official Receiver (Legal), Assistant Principal Solicitor, Senior Solicitor or Solicitor, appointed in accordance with section 75 of the Bankruptcy Ordinance (Cap. 6); or
    - (x) been the Director of Intellectual Property or a Deputy Director of Intellectual Property, Assistant Director of Intellectual Property, Senior Solicitor or Solicitor, appointed

in accordance with section 3 of the Director of Intellectual Property (Establishment) Ordinance (Cap. 412).

- (2A) A person shall also be eligible to be appointed to be a judge of the High Court if –
- (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;
  - (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<sup>3</sup> 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 a barrister, solicitor or advocate in such a court; or
    - (ii) been employed in such service as is described in paragraph (b).
- (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 a barrister, solicitor or advocate in any of the courts referred to in subsection (2)(a).
- (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 falling within subparagraphs (i) and (ii) of subsection (2A)(c) may be combined.
- (5) For the purposes of calculating the period of 10 years under subsection (2), periods served in an office specified in Part I of the First Schedule to the repealed Registrar General (Establishment) Ordinance (Cap. 100) may be taken into account notwithstanding the repeal of that Ordinance.”

## **Registrar, Senior Deputy Registrars, Deputy Registrars and Assistant Registrars of the High Court**

### **Section 37AA of the High Court Ordinance (Cap. 4) –**

- “(1) A person shall be eligible to be appointed as the Registrar if –
- (a) he is qualified to practise as a barrister, solicitor or advocate in a court in Hong Kong or any other common law jurisdiction having unlimited jurisdiction either in civil or criminal matters; and
  - (b) since becoming so qualified, he has for a period of or periods totalling not less than 5 years –
    - (i) practised as a barrister, solicitor or advocate in such a court;

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<sup>3</sup> In accordance with provisions of the Hong Kong Reunification Ordinance (Cap. 2601), any reference to the Crown shall be construed as a reference to the Government of the Hong Kong Special Administrative Region.

- (ii) been a senior deputy registrar, deputy registrar or assistant registrar appointed in accordance with section 37;
- (iii) been a District Judge appointed in accordance with section 4 or 7 of the District Court Ordinance (Cap. 336);
- (iv) been the Registrar of the District Court or a deputy registrar or assistant registrar of the District Court, appointed in accordance with section 14 of the District Court Ordinance (Cap. 336);
- (v) been a permanent magistrate appointed in accordance with section 5 of the Magistrates Ordinance (Cap. 227);
- (vi) been a coroner appointed in accordance with section 3 of the Coroners Ordinance (Cap. 504);
- (vii) been an adjudicator appointed in accordance with section 4 of the Small Claims Tribunal Ordinance (Cap. 338);
- (viii) been a presiding officer appointed in accordance with section 4 of the Labour Tribunal Ordinance (Cap. 25);
- (ix) been a legal officer as defined in section 2 of the Legal Officers Ordinance (Cap. 87);
- (x) been the Director of Legal Aid or a Deputy Director of Legal Aid, Assistant Director of Legal Aid or Legal Aid Officer, appointed in accordance with section 3 of the Legal Aid Ordinance (Cap. 91);
- (xi) been the Official Receiver or an Assistant Official Receiver (Legal), Assistant Principal Solicitor, Senior Solicitor or Solicitor, appointed in accordance with section 75 of the Bankruptcy Ordinance (Cap. 6); or
- (xii) been the Director of Intellectual Property or a Deputy Director of Intellectual Property, Assistant Director of Intellectual Property, Senior Solicitor or Solicitor, appointed in accordance with section 3 of the Director of Intellectual Property (Establishment) Ordinance (Cap. 412).

(2) A person shall be eligible to be appointed as a senior deputy registrar if –

- (a) he is qualified to practise as a barrister, solicitor or advocate in a court in Hong Kong or any other common law jurisdiction having unlimited jurisdiction either in civil or criminal matters; and
- (b) since becoming so qualified, he has for a period of or periods totalling not less than 5 years –
  - (i) practised as a barrister, solicitor or advocate in such a court;
  - (ii) been a deputy registrar or assistant registrar appointed in accordance with section 37;
  - (iii) been a District Judge appointed in accordance with section 4 or 7 of the District Court Ordinance (Cap. 336);
  - (iv) been the Registrar of the District Court or a deputy registrar or assistant registrar of the District Court, appointed in accordance with section 14 of the District Court Ordinance (Cap. 336);
  - (v) been a permanent magistrate appointed in accordance with section 5 of the Magistrates Ordinance (Cap. 227);
  - (vi) been a coroner appointed in accordance with section 3 of the Coroners Ordinance (Cap. 504);
  - (vii) been an adjudicator appointed in accordance with section 4 of the Small Claims Tribunal Ordinance (Cap. 338);

- (viii) been a presiding officer appointed in accordance with section 4 of the Labour Tribunal Ordinance (Cap. 25);
  - (ix) been a legal officer as defined in section 2 of the Legal Officers Ordinance (Cap. 87);
  - (x) been the Director of Legal Aid or a Deputy Director of Legal Aid, Assistant Director of Legal Aid or Legal Aid Officer, appointed in accordance with section 3 of the Legal Aid Ordinance (Cap. 91);
  - (xi) been the Official Receiver or an Assistant Official Receiver (Legal), Assistant Principal Solicitor, Senior Solicitor or Solicitor, appointed in accordance with section 75 of the Bankruptcy Ordinance (Cap. 6); or
  - (xii) been the Director of Intellectual Property or a Deputy Director of Intellectual Property, Assistant Director of Intellectual Property, Senior Solicitor or Solicitor, appointed in accordance with section 3 of the Director of Intellectual Property (Establishment) Ordinance (Cap. 412).
- (3) A person shall be eligible to be appointed as a deputy registrar if –
- (a) he is qualified to practise as a barrister, solicitor or advocate in a court in Hong Kong or any other common law jurisdiction having unlimited jurisdiction either in civil or criminal matters; and
  - (b) since becoming so qualified, he has for a period of or periods totalling not less than 5 years –
    - (i) practised as a barrister, solicitor or advocate in such a court;
    - (ii) been an assistant registrar appointed in accordance with section 37;
    - (iii) been a District Judge appointed in accordance with section 4 or 7 of the District Court Ordinance (Cap. 336);
    - (iv) been the Registrar of the District Court or a deputy registrar or assistant registrar of the District Court, appointed in accordance with section 14 of the District Court Ordinance (Cap. 336);
    - (v) been a permanent magistrate appointed in accordance with section 5 of the Magistrates Ordinance (Cap. 227);
    - (vi) been a coroner appointed in accordance with section 3 of the Coroners Ordinance (Cap. 504);
    - (vii) been an adjudicator appointed in accordance with section 4 of the Small Claims Tribunal Ordinance (Cap. 338);
    - (viii) been a presiding officer appointed in accordance with section 4 of the Labour Tribunal Ordinance (Cap. 25);
    - (ix) been a legal officer as defined in section 2 of the Legal Officers Ordinance (Cap. 87);
    - (x) been the Director of Legal Aid or a Deputy Director of Legal Aid, Assistant Director of Legal Aid or Legal Aid Officer, appointed in accordance with section 3 of the Legal Aid Ordinance (Cap. 91);
    - (xi) been the Official Receiver or an Assistant Official Receiver (Legal), Assistant Principal Solicitor, Senior Solicitor or Solicitor, appointed in accordance with section 75 of the Bankruptcy Ordinance (Cap. 6); or
    - (xii) been the Director of Intellectual Property or a Deputy Director of Intellectual Property, Assistant Director of Intellectual Property, Senior Solicitor or Solicitor, appointed in accordance with

section 3 of the Director of Intellectual Property (Establishment) Ordinance (Cap. 412).

- (4) A person shall be eligible to be appointed as an assistant registrar if –
- (a) he is qualified to practise as a barrister, solicitor or advocate in a court in Hong Kong or any other common law jurisdiction having unlimited jurisdiction either in civil or criminal matters; and
  - (b) since becoming so qualified, he has for a period of or periods totalling not less than 5 years –
    - (i) practised as a barrister, solicitor or advocate in such a court;
    - (ii) been a District Judge appointed in accordance with section 4 or 7 of the District Court Ordinance (Cap. 336);
    - (iii) been the Registrar of the District Court or a deputy registrar or assistant registrar of the District Court, appointed in accordance with section 14 of the District Court Ordinance (Cap. 336);
    - (iv) been a permanent magistrate appointed in accordance with section 5 of the Magistrates Ordinance (Cap. 227);
    - (v) been a coroner appointed in accordance with section 3 of the Coroners Ordinance (Cap. 504);
    - (vi) been an adjudicator appointed in accordance with section 4 of the Small Claims Tribunal Ordinance (Cap. 338);
    - (vii) been a presiding officer appointed in accordance with section 4 of the Labour Tribunal Ordinance (Cap. 25);
    - (viii) been a legal officer as defined in section 2 of the Legal Officers Ordinance (Cap. 87);
    - (ix) been the Director of Legal Aid or a Deputy Director of Legal Aid, Assistant Director of Legal Aid or Legal Aid Officer, appointed in accordance with section 3 of the Legal Aid Ordinance (Cap. 91);
    - (x) been the Official Receiver or an Assistant Official Receiver (Legal), Assistant Principal Solicitor, Senior Solicitor or Solicitor, appointed in accordance with section 75 of the Bankruptcy Ordinance (Cap. 6); or
    - (xi) been the Director of Intellectual Property or a Deputy Director of Intellectual Property, Assistant Director of Intellectual Property, Senior Solicitor or Solicitor, appointed in accordance with section 3 of the Director of Intellectual Property (Establishment) Ordinance (Cap. 412).
- (5) For the purposes of calculating the period of 5 years referred to in subsections (1)(b), (2)(b), (3)(b) and (4)(b) –
- (a) periods of less than 5 years falling within any of the subparagraphs of subsection (1)(b), (2)(b), (3)(b) or (4)(b), as the case may be, may be combined;
  - (b) periods served in an office specified in Part I of the First Schedule to the repealed Registrar General (Establishment) Ordinance (Cap. 100) may be taken into account notwithstanding the repeal of that Ordinance.”

## **District Judges**

### **Section 5 of the District Court Ordinance (Cap. 336) –**

- “(1) No person shall be appointed to be a District Judge under section 4 unless –
- (a) he is qualified to practise as a barrister, solicitor or advocate in a court in Hong Kong or any other common law jurisdiction having unlimited jurisdiction either in civil or criminal matters; and
  - (b) since becoming so qualified he has for a period of or periods totalling not less than 5 years –
    - (i) practised as a barrister, solicitor or advocate in such a court; or
    - (ia) been the Registrar of the High Court or a senior deputy registrar, deputy registrar or assistant registrar of the High Court, appointed in accordance with section 37 of the High Court Ordinance (Cap. 4); or
    - (ib) been the Registrar or a deputy registrar or assistant registrar appointed in accordance with section 14; or
    - (ii)-(iv) (Repealed 14 of 1997 s. 3)
    - (v) been a permanent magistrate appointed in accordance with section 5 of the Magistrates Ordinance (Cap. 227); or
    - (va) been a coroner appointed in accordance with section 3 of the Coroners Ordinance (Cap. 504); or
    - (vb) been an adjudicator appointed in accordance with section 4 of the Small Claims Tribunal Ordinance (Cap. 338); or
    - (vc) been a presiding officer appointed in accordance with section 4 of the Labour Tribunal Ordinance (Cap. 25); or
    - (vi) been a legal officer as defined in section 2 of the Legal Officers Ordinance (Cap. 87); or
    - (vii) (Repealed 8 of 1993 s. 26)
    - (viii) been the Director of Legal Aid or a Deputy Director of Legal Aid, Assistant Director of Legal Aid or Legal Aid Officer, appointed in accordance with section 3 of the Legal Aid Ordinance (Cap. 91); or
    - (ix) been the Official Receiver or an Assistant Official Receiver (Legal), Assistant Principal Solicitor, Senior Solicitor or Solicitor, appointed in accordance with section 75 of the Bankruptcy Ordinance (Cap. 6); or
    - (x) been the Director of Intellectual Property or a Deputy Director of Intellectual Property, Assistant Director of Intellectual Property, Senior Solicitor or Solicitor, appointed in accordance with section 3 of the Director of Intellectual Property (Establishment) Ordinance (Cap. 412).
- (2) For the purpose of calculating such period of 5 years, periods of less than 5 years falling within any of the sub-paragraphs of paragraph (b) of subsection (1) may be combined.
- (3) For the purposes of calculating the period of 5 years under subsection (1), periods served in an office specified in Part I of the First Schedule to the repealed Registrar General (Establishment) Ordinance (Cap. 100) may be taken into account notwithstanding the repeal of that Ordinance.”

## **Registrar, Deputy Registrars and Assistant Registrars of the District Court**

### **Section 14AA of the District Court Ordinance (Cap. 336) –**

- “(1) A person shall be eligible to be appointed as the Registrar, a deputy registrar or an assistant registrar if –
- (a) he is qualified to practise as a barrister, solicitor or advocate in a court in Hong Kong or any other common law jurisdiction having unlimited jurisdiction either in civil or criminal matters; and
  - (b) since becoming so qualified, he has for a period of or periods totalling not less than 5 years –
    - (i) practised as a barrister, solicitor or advocate in such a court;
    - (ii) been a permanent magistrate appointed in accordance with section 5 of the Magistrates Ordinance (Cap. 227);
    - (iii) been a coroner appointed in accordance with section 3 of the Coroners Ordinance (Cap. 504);
    - (iv) been an adjudicator appointed in accordance with section 4 of the Small Claims Tribunal Ordinance (Cap. 338);
    - (v) been a presiding officer appointed in accordance with section 4 of the Labour Tribunal Ordinance (Cap. 25);
    - (vi) been a legal officer as defined in section 2 of the Legal Officers Ordinance (Cap. 87);
    - (vii) been the Director of Legal Aid or a Deputy Director of Legal Aid, Assistant Director of Legal Aid or Legal Aid Officer, appointed in accordance with section 3 of the Legal Aid Ordinance (Cap. 91);
    - (viii) been the Official Receiver or an Assistant Official Receiver (Legal), Assistant Principal Solicitor, Senior Solicitor or Solicitor, appointed in accordance with section 75 of the Bankruptcy Ordinance (Cap. 6); or
    - (ix) been the Director of Intellectual Property or a Deputy Director of Intellectual Property, Assistant Director of Intellectual Property, Senior Solicitor or Solicitor, appointed in accordance with section 3 of the Director of Intellectual Property (Establishment) Ordinance (Cap. 412).
- (2) For the purposes of calculating the period of 5 years referred to in subsection (1)(b) –
- (a) periods of less than 5 years falling within any of the subparagraphs of that subsection may be combined;
  - (b) periods served in an office specified in Part I of the First Schedule to the repealed Registrar General (Establishment) Ordinance (Cap. 100) may be taken into account notwithstanding the repeal of that Ordinance.”

## **President, Lands Tribunal**

### **Section 4(1) of the Lands Tribunal Ordinance (Cap. 17) –**

- “(1) The Tribunal shall consist of the following members –
- (a) the President, who shall be one of the Judges of the High Court and shall be appointed by the Chief Executive; ....”

## **Presiding Officer, Lands Tribunal**

### **Section 4(2) of the Lands Tribunal Ordinance (Cap. 17) –**

- “(2) Every District Judge and deputy District Judge shall by virtue of his office be a presiding officer.”

## **Members, Lands Tribunal**

### **Sections 4(3) to 4(5) of the Lands Tribunal Ordinance (Cap. 17) –**

- “(3) A person shall be eligible to be appointed under subsection (1)(c) as a member of the Tribunal if –
- (a) he is qualified to practise as a barrister, solicitor or advocate in a court in Hong Kong or any other common law jurisdiction having unlimited jurisdiction either in civil or criminal matters; and
  - (b) since becoming so qualified, he has for a period of or periods totalling not less than 5 years –
    - (i) practised as a barrister, solicitor or advocate in such a court;
    - (ii) been the registrar or a deputy registrar or assistant registrar of the District Court appointed in accordance with section 14 of the District Court Ordinance (Cap. 336);
    - (iii) been a permanent magistrate appointed in accordance with section 5 of the Magistrates Ordinance (Cap. 227);
    - (iv) been a coroner appointed in accordance with section 3 of the Coroners Ordinance (Cap. 504);
    - (v) been an adjudicator appointed in accordance with section 4 of the Small Claims Tribunal Ordinance (Cap. 338);
    - (vi) been a presiding officer appointed in accordance with section 4 of the Labour Tribunal Ordinance (Cap. 25);
    - (vii) been a legal officer as defined in section 2 of the Legal Officers Ordinance (Cap. 87);
    - (viii) been the Director of Legal Aid or a Deputy Director of Legal Aid, Assistant Director of Legal Aid or Legal Aid Officer, appointed in accordance with section 3 of the Legal Aid Ordinance (Cap. 91);
    - (ix) been the Official Receiver or an Assistant Official Receiver (Legal), Assistant Principal Solicitor, Senior Solicitor or Solicitor, appointed in accordance with section 75 of the Bankruptcy Ordinance (Cap. 6); or
    - (x) been the Director of Intellectual Property or a Deputy Director of Intellectual Property, Assistant Director of Intellectual Property, Senior Solicitor or Solicitor,



appointed in accordance with section 3 of the Director of Intellectual Property (Establishment) Ordinance (Cap. 412).

- (4) Notwithstanding subsection (3), a person shall also be eligible to be appointed under subsection (1)(c) as a member of the Tribunal if he is a Corporate Member in the General Practice Division of The Hong Kong Institute of Surveyors incorporated by The Hong Kong Institute of Surveyors Ordinance (Cap. 1148), or a holder of an equivalent professional qualification, with at least 5 years' experience in the practice of land valuation.
- (5) For the purposes of calculating the period of 5 years referred to in subsection (3)(b) –
  - (a) periods of less than 5 years falling within any of the subparagraphs of that subsection may be combined;
  - (b) periods served in an office specified in Part I of the First Schedule to the repealed Registrar General (Establishment) Ordinance (Cap. 100) may be taken into account notwithstanding the repeal of that Ordinance.”

## **Permanent Magistrates**

### **Section 5AA of the Magistrates Ordinance (Cap. 227) –**

- “(1) A person shall be eligible to be appointed as a permanent magistrate if –
  - (a) he is qualified to practise as a barrister, solicitor or advocate in a court in Hong Kong or any other common law jurisdiction having unlimited jurisdiction either in civil or criminal matters; and
  - (b) since becoming so qualified, he has for a period of or periods totalling not less than 5 years –
    - (i) practised as a barrister, solicitor or advocate in such a court;
    - (ii) been a legal officer;
    - (iii) been the Director of Legal Aid or a Deputy Director of Legal Aid, Assistant Director of Legal Aid or Legal Aid Officer, appointed in accordance with section 3 of the Legal Aid Ordinance (Cap. 91);
    - (iv) been the Official Receiver or an Assistant Official Receiver (Legal), Assistant Principal Solicitor, Senior Solicitor or Solicitor, appointed in accordance with section 75 of the Bankruptcy Ordinance (Cap. 6); or
    - (v) been the Director of Intellectual Property or a Deputy Director of Intellectual Property, Assistant Director of Intellectual Property, Senior Solicitor or Solicitor, appointed in accordance with section 3 of the Director of Intellectual Property (Establishment) Ordinance (Cap. 412).
- (2) Notwithstanding subsection (1), a person shall also be eligible to be appointed as a permanent magistrate if –
  - (a) he is qualified to practise as a barrister, solicitor or advocate in a court in Hong Kong or any other common law jurisdiction having unlimited jurisdiction either in civil or criminal matters; and

- (b) whether before or since becoming so qualified, he has for a period of or periods totalling not less than 5 years been a special magistrate appointed in accordance with section 5.
- (3) For the purposes of calculating the period of 5 years referred to in subsection (1)(b) –
- (a) periods of less than 5 years falling within any of the subparagraphs of that subsection may be combined;
  - (b) periods served in an office specified in Part I of the First Schedule to the repealed Registrar General (Establishment) Ordinance (Cap. 100) may be taken into account notwithstanding the repeal of that Ordinance.”

## **Special Magistrates**

### **Section 5AB of the Magistrates Ordinance (Cap. 227) –**

- “(1) A person shall be eligible to be appointed as a special magistrate if –
- (a) he is qualified to practise as a barrister, solicitor or advocate in a court in Hong Kong or any other common law jurisdiction having unlimited jurisdiction either in civil or criminal matters; and
  - (b) since becoming so qualified, he has for a period of or periods totalling not less than 5 years –
    - (i) practised as a barrister, solicitor or advocate in such a court;
    - (ii) been a legal officer;
    - (iii) been the Director of Legal Aid or a Deputy Director of Legal Aid, Assistant Director of Legal Aid or Legal Aid Officer, appointed in accordance with section 3 of the Legal Aid Ordinance (Cap. 91);
    - (iv) been the Official Receiver or an Assistant Official Receiver (Legal), Assistant Principal Solicitor, Senior Solicitor or Solicitor, appointed in accordance with section 75 of the Bankruptcy Ordinance (Cap. 6); or
    - (v) been the Director of Intellectual Property or a Deputy Director of Intellectual Property, Assistant Director of Intellectual Property, Senior Solicitor or Solicitor, appointed in accordance with section 3 of the Director of Intellectual Property (Establishment) Ordinance (Cap. 412).
- (2) Notwithstanding subsection (1), a person shall also be eligible to be appointed as a special magistrate if –
- (a) he is qualified to practise as a barrister, solicitor or advocate in a court in Hong Kong or any other common law jurisdiction having unlimited jurisdiction either in civil or criminal matters; and
  - (b) whether before or since becoming so qualified, he has for a period of or periods totalling not less than 5 years served in the grade of Court Prosecutor, Court Interpreter or Judicial Clerk in the Government.
- (3) For the purposes of calculating the period of 5 years referred to in subsection (1)(b) –

- (a) periods of less than 5 years falling within any of the subparagraphs of that subsection may be combined;
- (b) periods served in an office specified in Part I of the First Schedule to the repealed Registrar General (Establishment) Ordinance (Cap. 100) may be taken into account notwithstanding the repeal of that Ordinance.”