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From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 6 June 2012

**Proposed resolution under Article 73(7) of the Basic Law of
the Hong Kong Special Administrative Region of
the People's Republic of China and section 7A of
the Hong Kong Court of Final Appeal Ordinance (Cap. 484)**

I forward for Members' consideration a proposed resolution which the Chief Secretary for Administration will move at the Council meeting of 6 June 2012 under Article 73(7) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and section 7A of the Hong Kong Court of Final Appeal Ordinance (Cap. 484). The President has directed that "it be printed in the terms in which it was handed in" on the Agenda of the Council.

2. The speech, in both Chinese and English, which the Chief Secretary for Administration will deliver when moving the proposed resolution is also attached.

(Mrs Justina LAM)
for Clerk to the Legislative Council

Encl.

**Basic Law of the Hong Kong Special Administrative
Region of the People's Republic of China
and
Hong Kong Court of Final Appeal Ordinance**

Resolution

(Under Article 73(7) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and section 7A of the Hong Kong Court of Final Appeal Ordinance (Cap. 484))

Resolved that the following appointments be endorsed—

- (a) the appointment of the Honourable Mr. Justice Robert Tang Ching as a permanent judge of the Hong Kong Court of Final Appeal pursuant to section 7 of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) (*the Ordinance*);
- (b) the appointment of the Honourable Mr. Justice Syed Kemal Shah Bokhary as a non-permanent Hong Kong judge of the Hong Kong Court of Final Appeal pursuant to section 8 of the Ordinance; and
- (c) the appointment of the Right Honourable The Lord Phillips of Worth Matravers as a judge of the Hong Kong Court of Final Appeal from another common law jurisdiction pursuant to section 9 of the Ordinance.

**Speech by the Chief Secretary for Administration
at the meeting of the Legislative Council on 6 June 2012**

**Resolution under Article 73(7) of the Basic Law and
Section 7A of the Hong Kong Court of Final Appeal Ordinance**

**Appointment of Permanent Judge and Non-permanent Judges
to the Court of Final Appeal**

Mr President,

I move that the motion under my name, as printed in the Agenda, be passed, that this Council endorses the appointments of the Honourable Mr Justice Robert Tang Ching as a permanent judge, the Honourable Mr Justice Syed Kemal Shah Bokhary as a non-permanent Hong Kong judge, and the Right Honourable The Lord Phillips of Worth Matravers as a judge from another common law jurisdiction to the Hong Kong Court of Final Appeal (CFA).

Constitutional and statutory framework

2. The CFA is the final appellate court in Hong Kong, hearing both civil and criminal appeals. It consists of the Chief Justice and the permanent judges. Non-permanent judges may be invited to sit and they may come from Hong Kong or from other common law jurisdictions. When hearing and determining appeals, the CFA

is constituted by five judges, comprising the Chief Justice, three permanent judges, and one non-permanent Hong Kong judge or one non-permanent common law judge.

3. Pursuant to Article 88 of the Basic Law and the Judicial Officers Recommendation Commission Ordinance (Cap. 92), judges of the courts of the Hong Kong Special Administrative Region shall be appointed by the Chief Executive on the recommendation of the Judicial Officers Recommendation Commission (JORC). In addition, Article 90 of the Basic Law provides that in the case of the appointment of judges of the CFA, the Chief Executive shall obtain the endorsement of the Legislative Council.

The current appointments

4. With regard to the current appointment exercise, Mr Justice Bokhary, a Permanent Judge of the CFA, will retire in October 2012, after having served as a Permanent Judge in the CFA for over 15 years. To fill this anticipated vacancy, JORC has recommended to the Chief Executive the appointment of Mr Justice Robert Tang Ching, Vice-President and Justice of Appeal of the Court of Appeal of the High Court. Mr Justice Tang is a judge of eminent standing and reputation, and has considerable experience in handling criminal and civil cases. The appointment will be for a term of

three years with effect from 25 October 2012, when Mr Justice Bokhary vacates his judicial office upon retirement.

5. As for non-permanent judges, at present, there are 19 non-permanent judges, comprising six non-permanent Hong Kong judges and 13 non-permanent judges from other common law jurisdictions. Considering the heavy caseload of the CFA and in order to provide more flexibility in judicial deployment, there is merit in increasing the number of both non-permanent Hong Kong judges and non-permanent judges from other common law jurisdictions.

6. JORC noted that Mr Justice Bokhary will become eligible for appointment as a non-permanent Hong Kong judge upon his retirement as a Permanent Judge. As a founding member of the CFA, Mr Justice Bokhary has considerable experience in the CFA and would be an invaluable addition to the list of non-permanent Hong Kong judges. Accordingly, JORC has recommended to the Chief Executive his appointment as a non-permanent Hong Kong judge for a term of three years with effect from 25 October 2012.

7. At the same time, JORC has recommended the appointment of the Right Honourable The Lord Phillips, President of the Supreme Court of the United Kingdom, as a non-permanent common law judge with effect from October 2012 after his

retirement. As the most senior judge in the United Kingdom, the appointment of Lord Phillips will be a great asset to the CFA.

8. The three judges have eminent standing and reputation in the legal sector. The Chief Executive is pleased to accept the recommendations of JORC on their appointments as judges to the Court of Final Appeal.

9. In accordance with the procedures previously endorsed by the House Committee, the Administration issued a paper on 28 March 2012 to inform the House Committee that the Chief Executive had accepted the recommendations of the JORC on these appointments. The curriculum vitae of the three judges were also set out in the paper. Representatives from the Administration and the Secretary to JORC attended the meeting of the Subcommittee on Proposed Senior Judicial Appointments on 7 May 2012 and answered Members' questions. I would like to thank Dr Honourable Margaret Ng, Chairman of the Subcommittee, and other Members of the Subcommittee for their support of the proposed appointments.

10. I invite Members to endorse the appointments.

Ends