

香港特別行政區政府  
政務司司長辦公室轄下行政署



The Government of  
The Hong Kong Special Administrative Region  
Administration Wing,  
Chief Secretary for Administration's Office

香港添馬添美道 2 號

2 Tim Mei Avenue, Tamar, Hong Kong

本函檔號 Our Ref.: CSO/ADM CR 8/4/3222/85

Tel: (852) 2810 3838

來函檔號 Your Ref.:

Fax: (852) 2804 6870

28 March 2012

***Urgent by Hand***

The Hon Miriam LAU Kin-ye, GBS, JP  
Chairman of the House Committee  
Legislative Council  
Room 819, Legislative Council Complex  
1 Legislative Council Road  
Central  
Hong Kong

*Dear Miriam,*


### **Senior Judicial Appointments**

I write to inform you that in accordance with Article 88 of the Basic Law, the Chief Executive has accepted the recommendations of the Judicial Officers Recommendation Commission ("JORC") to appoint -

- (a) The Honourable Mr Justice Robert Tang Ching as a Permanent Judge of the Court of Final Appeal;
- (b) The Honourable Mr Justice Syed Kemal Shah Bokhary as a non-permanent Hong Kong judge of the Court of Final Appeal; and
- (c) The Right Honourable the Lord Phillips of Worth Matravers as a non-permanent judge from another common law jurisdiction of the Court of Final Appeal ("non-permanent common law judge").

The Chief Executive will announce his acceptance of the JORC's recommendations this afternoon. Advance copies of the press statements on the above appointments are at **Annexes A, B and C** respectively for Members' reference. I should be grateful if Members could observe the confidentiality of the issue, pending the Chief Executive's public announcement.

Pursuant to Article 90 of the Basic Law, the Chief Executive shall obtain the endorsement of the Legislative Council ("LegCo") of the appointments. Following the procedure for endorsement of judicial appointment of judges agreed by the House Committee in May 2003, papers on the appointment of the Permanent Judge, the non-permanent Hong Kong judge and the non-permanent common law judge are at **Annexes D, E and F** respectively for Members' reference. Subject to the deliberation of the House Committee, the Administration will move motions to seek LegCo's endorsement of the appointments at the earliest opportunity.

*Yours sincerely,*  


( Miss Jennifer Mak )  
Director of Administration

c.c. All LegCo Members

**Press Statement**

**Senior Judicial Appointment:  
Permanent Judge of the Court of Final Appeal**

\*\*\*\*\*

The Chief Executive, Mr Donald Tsang, has accepted the recommendation of the Judicial Officers Recommendation Commission (JORC) on the appointment of The Honourable Mr. Justice Robert Tang Ching, Vice-President and Justice of Appeal of the Court of Appeal of the High Court, as a permanent judge of the Court of Final Appeal with effect from 25 October 2012. Subject to the endorsement of the Legislative Council, the Chief Executive will make the appointment under Article 88 of the Basic Law.

Mr Tsang said, “I am pleased to accept the JORC’s recommendation on the appointment of The Honourable Mr. Justice Robert Tang Ching as a permanent judge of the Court of Final Appeal. Mr Justice Tang is an outstanding lawyer who has considerable experience in handling criminal and civil cases. He is a judge of eminent standing and reputation. I am confident that he will be a great asset to the Court of Final Appeal.”

Article 90 of the Basic Law provides that the Chief Executive shall obtain the endorsement of the Legislative Council on the appointment of the judges of the Court of Final Appeal. The Administration will seek the endorsement of the Legislative Council of the recommended appointment in due course.

The curriculum vitae of the recommended appointee is at Annex.

\*\*\*\*\*

**Curriculum Vitae of  
The Honourable Mr. Justice Robert TANG Ching  
Vice-President and Justice of Appeal  
of the Court of Appeal of the High Court**

---

**1. Personal Background**

Mr. Justice Robert TANG Ching (“Mr. Justice Tang”) was born in Shanghai on 7 January 1947. He is married and has two children.

**2. Education**

Mr. Justice Tang received his legal education in England and obtained the degree of Bachelor of Laws from the Birmingham University in 1969.

**3. Legal Experience**

Mr. Justice Tang was called to the English Bar at Gray’s Inn in 1969, to the Hong Kong Bar in 1970, to the Bar of the State of Victoria in Australia in 1984 and to the Bar of the State of New York in 1986. He was appointed Queen’s Counsel in 1986. He was admitted as a Barrister in Singapore in 1992. Mr. Justice Tang was one of the most senior members of the Bar and had been Chairman of the Bar Association. He has great experience in the civil field and had a very successful civil practice. Mr. Justice Tang was in private practice since 1970 until he joined the Judiciary as a Judge of the Court of First Instance of the High Court (“CFI Judge”) on 2 April 2004.

**4. Judicial Experience**

Mr. Justice Tang deputized in the District Court in 1982 and in the High Court in 1986, and had been appointed as one of the first Recorders of the Court of First Instance of the High Court in September 1995 until his appointment as a CFI Judge in April 2004. Mr. Justice Tang was appointed Justice of Appeal of the Court of Appeal of the High Court on 3 January 2005 and Vice-President of the Court of Appeal of the High Court on 1 November 2006. He was appointed Non-Permanent Hong Kong Judge of the Court of Final Appeal on 1 September 2010. Mr. Justice Tang reached the normal retirement age of 65 on 7 January 2012 and his term of office as Justice of Appeal had been extended for three years until 6 January 2015.

## **5. Services and Activities related to the Legal Field**

- |              |  |
|--------------|--|
| 1978-92      | Criminal and Law Enforcement Injuries Compensation Boards (1978-86 Member, 1986-92 Chairman) |
| 1985-Present | Director, Hong Kong International Arbitration Centre   |
| 1988-90      | Chairman, The Hong Kong Bar Association  |
| 1988-90      | Member, Standing Committee on Legal Aid  |

## **6. Awards**

Mr. Justice Tang was honoured with the award of the Silver Bauhinia Star in 2004.

## **7. Activities Outside the Legal Field**

- |              |  |
|--------------|--|
| 1983-87      | Member, Judicial Service Commission  |
| 1989-93      | Member, Independent Police Complaints Council                                      |
| 1991-2000    | Town Planning Appeal Board<br>(1991-96 Deputy Chairman, 1996-2000 Chairman)        |
| 1992-93      | Member (Alternate), The Takeovers and Mergers Panel                                |
| 1993-99      | Securities and Futures Appeal Panel<br>(1993-95 Deputy Chairman, 1995-99 Chairman) |
| 1994-98      | Chairman, Takeovers Appeal Committee   |
| 1995-97      | Member, Appeal Board on Public Meetings and Processions                            |
| 1996-Present | Chairman, The S.K. Yee Medical Foundation  |
| 1998-2004    | Non-Executive Director, Mandatory Provident Fund Schemes Authority                 |

2000-2004 Chairman, Independent Police Complaints Council

2000-2004 Member, ICAC Complaints Committee

2001-2004 Member, Exchange Fund Advisory Committee, Hong Kong Monetary Authority

\*\*\*\*\*

**Press Statement**

**Senior Judicial Appointment:  
Non-Permanent Hong Kong Judge of the Court of Final Appeal**

\*\*\*\*\*

The Chief Executive, Mr Donald Tsang, has accepted the recommendation of the Judicial Officers Recommendation Commission (JORC) on the appointment of The Honourable Mr. Justice Syed Kemal Shah Bokhary, permanent judge of the Court of Final Appeal, as a non-permanent Hong Kong judge of the Court of Final Appeal upon his retirement from the office of permanent judge on 25 October 2012. Subject to the endorsement of the Legislative Council, the Chief Executive will make the appointment under Article 88 of the Basic Law.

Mr Tsang said, “I am pleased to accept the JORC’s recommendation on the appointment of The Honourable Mr. Justice Syed Kemal Shah Bokhary as non-permanent Hong Kong judge of the Court of Final Appeal, upon his retirement from the office of permanent judge of the Court of Final Appeal. Mr. Justice Bokhary is a founding member of the Court of Final Appeal. He would be an invaluable addition to the list of non-permanent Hong Kong judges having regard to his long established judicial experience. I am confident that he will continue to make valuable contribution to the Court of Final Appeal as a non-permanent Hong Kong judge.”

Article 90 of the Basic Law provides that the Chief Executive shall obtain the endorsement of the Legislative Council on the appointment of the judges of the Court of Final Appeal. The Administration will seek the endorsement of the Legislative Council of the recommended appointment in due course.

The curriculum vitae of the recommended appointee is at Annex.

\*\*\*\*\*



**Curriculum Vitae of  
The Honourable Mr. Justice Syed Kemal Shah BOKHARY**

**1. Personal Background**

Mr. Justice Syed Kemal Shah BOKHARY (“Mr. Justice Bokhary”) was born in Hong Kong on 25 October 1947. He is married (to The Honourable Mrs. Justice Verina Saeeda BOKHARY) and has three children.

**2. Education**

Mr. Justice Bokhary received his legal education in England and became a member of the Honourable Society of the Middle Temple, London, England in 1967.

**3. Legal Experience**

Mr. Justice Bokhary was called to the Bar in England (by the Middle Temple) in 1970 and to the Bar in Hong Kong in 1971. He was appointed Queen’s Counsel in 1983. He was made an Honorary Bencher of the Honourable Society of the Middle Temple in London in 2001. Mr. Justice Bokhary has great experience in the civil field (essentially in the Companies and Commercial fields). He was in private practice since 1971 in Hong Kong and occasionally before the Privy Council in London until he joined the Judiciary as High Court Judge in 1989.

**4. Judicial Experience**

Mr. Justice Bokhary was appointed High Court Judge on 20 March 1989 and was elevated to the Court of Appeal as Justice of Appeal on 1 March 1993. He was appointed Permanent Judge of the Court of Final Appeal on 1 July 1997.

## 5. Service and Activities related to the Legal Field

Past	Member, Bar Committee
Past	Chairman, Pharmacy and Poisons Appeal Tribunal
Past	Chairman, Civil Court Users Committee
Past	President, Deportation Tribunal
Past	Chairman, Law and Professional Legal Education Departments Advisory Committee of Faculty of Law of City University of Hong Kong
Past	Member, Law Faculty Board of City University of Hong Kong
Past	Chairman, Board of Governors of the Advocacy Institute of Hong Kong
Past	Member, Law Reform Commission
Past	Chairman, Working Party on Solicitors' Right of Audience
Current	Chairman, Editorial Advisory Board of Halsbury's Laws of Hong Kong
Current	Honorary Lecturer at the Department of Professional Legal Education, University of Hong Kong
Current	Member, Court of Final Appeal Rules Committee
Current	Member, Academy of Experts' Judicial Committee
Current	Vice-Chairman, Middle Temple Society in Hong Kong

Current	Chairman, Advisory Board, Chinese University of Hong Kong, School of Law
Current	Chairman, Academic Board for the Post-graduate Certificate of Law programme, Chinese University of Hong Kong, School of Law
Current	Affiliate, Centre of Near and Middle Eastern Studies, School of Oriental and African Studies, University of London
Current	Honorary Patron, Advocacy and Mooting Society, University of Hong Kong
Current	Judicial Member, Society of Trust and Estate Practitioners (STEP)

## **6. Publications**

Mr. Justice Bokhary published the “The Lan Kwai Fong disaster on January 1, 1993: final report” in 1993. He was the Editor-in-Chief of “Tort Law and Practice in Hong Kong” in 2005 and its second edition in 2011. He was also the Editor-in-Chief of the 2009 and 2011 Editions of “Archbold Hong Kong – Criminal Law, Pleading, Evidence and Practice, Fourth Edition”.

## **7. Awards**

Mr. Justice Bokhary was awarded the degree of Doctor of Laws (*honoris causa*) by the University of Hong Kong in 2012. The Ceremony at which the degree will be conferred will take place in November 2012.

## **8. Activities Outside the Legal Field**

Past	Appointed by the then Governor to conduct an independent inquiry into the Lan Kwai Fong Disaster
------	--

Past Chairman, Advisory Board of the Centre for Criminology at the Faculty of Social Science, University of Hong Kong

Current Fellow, Royal Anthropological Institute

Current President, Hong Kong Kennel Club

Current Member, Executive Committee of the charity "Helping Hand"

\*\*\*\*\*

**Press Statement**

**Senior Judicial Appointment:  
Non-Permanent Judge from Another Common Law Jurisdiction  
of the Court of Final Appeal**

\*\*\*\*\*

The Chief Executive, Mr Donald Tsang, has accepted the recommendation of the Judicial Officers Recommendation Commission (JORC) on the appointment of The Right Honourable The Lord Phillips of Worth Matravers, President of the Supreme Court of the United Kingdom, as a non-permanent judge from another common law jurisdiction of the Court of Final Appeal. Subject to the endorsement of the Legislative Council, the Chief Executive will make the appointment under Article 88 of the Basic Law.

Mr Tsang said, “I am pleased to accept the JORC’s recommendation on the appointment of The Right Honourable The Lord Phillips of Worth Matravers as a non-permanent judge from another common law jurisdiction of the Court of Final Appeal. Lord Phillips is the President of the Supreme Court of the United Kingdom. He is a judge of the highest standing and reputation. Lord Phillips will be retiring as President of the Supreme Court of the United Kingdom at the end of September 2012. I am confident that he will be a great asset to the Court of Final Appeal upon his appointment with effect from October 2012.”

Article 90 of the Basic Law provides that the Chief Executive shall obtain the endorsement of the Legislative Council on the appointment of the judges of the Court of Final Appeal. The Administration will seek the endorsement of the Legislative Council of the recommended appointment in due course.

The curriculum vitae of the recommended appointee is at Annex.

\*\*\*\*\*

**Curriculum Vitae of  
The Right Honourable The Lord PHILLIPS of Worth Matravers, KG**

**1. Personal Background**

Lord Phillips is a citizen of the United Kingdom. He was born on 21 January 1938. He is married with four children.

**2. Education**

Lord Phillips was educated at Bryanston School and King's College Cambridge.

**3. Legal Experience**

Lord Phillips was called to Bar at the Middle Temple in 1962 and practised as a barrister from 1962 to 1987. In 1973, he was appointed Junior Counsel to the Ministry of Defence, as well as to the Treasury in Maritime and Admiralty Matters. He was appointed Queen's Counsel in 1978.

**4. Judicial Experience**

Lord Phillips was appointed Recorder between 1982 and 1987. From 1987, he was appointed High Court Judge on the Queen's Bench Division, where he sat in the Commercial Court and presided over several complex fraud trials including the Barlow Clowes and Maxwells prosecutions. He was elevated to the Court of Appeal in 1995 and elevated to Lord of Appeal in Ordinary in 1999. In 2000, he was appointed Master of the Rolls and Head of Civil Justice, a post that he held until 2005. He was appointed Lord Chief Justice of England and Wales in 2005, and became the Senior Law Lord in 2008. In 2009, he was appointed the first President of the Supreme Court of the United Kingdom. He was appointed a Knight Companion of the Most Noble Order of the Garter by Her Majesty The Queen in 2011. Lord Phillips will retire from the position as the President of the Supreme Court of the United Kingdom on 30 September 2012.

**5. Service and Activities related to the Legal Field**

Lord Phillips has held various positions in services and activities related to the legal field. They include:

President of British Maritime Law Association (2005- ).

Chairman of British Council Law Advisory Committee (1991-97); Council of Legal Education (1992-97); BSE Inquiry (1998-2000); Lord Chancellor's Advisory Committee on Public Records (2000-05); Criminal Procedure Rules Committee (2005); and Sentencing Guidelines Council (2005- ).

Member of the Panel of Wreck Commissioners (1979); Council of Management, British Institute of International and Comparative Law; Advisory Council of Institute of European and Comparative Law; and Advisory Council of Institute of Global Law.

Honorary Fellow of the Society for Advanced Legal Studies; and King's College, Cambridge.

Visitor to Nuffield College, Oxford University; University College London; and Darwin College, Cambridge University.

## **6. Publications**

In recent years, Lord Phillips has given a considerable number of speeches some of which have been published in various ways, principally on the judiciary website of the United Kingdom, namely <http://www.judiciary.gov.uk/media/speeches/speakers/lord-phillips-of-worth-matravers>. They include:

The Supreme Court and other Constitutional Changes in the UK; Equality before the Law: East London Muslim Centre; Alternative Dispute Resolution: An English Viewpoint; 15th Australian Institute of Judicial Administration Oration - Courts Governance; Trusting the Jury; The Role of the Judge; The Relationship between the State, Sentencers and Probation: Judicial and Probation Autonomy; Prison Reform Trust Publication: Mitigation; Judicial Independence; Issues in Criminal Justice: Murder; Impact of Terrorism on the Rule of Law; How Important is Punishment?; Constitutional Reform: One Year on; Alternatives to Custody: The Case for Community Sentencing; Crime and Punishment: High Sheriff's Law Lecture, Oxford; Terrorism and Human Rights; and Youth Justice.

## **7. Awards**

Lord Phillips has received honorary degrees of Doctor of Laws (LL.D) from the University of Exeter (1998); the University of Birmingham (2003); the University of London (2004); the International Maritime Law Institute (2007); the University of Wolverhampton (2009); the Washington and Lee University (2009) and the Wake Forest University (2010). He has



also been awarded Doctor of Civil Law (D.CL) from the City University, London (2003).

**8. Activities Outside the Legal Field**

Lord Phillips was Chairman of the Magna Carta Trust. He was also Chairman of the Governors of Bryantson School.

\*\*\*\*\*

## **APPOINTMENT OF PERMANENT JUDGE OF THE COURT OF FINAL APPEAL**

### **INTRODUCTION**

Pursuant to Article 90 of the Basic Law of the Hong Kong Special Administrative Region (“HKSAR”) and section 7A of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) (“the Ordinance”), the Administration intends to give notice in due course to move a motion to obtain the endorsement of the Legislative Council of the appointment of The Honourable Mr. Justice Robert TANG Ching, Vice-President and Justice of Appeal of the Court of Appeal of the High Court (“Mr. Justice Tang VP”) as a Permanent Judge (“PJ”) of the Court of Final Appeal (“CFA”) for a term of three years with effect from 25 October 2012, when Mr. Justice Syed Kemal Shah BOKHARY, PJ, vacates his judicial office upon reaching the normal retiring age of 65 years and proceeds on pre-retirement leave. The curriculum vitae of Mr. Justice Tang VP is at

Appendix Appendix.

### **BACKGROUND**

#### **The Court of Final Appeal**

2. The CFA is the final appellate court in Hong Kong. The CFA hears appeals in civil and criminal matters and may confirm, reverse or vary the decision of the lower courts.

3. The CFA consists of the Chief Justice and the PJs. Non-permanent judges may be invited to sit. There are two lists of non-permanent judges –

- (a) the list of non-permanent Hong Kong judges (“HKNPJs”); and
- (b) the list of judges from other common law jurisdictions (“CLNPJs”).

4. In accordance with section 16 of the Ordinance, the CFA is constituted by five judges when hearing and determining appeals, as follows –

- (a) the Chief Justice or a PJ designated to sit in his place under subsection (2);
- (b) three PJs; and
- (c) one HKNPJ or one CLNPJ (selected by the Chief Justice and invited by the Court).

Where the Chief Justice is not available to sit, he designates a PJ to preside. Where a sufficient number of PJs are not available, the Chief Justice nominates a HKNPJ to sit in place of a PJ.

## **Duties, Requirements and Qualifications for Permanent Judges**

### Duties

5. The duty of a PJ is to hear civil and criminal appeals in the CFA. As circumstances necessitate, a PJ may be designated to sit in place of the Chief Justice and be President of the Court. The CFA deals with appeals in –
- (a) any civil cause or matter that falls under the civil jurisdiction of the CFA as provided for in sections 21 and 22 of the Ordinance; and
  - (b) any criminal cause or matter that falls under the criminal jurisdiction of the CFA as provided for in sections 30 and 31 of the Ordinance.

### Basic Law Requirements

6. Article 92 of the Basic Law stipulates that judges of the HKSAR shall be chosen on the basis of their judicial and professional qualities and may be recruited from other common law jurisdictions.

### Statutory Qualifications

7. Section 12(1A) of the Ordinance stipulates that a person shall be eligible to be appointed as a PJ if he is –

- (a) the Chief Judge of the High Court (“CJHC”);
- (b) a Justice of Appeal;
- (c) a judge of the Court of First Instance (“CFI Judge”); or
- (d) a barrister who has practised as a barrister or solicitor in Hong Kong for a period of at least 10 years.

### **Tenure of Office of Permanent Judges**

8. Under section 14(1) and (11) of the Ordinance, PJs shall vacate their offices when they attain the retiring age of 65 years.

9. Notwithstanding section 14(1), section 14(2)(b) of the Ordinance provides that a person who has attained the age of 65 years may be appointed to be a PJ for a term of three years; and that term may be extended for one period of three years by the Chief Executive acting in accordance with the recommendation of the Chief Justice.

10. Under section 14(5) of the Ordinance, a judge<sup>1</sup> may at any time resign his office by notice in writing addressed to the Chief Executive.

### **The Judiciary’s Policy on Appointment to the Court of Final Appeal**

11. The Judiciary’s current policy is to consider only internal candidates for appointment to the CFA, including appointments as PJs and HKNPJs but not as the Chief Justice. For appointment at such a senior level,

---

<sup>1</sup> Under section 2 of the Ordinance, “judge” means a judge of the Court, including a non-permanent judge; and “non-permanent judge” means a HKNPJ or a CLNPJ.

the Chief Justice considers that the appointees should have proven judicial experience.

## **Constitutional and Legal Framework for the Appointment**

### The Chief Executive

12. Article 48(6) of the Basic Law confers on the Chief Executive the power and function to appoint judges of the courts at all levels in accordance with legal procedures.

13. Article 88 of the Basic Law provides that judges of the courts of the 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 (Cap. 92) (“JORC Ordinance”) to perform the functions of the independent commission referred to in Article 88 of the Basic Law.

14. In the case of the appointment of CFA judges, Article 90 of the Basic Law provides that 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. These requirements in relation to CFA judges are also stipulated in section 7A of the Ordinance.

### Judicial Officers Recommendation Commission

15. Pursuant to Article 88 of the Basic Law and the JORC Ordinance, the JORC is entrusted with the function of making recommendations to the Chief Executive regarding the appointment of judges. The JORC consists of the Chief Justice as the Chairman, the Secretary for Justice and seven 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 three persons not connected with the practice of law). Under section 3(3A) of the JORC Ordinance, a resolution is not effective if there are more than two votes not in favour. The recommendation of the JORC is then communicated to the Chief Executive.

### The Legislative Council

16. Article 73(7) of the Basic Law confers on the Legislative Council the power and function to endorse the appointment of CFA judges. Article 90 of the Basic Law provides that the Chief Executive shall obtain the endorsement of the Legislative Council for the appointment of CFA judges.

17. Thus, the system of judicial appointment provides for the Chief Executive to make an appointment on the recommendation of an independent commission, viz the JORC, as laid down in Article 88 of the Basic Law, and to obtain the endorsement of the Legislative Council of the appointment of CFA judges under Article 90 of the Basic Law.

## **THE CURRENT APPOINTMENT EXERCISE**

### **The JORC's Recommendation**

18. Pursuant to Article 88 of the Basic Law and section 6(a) of the JORC Ordinance, the JORC has recommended the appointment of Mr. Justice Tang VP as PJ of the CFA. The recommendation has been communicated to the Chief Executive.

### **The Chief Executive's Acceptance of the JORC's Recommendation**

19. In accordance with Article 88 of the Basic Law and section 7(1) of the Ordinance, the Chief Executive has accepted the recommendation of the JORC on the appointment of Mr. Justice Tang VP as PJ of the CFA. Subject to the endorsement of the Legislative Council pursuant to Article 90 of the Basic Law and section 7A of the Ordinance, the Chief Executive will make the recommended appointment.

### **The JORC Process**

#### The JORC Meeting

20. The JORC had held a meeting in the first quarter of 2012 to consider the recommendation of the person to be appointed as PJ.



### Quorum

21. A quorum as required by section 3(3) of the JORC Ordinance was present at the JORC meeting at which the recommended appointment was considered.

### Statutory Disclosure

22. Under section 12(1A) of the Ordinance (please see paragraph 7 above), a barrister who has practised as a barrister or solicitor in Hong Kong for a period of at least 10 years is eligible to be appointed as a PJ. As the Judiciary's current policy is to consider only internal candidates for appointment as PJs (please see paragraph 11 above), the Secretary for Justice and the barrister Member of JORC from outside the Judiciary could not reasonably be regarded as candidates for the PJ position and they had not been invited, under section 3(5B) of the JORC Ordinance, to declare their interest in filling such position.

23. Mr. Justice Louis TONG ("Mr. Justice Tong"), CFI Judge and a Member of JORC, is an eligible candidate. In accordance with section 3(5B) of the JORC Ordinance, he had been asked to indicate in writing if he would wish to be considered as a candidate for appointment as PJ of the CFA on this occasion. As Mr. Justice Tong had replied in the negative, he was issued with the relevant discussion paper and took part in the deliberations on the matter.

### The JORC's Deliberations

24. The JORC noted that having regard to the professional requirements for PJs (paragraph 7 above) and in accordance with the Judiciary's policy to consider only internal candidates for appointment as PJs (paragraph 11 above), all High Court judges (i.e., the CJHC, Justices of Appeal and CFI Judges) are eligible candidates for consideration.

25. The JORC noted that the long list of candidates comprises the 36 serving Judges of the High Court. Excluding the JORC member who had made declaration (paragraph 23 above), 35 Judges of the High Court on the long list was considered.

26. In view of the important judicial duties of PJs in determining appeals in the highest appellate court of Hong Kong, the JORC agreed it is essential that only Judges of the highest calibre for the CFA are further considered for appointment as PJ.

27. Having regard to the consideration above, the JORC agreed that three Judges of the High Court should be placed on the short list for further consideration.

28. The JORC 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 that Mr. Justice Tang VP was the most suitable for the PJ vacancy.

### The JORC's Resolution

29. The JORC resolved to recommend to the Chief Executive the appointment of Mr. Justice Tang VP as PJ of the CFA. In resolving to make the recommendation, the JORC noted that Mr. Justice Tang VP's term of office as Justice of Appeal had been extended beyond his normal retiring age of 65 years for three years from 7 January 2012 to 6 January 2015, as earlier recommended by the JORC and approved by the Chief Executive<sup>2</sup>. While Mr. Justice Tang VP would already have attained the age of 65 years when the anticipated PJ vacancy arises on 25 October 2012, section 14(2)(b) of the Ordinance (paragraph 9 above) provides for the appointment of a person who has attained the age of 65 as a PJ. In accordance with that same section, the proposed appointment of Mr. Justice Tang VP as a PJ should be for a term of three years from 25 October 2012 to 24 October 2015.

### **The Chief Executive's Acceptance of the Recommendation**

30. The Chief Executive accepted the recommendation of the JORC.

31. The Chief Executive noted that Mr. Justice Tang VP is holding the appointment of a HKNPJ for the period from 1 September 2010 to 31 August 2013. As an individual cannot hold appointment as a PJ and a HKNPJ of the CFA at the same time, Mr. Justice Tang VP will need to resign from his appointment as a HKNPJ before he takes up the judicial office of PJ on 25 October 2012, pursuant to section 14(5) of the Ordinance

---

<sup>2</sup> Section 11A(3)(b) of the High Court Ordinance, Cap. 4, provides that the term of office of a judge of the High Court may be extended for a specified period or periods not exceeding 5 years in the aggregate by the Chief Executive acting in accordance with the recommendation of the JORC, and in any such case, the judge shall accordingly be regarded as having attained the retiring age at the expiration of the specified period or periods.

(paragraph 10 above). Mr. Justice Tang VP's resignation will be submitted to the Chief Executive in due course.

### **ENDORSEMENT OF THE LEGISLATIVE COUNCIL**

32. Subject to the endorsement of the Legislative Council, the Chief Executive will make the recommended appointment and will report the appointment to the Standing Committee of the National People's Congress for the record.

Administration Wing  
Chief Secretary for Administration's Office  
March 2012

**The Honourable Mr. Justice Robert TANG Ching  
Vice-President and Justice of Appeal  
of the Court of Appeal of the High Court**

---

**1. Personal Background**

Mr. Justice Robert TANG Ching (“Mr. Justice Tang”) was born in Shanghai on 7 January 1947. He is married and has two children.

**2. Education**

Mr. Justice Tang received his legal education in England and obtained the degree of Bachelor of Laws from the Birmingham University in 1969.

**3. Legal Experience**

Mr. Justice Tang was called to the English Bar at Gray’s Inn in 1969, to the Hong Kong Bar in 1970, to the Bar of the State of Victoria in Australia in 1984 and to the Bar of the State of New York in 1986. He was appointed Queen’s Counsel in 1986. He was admitted as a Barrister in Singapore in 1992. Mr. Justice Tang was one of the most senior members of the Bar and had been Chairman of the Bar Association. He has great experience in the civil field and had a very successful civil practice. Mr. Justice Tang was in private practice since 1970 until he joined the Judiciary as a Judge of the Court of First Instance of the High Court (“CFI Judge”) on 2 April 2004.

**4. Judicial Experience**

Mr. Justice Tang deputized in the District Court in 1982 and in the High Court in 1986, and had been appointed as one of the first Recorders of the Court of First Instance of the High Court in September 1995 until his appointment as a CFI Judge in April 2004. Mr. Justice Tang was appointed Justice of Appeal of the Court of Appeal of the High Court on 3 January 2005 and Vice-President of the Court of Appeal of the High Court on 1 November 2006. He was appointed Non-Permanent Hong Kong Judge of the Court of Final Appeal on 1 September 2010. Mr. Justice Tang reached

the normal retirement age of 65 on 7 January 2012 and his term of office as Justice of Appeal had been extended for three years until 6 January 2015.

**5. Services and Activities related to the Legal Field**

1978-92	Criminal and Law Enforcement Injuries Compensation Boards (1978-86 Member, 1986-92 Chairman)
1985- Present	Director, Hong Kong International Arbitration Centre
1988-90	Chairman, The Hong Kong Bar Association
1988-90	Member, Standing Committee on Legal Aid

**6. Awards**

Mr. Justice Tang was honoured with the award of the Silver Bauhinia Star in 2004.

**7. Activities Outside the Legal Field**

1983-87	Member, Judicial Service Commission
1989-93	Member, Independent Police Complaints Council
1991-2000	Town Planning Appeal Board (1991-96 Deputy Chairman, 1996-2000 Chairman)
1992-93	Member (Alternate), The Takeovers and Mergers Panel
1993-99	Securities and Futures Appeal Panel (1993-95 Deputy Chairman, 1995-99 Chairman)
1994-98	Chairman, Takeovers Appeal Committee
1995-97	Member, Appeal Board on Public Meetings and Processions

1996- Present	Chairman, The S.K. Yee Medical Foundation
1998-2004	Non-Executive Director, Mandatory Provident Fund Schemes Authority
2000-2004	Chairman, Independent Police Complaints Council
2000-2004	Member, ICAC Complaints Committee
2001-2004	Member, Exchange Fund Advisory Committee, Hong Kong Monetary Authority

\*\*\*\*\*

**APPOINTMENT OF NON-PERMANENT JUDGE  
OF THE COURT OF FINAL APPEAL –**

**NON-PERMANENT HONG KONG JUDGE**

**INTRODUCTION**

Pursuant to Article 90 of the Basic Law of the Hong Kong Special Administrative Region (“HKSAR”) and section 7A of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) (“the Ordinance”), the Administration intends to give notice in due course to move a motion to obtain the endorsement of the Legislative Council of the appointment of The Honourable Mr. Justice Syed Kemal Shah BOKHARY (“Mr. Justice Bokhary PJ”), Permanent Judge (“PJ”) of the Court of Final Appeal (“CFA”), as a non-permanent Hong Kong judge (“HKNPJ”) of the CFA. The curriculum vitae of Mr. Justice Bokhary PJ is at [Appendix 1](#).

**Appendix 1**

**BACKGROUND**

**The Court of Final Appeal**

2. The CFA is the final appellate court in Hong Kong. The CFA hears appeals in civil and criminal matters and may confirm, reverse or vary the decision of the lower courts.

3. The CFA consists of the Chief Justice and the PJs. Non-permanent judges may be invited to sit. There are two lists of non-permanent judges –



- (a) the list of HKNPJs ; and
- (b) the list of judges from other common law jurisdictions ( “CLNPJs”).

Section 10 of the Ordinance sets a ceiling of 30 on the total number of persons holding office as non-permanent judges.

4. In accordance with section 16 of the Ordinance, the CFA is constituted by five judges when hearing and determining appeals, as follows –

- (a) the Chief Justice or a PJ designated to sit in his place under subsection (2);
- (b) three PJs; and
- (c) one HKNPJ or one CLNPJ (selected by the Chief Justice and invited by the Court).

Where the Chief Justice is not available to sit, he designates a PJ to preside. Where a sufficient number of PJs are not available, the Chief Justice nominates a HKNPJ to sit in place of a PJ.

## **Duties, Requirements and Qualifications for Non-Permanent Hong Kong Judges**

### Duties

5. The duty of a non-permanent judge is to hear civil and criminal appeals in the CFA. The CFA deals with appeals in –

- (a) any civil cause or matter that falls under the civil jurisdiction of the CFA as provided for in sections 21 and 22 of the Ordinance; and
- (b) any criminal cause or matter that falls under the criminal jurisdiction of the CFA as provided for in sections 30 and 31 of the Ordinance.

### Basic Law Requirements

6. Article 92 of the Basic Law stipulates that judges of the HKSAR shall be chosen on the basis of their judicial and professional qualities and may be recruited from other common law jurisdictions.

### Statutory Qualifications

7. Section 12(3) of the Ordinance provides that a person shall be eligible to be appointed as a HKNPJ if he is –

- (a) a retired Chief Judge of the High Court;

- (b) a retired Chief Justice of the CFA;
- (c) a retired PJ of the CFA;
- (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.

### **Tenure of Office of Non-Permanent Judges**

8. Under section 14(4) of the 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. Under section 14(3) of the Ordinance, there is no retiring age for a non-permanent judge.

### **The Judiciary's Policy on Appointment to the Court of Final Appeal**

9. The Judiciary's current policy is to consider only internal candidates for appointment to the CFA, including as PJs and HKNPJs but not as the Chief Justice. For appointment at such a senior level, the Chief Justice considers that the appointees should have proven judicial experience.

## **Constitutional and Legal Framework for the Appointment**

### The Chief Executive

10. Article 48(6) of the Basic Law confers on the Chief Executive the power and function to appoint judges of the courts at all levels in accordance with legal procedures.

11. Article 88 of the Basic Law provides that judges of the courts of the 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 (Cap. 92) (“JORC Ordinance”) to perform the functions of the independent commission referred to in Article 88 of the Basic Law.

12. In the case of the appointment of CFA judges, Article 90 of the Basic Law provides that 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. These requirements in relation to CFA judges are also stipulated in section 7A of the Ordinance.

### Judicial Officers Recommendation Commission

13. Pursuant to Article 88 of the Basic Law and the JORC Ordinance, the JORC is entrusted with the function of making

recommendations to the Chief Executive regarding the appointment of judges. The JORC consists of the Chief Justice as the Chairman, the Secretary for Justice and seven 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 three persons not connected with the practice of law). Under section 3(3A) of the JORC Ordinance, a resolution is not effective if there are more than two votes not in favour. The recommendation of the JORC is then communicated to the Chief Executive.

### The Legislative Council

14. Article 73(7) of the Basic Law confers on the Legislative Council the power and function to endorse the appointment of CFA judges. Article 90 of the Basic Law provides that the Chief Executive shall obtain the endorsement of the Legislative Council for the appointment of CFA judges.

15. Thus, the system of judicial appointment provides for the Chief Executive to make an appointment on the recommendation of an independent commission, viz the JORC, as laid down in Article 88 of the Basic Law, and to obtain the endorsement of the Legislative Council of the appointment of CFA judges under Article 90 of the Basic Law.

## **THE CURRENT APPOINTMENT EXERCISE**

### **The JORC's Recommendation**

16. Pursuant to Article 88 of the Basic Law and section 6(a) of the JORC Ordinance, the JORC has recommended the appointment of Mr. Justice Bokhary PJ to the list of HKNPJs of the CFA for a term of three years with effect from 25 October 2012. The recommendation has been communicated to the Chief Executive.

### **The Chief Executive's Acceptance of the JORC's Recommendation**

17. In accordance with Article 88 of the Basic Law and section 8(2) of the Ordinance, the Chief Executive has accepted the recommendation of the JORC on the appointment of Mr. Justice Bokhary PJ as a HKNPJ of the CFA. Subject to the endorsement of the Legislative Council pursuant to Article 90 of the Basic Law and section 7A of the Ordinance, the Chief Executive will make the recommended appointment.

### **The JORC Process**

#### The JORC Meeting

18. The JORC had held a meeting in the first quarter of 2012 to consider the recommendation of the person to be appointed as a HKNPJ.

### Quorum

19. A quorum as required by section 3(3) of the JORC Ordinance was present at the JORC meeting at which the recommended appointment was considered.

### Statutory Disclosure

20. Having regard to the qualifications required of HKNPJs under section 12(3) of the Ordinance (as detailed in paragraph 7 above) and in accordance with the Judiciary's current policy to consider only internal candidates for appointment as HKNPJs (please see paragraph 9 above), the Secretary for Justice and the barrister Member of JORC from outside the Judiciary could not reasonably be regarded as candidates for the HKNPJ position and they had not been invited, under section 3(5B) of the JORC Ordinance, to declare their interest in filling such position.

### The JORC's Deliberations

#### *The Non-Permanent Judges*

21. The JORC noted that there were 19 non-permanent judges, comprising six<sup>1</sup> HKNPJs and 13 CLNPJs. A list of the serving non-permanent judges is at Appendix 2.

**Appendix 2**

---

<sup>1</sup> Excluding Sir Noel Plunkett POWER (whose term of appointment was for the period from 28 July 2009 to 27 July 2012) who passed away on 19 November 2009.

*Caseload of the CFA*

**Appendix 3**

22. The JORC noted the statistics for applications for leave to appeal and substantive appeals in the past five years from 2007 to 2011 (up to September) as set out in Appendix 3. Applications for leave to appeal are dealt with by the Appeal Committee<sup>2</sup> and do not involve non-permanent judges. The volume of applications for leave to appeal is an indicator of the likely caseload of substantive appeals which will come before the CFA. As regards substantive appeals, while the number of cases has decreased since 2008, appeals have become considerably more complex. One relevant indicator of this is that the average number of days for each hearing has increased from 1.51 days in 2008 to 2.79 days in 2011 (up to September). The JORC noted that with the caseload of the CFA at these levels and with the increasing complexity of appeals, the CFA has a heavy caseload particularly bearing in mind the relatively small number of PJs.

*Present Position*

23. The JORC noted that overall, the CFA had been functioning satisfactorily. From 1997, apart from very few exceptions, the “5<sup>th</sup> judge” (please refer to paragraph 4(c) above) has invariably been drawn from the list of CLNPJs to hear a substantive appeal.

24. The JORC noted that the list of six HKNPJs comprises three HKNPJs who are retired judges of the CFA or Court of Appeal of the High

---

<sup>2</sup> Section 18 of the Ordinance stipulates that the power of the CFA to hear and determine any application for leave to appeal shall be exercised by the Appeal Committee, consisting of the Chief Justice and two PJs nominated by the Chief Justice or three PJs nominated by the Chief Justice.



Court, and three HKNPJs who are serving judges of the Court of Appeal of the High Court.

25. The JORC noted that for the three retired judges, they are all resident outside Hong Kong. Although they are retired, they are not always available as they are often tied up in various commitments and two of them have judicial duties in other jurisdictions (Mr. Justice Gerald Paul NAZARETH and Mr. Justice John Barry MORTIMER have to sit from time to time in the Court of Appeal in Bermuda and Brunei respectively).

26. The JORC noted that for the three serving judges who are Justices of Appeal, in nominating one of them to sit in any appeal, the Chief Justice would bear in mind that, as much as possible, the operation of the Court of Appeal should not be adversely affected. Therefore, in practice, where a HKNPJ is required, the Chief Justice continues to select HKNPJs who are retired judges and the cases in which serving Justices of Appeal are selected to sit have been limited.

27. The JORC noted that under section 6(2) of the Ordinance, the Chief Justice is the head of the Judiciary and is charged with its administration. Having regard to his administrative duties, it is not practicable for the Chief Justice to sit in all the CFA cases. In addition, having regard to the need to avoid possible conflict of interest, the Chief Justice does not hear any appeals from those cases in which Madam Justice Maria Candace YUEN, Justice of Appeal (the spouse of the Chief Justice) has sat. Accordingly, a HKNPJ needs to be nominated by the Chief Justice to sit when the Chief Justice is not available to hear an appeal and there is in practice insufficient number of PJs available (please see paragraph 4 above).

On these occasions in the past three years (2009 – present), all the HKNPJs have been selected to sit.

28. In addition, the JORC noted that one of the HKNPJs, namely, Mr. Justice Robert TANG Ching, Vice-President and Justice of Appeal of the Court of Appeal of the High Court, will resign from his appointment as a HKNPJ if approval is given for his appointment as a PJ of the CFA, which is the subject of a separate submission to the Legislative Council. The number of HKNPJs will be reduced to five.

29. The JORC noted that the existing small number of HKNPJs and the situation described in paragraphs 25 – 28 above does not allow sufficient flexibility in listing appeals, and agreed that the number of HKNPJs should not be reduced to less than six to retain flexibility for dealing with the CFA caseload and to ensure its effective operation.

### *Considerations*

30. The JORC considered the proposed appointment of Mr. Justice Bokhary PJ as a HKNPJ of the CFA and noted his curriculum vitae.

31. The JORC noted that Mr. Justice Bokhary PJ will become eligible to be appointed as a HKNPJ under section 12(3) of the Ordinance on 25 October 2012 by virtue of being a retired PJ, as he will reach the normal retiring age of 65 years and retire from the office of PJ on the same date. The JORC also noted that Mr. Justice Bokhary PJ is an outstanding lawyer and judge. As a founding member of the CFA, he has considerable experience in handling appeals in civil and criminal matters. He would be an

invaluable addition to the list of HKNPJs having regard to his long established judicial experience in the CFA. As he would be staying in Hong Kong after his retirement, his appointment as a HKNPJ would provide greater flexibility in judicial deployment. If appointed, the total number of HKNPJs will remain at six.

### The JORC's Resolution

32. The JORC resolved to recommend to the Chief Executive the appointment of Mr. Justice Bokhary PJ to the list of HKNPJs for a term of three years with effect from 25 October 2012.

### **Related Matter**

33. Mr. Justice Bokhary PJ is the spouse of Mrs. Justice Verina Saeeda BOKHARY (“Mrs. Justice Bokhary”), Judge of the Court of First Instance of the High Court. If Mr. Justice Bokhary PJ is appointed as a HKNPJ, he will continue to recuse himself from hearing any appeals from cases in which Mrs. Justice Bokhary has sat.

### **The Chief Executive's Acceptance of the Recommendations**

34. The Chief Executive accepted the recommendation of the JORC.

### **ENDORSEMENT OF THE LEGISLATIVE COUNCIL**

35. Subject to the endorsement of the Legislative Council, the Chief Executive will make the recommended appointment and report the

appointment to the Standing Committee of the National People's Congress  
for the record.

Administration Wing  
Chief Secretary for Administration's Office  
March 2012

**The Honourable Mr. Justice Syed Kemal Shah BOKHARY**

**1. Personal Background**

Mr. Justice Syed Kemal Shah BOKHARY (“Mr. Justice Bokhary”) was born in Hong Kong on 25 October 1947. He is married (to The Honourable Mrs. Justice Verina Saeeda BOKHARY) and has three children.

**2. Education**

Mr. Justice Bokhary received his legal education in England and became a member of the Honourable Society of the Middle Temple, London, England in 1967.

**3. Legal Experience**

Mr. Justice Bokhary was called to the Bar in England (by the Middle Temple) in 1970 and to the Bar in Hong Kong in 1971. He was appointed Queen’s Counsel in 1983. He was made an Honorary Bencher of the Honourable Society of the Middle Temple in London in 2001. Mr. Justice Bokhary has great experience in the civil field (essentially in the Companies and Commercial fields). He was in private practice since 1971 in Hong Kong and occasionally before the Privy Council in London until he joined the Judiciary as High Court Judge in 1989.

**4. Judicial Experience**

Mr. Justice Bokhary was appointed High Court Judge on 20 March 1989 and was elevated to the Court of Appeal as Justice of Appeal on 1 March 1993. He was appointed Permanent Judge of the Court of Final Appeal on 1 July 1997.

## 5. Service and Activities related to the Legal Field

Past	Member, Bar Committee
Past	Chairman, Pharmacy and Poisons Appeal Tribunal
Past	Chairman, Civil Court Users Committee
Past	President, Deportation Tribunal
Past	Chairman, Law and Professional Legal Education Departments Advisory Committee of Faculty of Law of City University of Hong Kong
Past	Member, Law Faculty Board of City University of Hong Kong
Past	Chairman, Board of Governors of the Advocacy Institute of Hong Kong
Past	Member, Law Reform Commission
Past	Chairman, Working Party on Solicitors' Right of Audience
Current	Chairman, Editorial Advisory Board of Halsbury's Laws of Hong Kong
Current	Honorary Lecturer at the Department of Professional Legal Education, University of Hong Kong
Current	Member, Court of Final Appeal Rules Committee
Current	Member, Academy of Experts' Judicial Committee
Current	Vice-Chairman, Middle Temple Society in Hong Kong

Current	Chairman, Advisory Board, Chinese University of Hong Kong, School of Law
Current	Chairman, Academic Board for the Post-graduate Certificate of Law programme, Chinese University of Hong Kong, School of Law
Current	Affiliate, Centre of Near and Middle Eastern Studies, School of Oriental and African Studies, University of London
Current	Honorary Patron, Advocacy and Mooting Society, University of Hong Kong
Current	Judicial Member, Society of Trust and Estate Practitioners (STEP)

## **6. Publications**

Mr. Justice Bokhary published the “The Lan Kwai Fong disaster on January 1, 1993: final report” in 1993. He was the Editor-in-Chief of “Tort Law and Practice in Hong Kong” in 2005 and its second edition in 2011. He was also the Editor-in-Chief of the 2009 and 2011 Editions of “Archbold Hong Kong – Criminal Law, Pleading, Evidence and Practice, Fourth Edition”.

## **7. Awards**

Mr. Justice Bokhary was awarded the degree of Doctor of Laws (*honoris causa*) by the University of Hong Kong in 2012. The Ceremony at which the degree will be conferred will take place in November 2012.

## **8. Activities Outside the Legal Field**

Past	Appointed by the then Governor to conduct an independent inquiry into the Lan Kwai Fong Disaster
------	--

Past Chairman, Advisory Board of the Centre for Criminology at the Faculty of Social Science, University of Hong Kong

Current Fellow, Royal Anthropological Institute

Current President, Hong Kong Kennel Club

Current Member, Executive Committee of the charity "Helping Hand"

\*\*\*\*\*



**List of Non-Permanent Judges of the Court of Final Appeal**

**A. Non-Permanent Hong Kong Judges**

	<b>Date of First Appointment</b>	<b>Expiry Date of Present Appointment</b>
1. Mr. Justice Gerald Paul NAZARETH	28.7.1997	27.7.2012
2. Mr. Justice John Barry MORTIMER	28.7.1997	27.7.2012
3. The Honourable Mr. Justice Henry Denis LITTON	14.9.2000	13.9.2012
4. The Honourable Mr. Justice Robert TANG Ching	1.9.2010	31.8.2013
5. The Honourable Mr. Justice Frank STOCK	1.9.2010	31.8.2013
6. The Honourable Mr. Justice Michael John HARTMANN	1.9.2010	31.8.2013

**B. Non-permanent Judges from Other Common Law Jurisdictions**

	<b>Date of First Appointment</b>	<b>Expiry Date of Present Appointment</b>
1. The Honourable Sir Anthony MASON	28.7.1997	27.7.2012
2. The Right Honourable The Lord HOFFMANN	12.1.1998	11.1.2013
3. The Honourable Sir Gerard BRENNAN	28.7.2000	27.7.2012
4. The Right Honourable The Lord MILLETT	28.7.2000	27.7.2012
5. The Right Honourable The Lord WOOLF of Barnes	28.7.2003	27.7.2012
6. The Right Honourable The Lord SCOTT of Foscote	28.7.2003	27.7.2012
7. Mr. Justice Michael McHUGH	1.7.2006	30.6.2012
8. The Right Honourable Sir Thomas Munro GAULT	1.7.2006	30.6.2012
9. Mr. Justice Murray GLEESON	1.3.2009	28.2.2015
10. The Right Honourable The Lord WALKER of Gestingthorpe*	1.3.2009	28.2.2015
11. The Right Honourable The Lord NEUBERGER of Abbotsbury§	1.3.2009	28.2.2015
12. The Right Honourable The Lord COLLINS of Mapesbury	30.6.2011	29.6.2014
13. The Right Honourable The Lord CLARKE of Stone-cum-Ebony*	30.6.2011	29.6.2014

\* Serving Justice of the Supreme Court of the United Kingdom

§ Serving Master of the Rolls of England and Wales

\*\*\*\*\*

**APPOINTMENT OF NON-PERMANENT JUDGE  
OF THE COURT OF FINAL APPEAL –**

**JUDGE FROM ANOTHER COMMON LAW JURISDICTION**

**INTRODUCTION**

Pursuant to Article 90 of the Basic Law of the Hong Kong Special Administrative Region (“HKSAR”) and section 7A of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) (“the Ordinance”), the Administration intends to give notice in due course to move a motion to obtain the endorsement of the Legislative Council of the appointment of The Right Honourable the Lord PHILLIPS of Worth Matravers (“Lord Phillips”) to the Court of Final Appeal (“CFA”) as a non-permanent judge from another common law jurisdiction. The curriculum vitae of Lord Phillips is at

**Appendix 1** [Appendix 1](#).

**BACKGROUND**

**The Court of Final Appeal**

2. The CFA is the final appellate court in Hong Kong. The CFA hears appeals in civil and criminal matters and may confirm, reverse or vary the decision of the lower courts.

3. The CFA consists of the Chief Justice and the permanent judges (“PJs”). Non-permanent judges may be invited to sit. There are two lists of non-permanent judges –

- (a) the list of non-permanent Hong Kong judges (“HKNPJs”); and
- (b) the list of judges from other common law jurisdictions (“CLNPJs”).

Section 10 of the Ordinance sets a ceiling of 30 on the total number of persons holding office as non-permanent judges.

4. In accordance with section 16 of the Ordinance, the CFA is constituted by five judges when hearing and determining appeals, as follows –

- (a) the Chief Justice or a PJ designated to sit in his place under subsection (2);
- (b) three PJs; and
- (c) one HKNPJ or one CLNPJ (selected by the Chief Justice and invited by the Court).

Where the Chief Justice is not available to sit, he designates a PJ to preside. Where a sufficient number of PJs are not available, the Chief Justice nominates a HKNPJ to sit in place of a PJ.

## **Duties, Requirements and Qualifications for Non-Permanent Judges from Other Common Law Jurisdictions**

### Duties

5. The duty of a non-permanent judge is to hear civil and criminal appeals in the CFA. The CFA deals with appeals in –
- (a) any civil cause or matter that falls under the civil jurisdiction of the CFA as provided for in sections 21 and 22 of the Ordinance; and
  - (b) any criminal cause or matter that falls under the criminal jurisdiction of the CFA as provided for in sections 30 and 31 of the Ordinance.

### Basic Law Requirements

6. Article 92 of the Basic Law stipulates that judges of the HKSAR shall be chosen on the basis of their judicial and professional qualities and may be recruited from other common law jurisdictions.

### Statutory Qualifications

7. Section 12(4) of the Ordinance provides that a person shall be eligible to be appointed as a CLNPJ 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 Court or a permanent magistrate, in Hong Kong.

### **Tenure of Office of Non-Permanent Judges**

8. Under section 14(4) of the 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. Under section 14(3) of the Ordinance, there is no retiring age for a non-permanent judge.

### **Constitutional and Legal Framework for the Appointment**

#### The Chief Executive

9. Article 48(6) of the Basic Law confers on the Chief Executive the power and function to appoint judges of the courts at all levels in accordance with legal procedures.

10. Article 88 of the Basic Law provides that judges of the courts of the 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 (Cap. 92) (“JORC Ordinance”) to perform the functions of the independent commission referred to in Article 88 of the Basic Law.

11. In the case of the appointment of CFA judges, Article 90 of the Basic Law provides that 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. These requirements in relation to CFA judges are also stipulated in section 7A of the Ordinance.

#### Judicial Officers Recommendation Commission

12. Pursuant to Article 88 of the Basic Law and the JORC Ordinance, the JORC is entrusted with the function of making recommendations to the Chief Executive regarding the appointment of judges. The JORC consists of the Chief Justice as the Chairman, the Secretary for Justice and seven 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 three persons not connected with the practice of law). Under section 3(3A) of the JORC Ordinance, a resolution is not effective if there are more than two votes not in favour. The recommendation of the JORC is then communicated to the Chief Executive.

## The Legislative Council

13. Article 73(7) of the Basic Law confers on the Legislative Council the power and function to endorse the appointment of CFA judges. Article 90 of the Basic Law provides that the Chief Executive shall obtain the endorsement of the Legislative Council for the appointment of CFA judges.

14. Thus, the system of judicial appointment provides for the Chief Executive to make an appointment on the recommendation of an independent commission, viz the JORC, as laid down in Article 88 of the Basic Law, and to obtain the endorsement of the Legislative Council of the appointment of CFA judges under Article 90 of the Basic Law.

## **THE CURRENT APPOINTMENT EXERCISE**

### **The JORC's Recommendation**

15. Pursuant to Article 88 of the Basic Law and section 6(a) of the JORC Ordinance, the JORC has recommended the appointment of Lord Phillips to the list of CLNPJs of the CFA for a term of three years. The recommendation has been communicated to the Chief Executive.

### **The Chief Executive's Acceptance of the JORC's Recommendation**

16. In accordance with Article 88 of the Basic Law and section 9(2) of the Ordinance, the Chief Executive has accepted the recommendation of



the JORC on the appointment of Lord Phillips as a CLNPJ of the CFA. Subject to the endorsement of the Legislative Council pursuant to Article 90 of the Basic Law and section 7A of the Ordinance, the Chief Executive will make the recommended appointment.

## **The JORC Process**

### The JORC Meeting

17. The JORC had held a meeting in the first quarter of 2012 to consider the recommendation of the person to be appointed as a CLNPJ.

### Quorum

18. A quorum as required by section 3(3) of the JORC Ordinance was present at the JORC meeting at which the recommended appointment was considered.

### Statutory Disclosure

19. In view of the qualifications required of CLNPJs under section 12(4) of the Ordinance (as detailed in paragraph 7 above), the legal and judicial members of the JORC could not reasonably be regarded as candidates for the CLNPJ position and they had not been invited, under section 3(5B) of the JORC Ordinance, to declare their interest in filling such position.

## The JORC's Deliberations

### *The Non-Permanent Judges*

20. The JORC noted that there were 19 non-permanent judges comprising six<sup>1</sup> HKNPJs and 13 CLNPJs. A list of the serving non-permanent judges is at Appendix 2.

**Appendix 2**

21. The JORC noted that the list of 13 CLNPJs comprises the current Master of the Rolls of England and Wales, two serving Justices of the Supreme Court of the United Kingdom (“Justices of the Supreme Court”) and 10 retired judges from England, Australia and New Zealand. A CLNPJ is normally required to come to Hong Kong for a period of four weeks at a time. In the past three years (2009 – present), 10<sup>2</sup> of the 13 CLNPJs have been selected to sit.

### *Caseload of the CFA*

22. The JORC noted the statistics for applications for leave to appeal and substantive appeals in the past five years from 2007 to 2011 (up to September) as set out in Appendix 3. Applications for leave to appeal are

**Appendix 3**

---

<sup>1</sup> Excluding Sir Noel Plunkett POWER (whose term of appointment was for the period from 28 July 2009 to 27 July 2012) who passed away on 19 November 2009.

<sup>2</sup> The three CLNPJs who have not been invited to sit are Mr. Justice Michael McHUGH (“Mr. Justice McHugh”), The Right Honourable The Lord COLLINS of Mapesbury (“Lord Collins”) and The Right Honourable The Lord CLARKE of Stone-cum-Ebony (“Lord Clarke”). Mr. Justice McHugh has not been able to sit owing to the pressure in professional commitment. As for Lord Collins and Lord Clarke, both first appointed on 30 June 2011, they have been scheduled to sit in June 2012 and January 2013 respectively.

dealt with by the Appeal Committee<sup>3</sup> and do not involve non-permanent judges. The volume of applications for leave to appeal is an indicator of the likely caseload of substantive appeals which will come before the CFA. As regards substantive appeals, while the number of cases has decreased since 2008, appeals have become considerably more complex. One relevant indicator of this is that the average number of days for each hearing has increased from 1.51 days in 2008 to 2.79 days in 2011 (up to September). The JORC noted that with the caseload of the CFA at these levels and with the increasing complexity of appeals, the CFA has a heavy caseload particularly bearing in mind the relatively small number of PJs.

*Present Position*

23. The JORC noted that overall, the CFA had been functioning satisfactorily. From 1997, apart from very few exceptions, the “5<sup>th</sup> judge” (please refer to paragraph 4(c) above) has invariably been drawn from the list of CLNPJs to hear a substantive appeal.

24. The JORC noted that it was anticipated that two CLNPJs would unlikely be available to sit or to sit on a frequent basis in the foreseeable future. The Right Honourable the Lord NEUBERGER of Abbotsbury (“Lord Neuberger”) was appointed as the Master of the Rolls of England and Wales on 1 October 2009. Although he managed to sit in October 2010, it is envisaged that he will be heavily committed given his judicial responsibilities in England and may not be available to sit on a frequent basis. Shorter stints would be arranged for Lord Neuberger to secure his valuable

---

<sup>3</sup> Section 18 of the Ordinance stipulates that the power of the CFA to hear and determine any application for leave to appeal shall be exercised by the Appeal Committee, consisting of the Chief Justice and two PJs nominated by the Chief Justice or three PJs nominated by the Chief Justice.

contribution. The Honourable Sir Gerard BRENNAN is unlikely to be available to sit due to personal reasons.

25. The JORC noted that with the two above-named CLNPs unlikely to be available to sit or to sit on a frequent basis in the foreseeable future, the CFA will effectively be operating with only 11 CLNPs. These 11 CLNPs comprise two serving Justices of the Supreme Court and nine retired judges. All of them have extensive professional commitments. The two serving Justices of the Supreme Court (namely, The Right Honourable the Lord WALKER of Gestingthorpe and The Right Honourable the Lord CLARKE of Stone-cum-Ebony) have judicial commitments. The retired judges have various commitments including arbitration, mediation and/or lecturing work for which they are in huge demand. Of course, all of them also have personal and family commitments.

26. The JORC noted that because of their various commitments, the availability of the 11 CLNPs to come to Hong Kong for four weeks to sit is somewhat limited.

27. The JORC noted that there are other logistical considerations in inviting CLNPs to sit. For example, the relevant judge may simply be unavailable to sit during the time slot in which he is asked to sit. In addition, most of the judges have particular expertise in certain areas. When a judge who has an expertise in a particular area of law is not available to sit, the listing of the case may have to be delayed.

28. The JORC noted that it is important that substantive appeals are heard within a reasonable time. Bearing in mind that the Chief Justice

intends to continue to require a CLNPJ as the “5<sup>th</sup> judge” for hearing appeals (please refer to paragraph 4(c) above) and to avoid delays, it would assist the listing of cases considerably if the pool is increased to cope with the circumstances mentioned in paragraphs 24 and 25 above. The JORC noted that the number of CLNPJs should be increased in the circumstances to give greater flexibility for dealing with the CFA caseload (please refer to paragraph 22 above and Appendix 3 for details) and to ensure its effective operation.

### *Considerations*

29. The JORC considered the proposed appointment of Lord Phillips as CLNPJ of the CFA and noted his curriculum vitae.

30. The JORC noted that Lord Phillips, who is an eligible person for appointment as a CLNPJ of the CFA, is the first President of the Supreme Court of the United Kingdom, having previously been a member of the House of Lords, the Lord Chief Justice and Master of the Rolls. Lord Phillips is a judge of the highest standing and reputation, and his appointment will be a great asset to the CFA. He has recently announced that he will retire as the most senior judge in the United Kingdom at the end of the current legal year (30 September 2012). If approved, Lord Phillips’ appointment as a CLNPJ will take effect in October 2012 after his retirement from the Supreme Court of the United Kingdom. If appointed, the total number of CLNPJs will increase to 14 (including two who would unlikely be available to sit or to sit on a frequent basis in the foreseeable future as described in paragraph 24 above).

The JORC's Resolution

31. The JORC resolved to recommend to the Chief Executive the appointment of Lord Phillips to the list of CLNPJs for a term of three years.

**The Chief Executive's Acceptance of the Recommendation**

32. The Chief Executive accepted the recommendation of the JORC.

**ENDORSEMENT OF THE LEGISLATIVE COUNCIL**

33. Subject to the endorsement of the Legislative Council, the Chief Executive will make the recommended appointment and report the appointment to the Standing Committee of the National People's Congress for the record.

Administration Wing  
Chief Secretary for Administration's Office  
March 2012

**The Right Honourable the Lord PHILLIPS of Worth Matravers, KG**

**1. Personal Background**

Lord Phillips is a citizen of the United Kingdom. He was born on 21 January 1938. He is married with four children.

**2. Education**

Lord Phillips was educated at Bryanston School and King's College Cambridge.

**3. Legal Experience**

Lord Phillips was called to Bar at the Middle Temple in 1962 and practised as a barrister from 1962 to 1987. In 1973, he was appointed Junior Counsel to the Ministry of Defence, as well as to the Treasury in Maritime and Admiralty Matters. He was appointed Queen's Counsel in 1978.

**4. Judicial Experience**

Lord Phillips was appointed Recorder between 1982 and 1987. From 1987, he was appointed High Court Judge on the Queen's Bench Division, where he sat in the Commercial Court and presided over several complex fraud trials including the Barlow Clowes and Maxwells prosecutions. He was elevated to the Court of Appeal in 1995 and elevated to Lord of Appeal in Ordinary in 1999. In 2000, he was appointed Master of the Rolls and Head of Civil Justice, a post that he held until 2005. He was appointed Lord Chief Justice of England and Wales in 2005, and became the Senior Law Lord in 2008. In 2009, he was appointed the first President of the Supreme Court of the United Kingdom. He was appointed a Knight Companion of the Most Noble Order of the Garter by Her Majesty The Queen in 2011. Lord Phillips will retire from the position as the President of the Supreme Court of the United Kingdom on 30 September 2012.

## **5. Service and Activities related to the Legal Field**

Lord Phillips has held various positions in services and activities related to the legal field. They include:

President of British Maritime Law Association (2005- ).

Chairman of British Council Law Advisory Committee (1991-97); Council of Legal Education (1992-97); BSE Inquiry (1998-2000); Lord Chancellor's Advisory Committee on Public Records (2000-05); Criminal Procedure Rules Committee (2005); and Sentencing Guidelines Council (2005- ).

Member of the Panel of Wreck Commissioners (1979); Council of Management, British Institute of International and Comparative Law; Advisory Council of Institute of European and Comparative Law; and Advisory Council of Institute of Global Law.

Honorary Fellow of the Society for Advanced Legal Studies; and King's College, Cambridge.

Visitor to Nuffield College, Oxford University; University College London; and Darwin College, Cambridge University.

## **6. Publications**

In recent years, Lord Phillips has given a considerable number of speeches some of which have been published in various ways, principally on the judiciary website of the United Kingdom, namely <http://www.judiciary.gov.uk/media/speeches/speakers/lord-phillips-of-worth-matrovers>. They include:

The Supreme Court and other Constitutional Changes in the UK; Equality before the Law: East London Muslim Centre; Alternative Dispute Resolution: An English Viewpoint; 15th Australian Institute of Judicial Administration Oration - Courts Governance; Trusting the Jury; The Role of the Judge; The Relationship between the State, Sentencers and Probation: Judicial and Probation Autonomy; Prison Reform Trust Publication: Mitigation; Judicial Independence; Issues in Criminal Justice: Murder; Impact of Terrorism on the Rule of Law; How Important is Punishment?; Constitutional Reform: One Year on;



Alternatives to Custody: The Case for Community Sentencing; Crime and Punishment: High Sheriff's Law Lecture, Oxford; Terrorism and Human Rights; and Youth Justice.

## **7. Awards**

Lord Phillips has received honorary degrees of Doctor of Laws (LL.D) from the University of Exeter (1998); the University of Birmingham (2003); the University of London (2004); the International Maritime Law Institute (2007); the University of Wolverhampton (2009); the Washington and Lee University (2009) and the Wake Forest University (2010). He has also been awarded Doctor of Civil Law (D.CL) from the City University, London (2003).

## **8. Activities Outside the Legal Field**

Lord Phillips was Chairman of the Magna Carta Trust. He was also Chairman of the Governors of Bryantson School.

\*\*\*\*\*

**List of Non-Permanent Judges of the Court of Final Appeal**

**A. Non-Permanent Hong Kong Judges**

	<b>Date of First Appointment</b>	<b>Expiry Date of Present Appointment</b>
1. Mr. Justice Gerald Paul NAZARETH	28.7.1997	27.7.2012
2. Mr. Justice John Barry MORTIMER	28.7.1997	27.7.2012
3. The Honourable Mr. Justice Henry Denis LITTON	14.9.2000	13.9.2012
4. The Honourable Mr. Justice Robert TANG Ching	1.9.2010	31.8.2013
5. The Honourable Mr. Justice Frank STOCK	1.9.2010	31.8.2013
6. The Honourable Mr. Justice Michael John HARTMANN	1.9.2010	31.8.2013

**B. Non-permanent Judges from Other Common Law Jurisdictions**

	<b>Date of First Appointment</b>	<b>Expiry Date of Present Appointment</b>
1. The Honourable Sir Anthony MASON	28.7.1997	27.7.2012
2. The Right Honourable The Lord HOFFMANN	12.1.1998	11.1.2013
3. The Honourable Sir Gerard BRENNAN	28.7.2000	27.7.2012
4. The Right Honourable The Lord MILLETT	28.7.2000	27.7.2012
5. The Right Honourable The Lord WOOLF of Barnes	28.7.2003	27.7.2012
6. The Right Honourable The Lord SCOTT of Foscote	28.7.2003	27.7.2012
7. Mr. Justice Michael McHUGH	1.7.2006	30.6.2012
8. The Right Honourable Sir Thomas Munro GAULT	1.7.2006	30.6.2012
9. Mr. Justice Murray GLEESON	1.3.2009	28.2.2015
10. The Right Honourable The Lord WALKER of Gestingthorpe*	1.3.2009	28.2.2015
11. The Right Honourable The Lord NEUBERGER of Abbotsbury§	1.3.2009	28.2.2015
12. The Right Honourable The Lord COLLINS of Mapesbury	30.6.2011	29.6.2014
13. The Right Honourable The Lord CLARKE of Stone-cum-Ebony*	30.6.2011	29.6.2014

\* Serving Justice of the Supreme Court of the United Kingdom

§ Serving Master of the Rolls of England and Wales

\*\*\*\*\*

**Statistics on the Court of Final Appeal  
from 2007 to 2011 (up to September 2011)**

	No. of cases														
	1.1.2007 to 31.12.2007			1.1.2008 to 31.12.2008			1.1.2009 to 31.12.2009			1.1.2010 to 31.12.2010			1.1.2011 to 30.9.2011		
	Filed	Disposed of	Withdrawn	Filed	Disposed of	Withdrawn	Filed	Disposed of	Withdrawn	Filed	Disposed of	Withdrawn	Filed	Disposed of	Withdrawn
Application for leave to appeal															
- Civil	75	62	0	82	66	1	60	86	1	47	41	0	33	29	1
- Criminal	64	61	3	76	74	3	76	75	6	101	89	4	52	44	0
<b>(Total)</b>	<b>(139)</b>	<b>(123)</b>	<b>(3)</b>	<b>(158)</b>	<b>(140)</b>	<b>(4)</b>	<b>(136)</b>	<b>(161)</b>	<b>(7)</b>	<b>(148)</b>	<b>(130)</b>	<b>(4)</b>	<b>(85)</b>	<b>(73)</b>	<b>(1)</b>
Substantive appeal															
- Civil	34	23	2	30	37	5	22	25	2	17	13	2	12	16	1
- Criminal	10	12	0	12	8	1	11	10	0	14	13	0	7	10	0
<b>(Total)</b>	<b>(44)</b>	<b>(35)</b>	<b>(2)</b>	<b>(42)</b>	<b>(45)</b>	<b>(6)</b>	<b>(33)</b>	<b>(35)</b>	<b>(2)</b>	<b>(31)</b>	<b>(26)</b>	<b>(2)</b>	<b>(19)</b>	<b>(26)</b>	<b>(1)</b>