

CONFIDENTIAL

政府總部  
香港下亞厘畢道



GOVERNMENT SECRETARIAT  
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HONG KONG

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11 April 2011

***Urgent by Hand***

The Hon Miriam LAU Kin-ye, GBS, JP  
Chairman of the House Committee  
Legislative Council  
Legislative Council Building  
8 Jackson 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 Right Honourable the Lord Collins of Mapesbury and the Right Honourable the Lord Clarke of Stone-cum-Ebony as non-permanent judges from other common law jurisdictions to the Court of Final Appeal ("non-permanent common law judges"); and
- (b) The Honourable Mr Justice Andrew Cheung Kui-nung as the Chief Judge of the High Court ("CJHC").

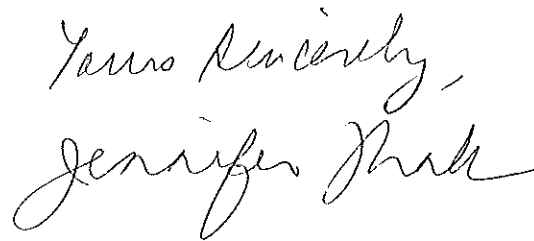
The Chief Executive will announce his acceptance of the JORC's recommendations this afternoon. Advance copies of the press statements on the above appointments are at **Annexes A** and **B** respectively for Members'

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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 non-permanent common law judges and CJHC are at **Annexes C** and **D** 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.

A handwritten signature in cursive script, appearing to read 'Jennifer Mak', written in black ink.

( Miss Jennifer Mak )  
Director of Administration

c.c. All LegCo Members

## **Press Statement**

### **Senior Judicial Appointments:**

### **Non-Permanent Judges from Other Common Law Jurisdictions of the Court of Final Appeal**

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The Chief Executive, Mr Donald Tsang, has accepted the recommendations of the Judicial Officers Recommendation Commission (JORC) on the appointment of The Right Honourable The Lord Collins of Mapesbury and The Right Honourable The Lord Clarke of Stone-cum-Ebony, serving Justices of the Supreme Court of the United Kingdom, as non-permanent judges from other common law jurisdictions to the Court of Final Appeal. Subject to the endorsement of the Legislative Council, the Chief Executive will make the appointments under Article 88 of the Basic Law.

Mr Tsang said, "I am pleased to accept the JORC's recommendations on the appointment of The Right Honourable The Lord Collins of Mapesbury and The Right Honourable The Lord Clarke of Stone-cum-Ebony as non-permanent judges from other common law jurisdictions to the Court of Final Appeal. The two judges have eminent standing and reputation. I am confident that they will be great assets 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 appointments of the judges of the Court of Final Appeal. The Administration will seek the endorsement of the Legislative Council of the recommended appointments in due course.

The curriculum vitae of the recommended appointees are at  
annex.

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**Curriculum Vitae of  
The Right Honourable the Lord COLLINS of Mapesbury, LLD, FBA**

**1. Personal Background**

Lord (Lawrence) Collins is a citizen of the United Kingdom. He was born on 7 May 1941. He is divorced and has two children.

**2. Education**

Lord Collins was educated at the City of London School and at Downing College, Cambridge (BA Law 1963, LLB International Law, 1964), and Columbia Law School, New York (LLM International Law, 1965).

**3. Legal Experience**

Lord Collins qualified as a solicitor in 1968, and was a partner in the City of London firm of solicitors, Herbert Smith & Co (later Herbert Smith), between 1971 and 2000 (and Head of Litigation, 1995-1998) specialising in international commercial litigation. In 1997 he was one of the first two solicitors to be appointed Queen's Counsel.

**4. Judicial Experience**

Lord Collins became the first solicitor to be appointed direct to the High Court bench (Chancery Division) in 2000, as Mr Justice Lawrence Collins (having sat as a deputy High Court Judge between 1997 and 2000). He was appointed to the Court of Appeal in 2007 as Lord Justice Lawrence Collins. He was appointed a Law Lord in the House of Lords in April 2009 as Lord Collins of Mapesbury. The functions of the House of Lords appellate committee were transferred to the Supreme Court of the United Kingdom in October 2009, when Lord Collins became a Justice of the new Supreme Court.

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

*Academic activities:* Lord Collins has been a fellow of Wolfson College, Cambridge (now Emeritus and Honorary) since 1975, and since 1982 he has been a Visiting Professor at what is now Queen Mary, University of London. He has lectured at the Hague Academy of International Law in 1991 (Provisional and Protective Measures in International Litigation),

1998 (General Course); and in 2007 (opening lecture for new Hague Academy building: Revolution and Restitution: Foreign States in National Courts).

**Lectures:** In addition he has given (among others) the following lectures: Graveson Memorial Lecture, King's College, London, 1995; Address to Judicial Conference of the Second Circuit, New York, 1996; FA Mann Lecture, Lincoln's Inn, 2001; Lionel Cohen Lecture, Hebrew University of Jerusalem, 2007; Freshfields Arbitration Lecture, 2009; Chancery Bar Association Lecture, 2010; Commercial Bar Association Lecture 2010.

**Editorial positions:** Member: Editorial Advisory Committee, *Law Quarterly Review* (since 1987); Board of Editors, *International and Comparative Law Quarterly* (1988-2009); Editorial Committee, *British Year Book of International Law* (since 1991); Advisory Editor, *Supreme Court Practice* (2002-2009); Editorial Board, *Civil Justice Quarterly* (since 2005).

**Professional positions:** Member: Advisory Council, Centre for Commercial Law Studies, Queen Mary College; Advisory Council, British Institute of International and Comparative Law; Ministry of Justice Advisory Committee on Private International Law. Formerly Member: Joint Working Party of the Bar and Law Society on Anglo-U.S. Judgments Convention (1980-82); Law Commission Joint Working Party on Torts in Private International Law (1982-84); Commercial Court Committee Working Party on Brussels and Lugano Conventions (1997); International Law Association, British Branch: Hon. Secretary, 1983-1988; International Law Association, Committee on International Securities Regulation, Chairman (1989-1994); Consultant to Law Commission on Torts in Private International Law (1989-90).

## 6. Publications

Lord Collins is the General Editor, Dicey, Morris (now Dicey, Morris & Collins), *The Conflict of Laws*, 11th-14th eds 1987-2006. He is also the author of *European Community Law in the United Kingdom* (1st ed. 1975; 2nd ed. 1980; 3rd ed. 1984; 4th ed. 1990), and *Essays in International Litigation and the Conflict of Laws* (1994), and many articles on public and private international law.

## 7. Awards

In 1994 Lord Collins was awarded the degree of Doctor of Laws by Cambridge University (for distinction by original contribution to the advancement of the science or study of law). He has also been elected Associate (1989-1993) and Member (1993) of the Institut de Droit International; a Bencher, Inner Temple (2000); Honorary Fellow, Downing College, Cambridge (2000); Honorary Fellow, Wolfson College, Cambridge (2009); Honorary Member, Society of Public Teachers of Law (now Society of Legal Scholars) (1993); Honorary Life Member, Law Society of England and Wales (2000); and has been awarded Hon LL.D., College of Law (2008); City of London Solicitors' Company Lifetime Achievement Award (2009).

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**Curriculum Vitae of**  
**The Right Honourable the Lord CLARKE of Stone-cum-Ebony**

**1. Personal Background**

Lord (Anthony) Clarke is a citizen of the United Kingdom. He was born in Scotland on 13 May 1943 and is married with three children and two grandchildren.

**2. Education**

Lord Clarke was educated at Oakham School and King's College Cambridge, where he graduated in 1964 having read economics and law.

**3. Legal Experience**

Lord Clarke was called to the Bar of England and Wales in 1965 and, after practising as a barrister for 14 years, he was appointed Queen's Counsel in 1979. He practised principally in the fields of maritime and commercial law, mostly in London but occasionally in Singapore and Hong Kong. He also sat frequently as an arbitrator.

**4. Judicial Experience**

Between 1981 and 1993 Lord Clarke sat first as an Assistant Recorder and then, from 1985, as a Recorder trying criminal and civil cases on a part time basis. He was appointed a High Court Judge in 1993. He sat in the Admiralty Court (as the Admiralty Judge) and in the Commercial Court (as one of the judges of that court). In addition he sat in the Court of Appeal Criminal Division. He was appointed to the Court of Appeal in October 1998. In 1999 and 2000 he conducted a public inquiry, first into safety on the River Thames and then into the collision on the river between the Marchioness and The Bow Belle and its aftermath. He became Master of the Rolls in 2005, when he stopped sitting in the Court of Appeal Criminal Division and focused on the civil cases of particular importance, including public law cases, which came before the Civil Division. Since October 2009 he has been a member of the new Supreme Court.



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

Lord Clarke has been a Bencher of the Middle Temple since 1987. As Master of the Rolls, he was Head of Civil Justice, which involved a number of different facets including: as *de jure* chairman of the Civil Procedure Rules Committee and as chairman of the Civil Justice Council. In particular Lord Clarke set up the Jackson Review of costs, which produced a comprehensive report written by Lord Justice Jackson, which will inform the way costs should be approached. Lord Clarke was a member of the Judicial Executive Board. He also played a part in the appointment of judges to the Court of Appeal.

## 6. Publications

In recent years, Lord Clarke has given a considerable number of lectures 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/2010/index>. They include: the Differing Approach to Commercial Litigation in the European Court of Justice and the Courts of England and Wales; Claims against Professionals: Negligence, Dishonesty and Fraud; Vexatious Litigants & Access to Justice: Past, Present and Future, the Supercase – Problems and Solutions: Reflections on *BCCI* and *Equitable Life*; the Future of Civil Mediation; the Role of the Expert after Woolf; the Importance of Civil Justice, Nationally and Internationally; the Law Lords: a Rose as Sweet by Any Other Name? Reflections on the new UK Supreme Court and 21<sup>st</sup> Century Constitutional Change; the Rule of Law and our Changing Constitution; Constitutional Justice: Lessons from Magna Carta; the Continuing Importance of Magna Carta; Open Societies and the Rule of Law; the Woolf Reforms: a Singular Event or an Ongoing Process? *Kadi*, Fundamental Rights and the Rule of Law; Mediation – an Integral Part of our Litigation Culture; Proportionate Costs from Woolf to Jackson; Access to Justice – Hope Springs Eternal; Selecting Judges: Merit, Moral Courage, Judgment & Diversity; and The Importance of Civil Justice.

## 7. Other Public Services

Lord Clarke was chairman of the Magna Carta Trust. Lord Clarke was also the chairman of the Lord Chancellor's Advisory Committee.

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## **Press Statement**

### **Senior Judicial Appointment: Chief Judge of the High Court**

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The Chief Executive, Mr Donald Tsang, has accepted the recommendation of the Judicial Officers Recommendation Commission (JORC) on the appointment of the Honourable Mr Andrew Cheung Kiu-nung (Mr Justice Cheung), Judge of the Court of First Instance of the High Court, as the Chief Judge of the High Court. 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 Mr Justice Cheung as the Chief Judge of the High Court. Mr Justice Cheung is a man of high integrity and an outstanding lawyer who commands strong respect within and outside the Judiciary, including that of the legal profession. I am confident that Mr Justice Cheung, if appointed, will discharge his duties as the court leader of the High Court with distinction.”

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

The curriculum vitae of Mr Justice Cheung is at annex.

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**Curriculum Vitae  
of The Honourable Mr Justice Andrew Cheung Kui-nung  
Judge of the Court of First Instance of the High Court**

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**1. Personal Background**

Mr Justice Andrew Cheung Kui-nung (Mr Justice Cheung) was born in Hong Kong in September 1961 (now 49). He is married and has three children.

**2. Education**

Mr Justice Cheung received his education in Hong Kong. He obtained his LL.B and P.C.LL from the University of Hong Kong in 1983 and 1984 respectively. He obtained his Master degree in law at Harvard University, U.S.A. in 1985.

**3. Legal Experience**

Mr Justice Cheung was called to the Hong Kong Bar in 1985. He was admitted as Advocate and Solicitor of the Supreme Court of Singapore in 1995.

**4. Judicial Experience**

Mr Justice Cheung was in private practice in Hong Kong from 1986 until he joined the Judiciary as District Judge in 2001. He started sitting as a deputy High Court judge in December 2001. He was appointed Judge of the Court of First Instance of the High Court in 2003.

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

2004-07      Member, Working Party on Solicitors' Right of Audience

2004-08      Probate Judge

Since 2004      Judge in charge of supervising the transfer of unclaimed moneys in court under the High Court Suitors' Funds Rules and similar rules of the District Court and tribunals, including the compilation of an internal manual on the transfer of moneys

Since 2005      Member, High Court Rules Committee

- Since 2008 Judge in charge of the Constitutional and Administrative Law List
- Since 2008 Member, The Chief Justice's Committee on Judicial Remuneration
- Since 2010 Chairman, Working Group on Civil Matters under the Committee on Information Technology

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## **APPOINTMENT OF NON-PERMANENT JUDGES TO 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 Right Honourable the Lord COLLINS of Mapesbury (“Lord Collins”) and The Right Honourable the Lord CLARKE of Stone-cum-Ebony (“Lord Clarke”) as non-permanent judges from other common law jurisdictions to the Court of Final Appeal. The curriculum vitae of the two Judges are at Appendix 1.

Appendix 1

### **BACKGROUND**

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

2. The Court of Final Appeal (“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. 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 (“non-permanent Hong Kong judges”); and
- (b) the list of judges from other common law jurisdictions ( “non-permanent common law judges”).

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;
- (b) three permanent judges; and
- (c) one non-permanent Hong Kong judge or one non-permanent common law judge (selected by the Chief Justice and invited by the Court).

Where the Chief Justice is not available to sit, he designates a permanent judge to preside. Where a sufficient number of permanent judges are not available, the Chief Justice nominates a non-permanent Hong Kong judge to sit in place of a permanent judge.

## **Requirements and Qualifications for Non-permanent Common Law Judges**

### Basic Law Requirements

5. 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

6. Section 12(4) of the Ordinance provides that a person shall be eligible to be appointed as a non-permanent common law judge 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**

7. 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 retirement age for a non-permanent judge.

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

### The Chief Executive

8. 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.

9. 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.

10. 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

11. 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

12. 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.

13. 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 Recommendations**

14. Pursuant to Article 88 of the Basic Law and section 6(a) of the JORC Ordinance, the JORC has recommended the appointment of Lord Collins and Lord Clarke as non-permanent common law judges to the CFA. The recommendations have been communicated to the CE.

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

15. In accordance with Article 88 of the Basic Law and section 9(2) of the Ordinance, the Chief Executive has accepted the recommendations of the JORC on the appointment of Lord Collins and Lord Clarke as non-permanent common law judges to 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 appointments.

### **The JORC Process**

#### The JORC Meeting

16. The JORC had held a meeting in the last quarter of 2010 to consider the recommendations of the persons to be appointed as non-permanent common law judges. The JORC noted the relevant information as described in paragraphs 19 to 27 below and decided on the persons to recommend for appointment as described in paragraphs 28 to 30 below.

### Quorum

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

### Statutory Disclosure

18. In view of the qualification and experience required of non-permanent common law judges under section 12(4) of the Ordinance (as detailed in paragraph 6 above), the legal and judicial members of the JORC could not reasonably be regarded as candidates for the non-permanent common law judge position and they had not been invited, under section 3(5B) of the JORC Ordinance, to declare their interest in filling such position.

### The Non-Permanent Judges

19. The JORC noted that at present, there were 17 non-permanent judges comprising six<sup>1</sup> non-permanent Hong Kong judges and 11 non-permanent common law judges. A list of the serving non-permanent judges is at Appendix 2.

Appendix 2

20. The JORC noted that the list of 11 non-permanent common law judges comprises the current Master of the Rolls of England and Wales, a serving Justice of the Supreme Court of the United Kingdom (“Justice of the Supreme Court”) and nine retired judges from England, Australia and New

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<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.

Zealand. A non-permanent common law judge is normally required to come to Hong Kong for a period of four weeks at a time. In the past three years (2008 – 2010), all non-permanent common law judges have sat.

### Caseload of the CFA

#### Appendix 3

21. The JORC noted the statistics for applications for leave to appeal and substantive appeals in the past five years from 2006 to 2010 (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 common law 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 overall, the average number of days for each hearing has increased from 1.51 days in 2008 to 3 days in 2010 (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 permanent judges.

### Present Position

22. The JORC noted that overall, the CFA has been functioning satisfactorily. From 1997, apart from very few exceptions, the “5<sup>th</sup> judge”

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<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 permanent judges nominated by the Chief Justice or three permanent judges nominated by the Chief Justice.

(please refer to paragraph 4(c) above) has invariably been drawn from the list of non-permanent common law judges to hear a substantive appeal.

23. The JORC noted that it was anticipated that two non-permanent common law judges would unlikely be available to sit in the near future. The Right Honourable the Lord NEUBERGER of Abbotsbury 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 find it difficult to sit in Hong Kong during the currency of his present office as Master of the Rolls. The Honourable Sir Gerard BRENNAN is unlikely to be available to sit due to personal reasons.

24. The JORC noted that with the two above-named non-permanent common law judges unlikely to be available to sit in the foreseeable future, the CFA will effectively be operating with only nine non-permanent common law judges. These nine non-permanent common law judges comprise one serving Justice of the Supreme Court and eight retired judges. All of them have extensive professional commitments. The serving Justice of the Supreme Court, The Right Honourable the Lord WALKER of Gestingthorpe, has 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.

25. The JORC noted that because of their various commitments, the availability of the nine non-permanent common law judges to come to Hong Kong for four weeks to sit is somewhat limited.

26. The JORC noted that there are other logistical considerations in inviting non-permanent common law judges to sit. For example, the relevant judge is simply 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 has to be delayed.

27. 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 non-permanent common law judge 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 23 and 24 above. The JORC noted that the number of non-permanent common law judges should be expanded in the circumstances to give greater flexibility for dealing with the CFA caseload (please refer to paragraph 21 above and Appendix 3 for details) and to ensure its effective operation.

#### Considerations and Recommendations

28. The JORC considered the proposed appointment of Lord Collins and Lord Clarke as non-permanent common law judges to the CFA and noted their curriculum vitae.

29. The JORC considered that these two judges, who are eligible persons for appointment as non-permanent common law judges to the CFA, are judges of considerable eminent standing and reputation and their appointments will be a great asset to the CFA. If appointed, the total number

of non-permanent common law judges will increase to 13 (including two who would unlikely be available to sit in the foreseeable future as described in paragraph 23 above).

30. The JORC resolved to recommend to the Chief Executive the appointment of Lord Collins and Lord Clarke as non-permanent common law judges for a term of three years.

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

31. The Chief Executive accepted the recommendations of the JORC. The Chief Executive was satisfied that the resolution of the JORC on the above recommended appointments was effective in accordance with section 3(3A) of the JORC Ordinance and that the procedure was proper and appropriate.

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

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

Administration Wing  
Chief Secretary for Administration's Office

April 2011

**Curriculum Vitae of  
The Right Honourable the Lord COLLINS of Mapesbury, LLD, FBA**

**1. Personal Background**

Lord (Lawrence) Collins is a citizen of the United Kingdom. He was born on 7 May 1941. He is divorced and has two children.

**2. Education**

Lord Collins was educated at the City of London School and at Downing College, Cambridge (BA Law 1963, LLB International Law, 1964), and Columbia Law School, New York (LLM International Law, 1965).

**3. Legal Experience**

Lord Collins qualified as a solicitor in 1968, and was a partner in the City of London firm of solicitors, Herbert Smith & Co (later Herbert Smith), between 1971 and 2000 (and Head of Litigation, 1995-1998) specialising in international commercial litigation. In 1997 he was one of the first two solicitors to be appointed Queen's Counsel.

**4. Judicial Experience**

Lord Collins became the first solicitor to be appointed direct to the High Court bench (Chancery Division) in 2000, as Mr Justice Lawrence Collins (having sat as a deputy High Court Judge between 1997 and 2000). He was appointed to the Court of Appeal in 2007 as Lord Justice Lawrence Collins. He was appointed a Law Lord in the House of Lords in April 2009 as Lord Collins of Mapesbury. The functions of the House of Lords appellate committee were transferred to the Supreme Court of the United Kingdom in October 2009, when Lord Collins became a Justice of the new Supreme Court.

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

*Academic activities:* Lord Collins has been a fellow of Wolfson College, Cambridge (now Emeritus and Honorary) since 1975, and since 1982 he has been a Visiting Professor at what is now Queen



Mary, University of London. He has lectured at the Hague Academy of International Law in 1991 (Provisional and Protective Measures in International Litigation), 1998 (General Course); and in 2007 (opening lecture for new Hague Academy building: Revolution and Restitution: Foreign States in National Courts).

**Lectures:** In addition he has given (among others) the following lectures: Graveson Memorial Lecture, King's College, London, 1995; Address to Judicial Conference of the Second Circuit, New York, 1996; FA Mann Lecture, Lincoln's Inn, 2001; Lionel Cohen Lecture, Hebrew University of Jerusalem, 2007; Freshfields Arbitration Lecture, 2009; Chancery Bar Association Lecture, 2010; Commercial Bar Association Lecture 2010.

**Editorial positions:** Member: Editorial Advisory Committee, *Law Quarterly Review* (since 1987); Board of Editors, *International and Comparative Law Quarterly* (1988-2009); Editorial Committee, *British Year Book of International Law* (since 1991); Advisory Editor, *Supreme Court Practice* (2002-2009); Editorial Board, *Civil Justice Quarterly* (since 2005).

**Professional positions:** Member: Advisory Council, Centre for Commercial Law Studies, Queen Mary College; Advisory Council, British Institute of International and Comparative Law; Ministry of Justice Advisory Committee on Private International Law. Formerly Member: Joint Working Party of the Bar and Law Society on Anglo-U.S. Judgments Convention (1980-82); Law Commission Joint Working Party on Torts in Private International Law (1982-84); Commercial Court Committee Working Party on Brussels and Lugano Conventions (1997); International Law Association, British Branch: Hon. Secretary, 1983-1988; International Law Association, Committee on International Securities Regulation, Chairman (1989-1994); Consultant to Law Commission on Torts in Private International Law (1989-90).

## 6. Publications

Lord Collins is the General Editor, Dicey, Morris (now Dicey, Morris & Collins), *The Conflict of Laws*, 11th-14th eds 1987-2006. He is also the author of *European Community Law in the United Kingdom* (1st ed. 1975; 2nd ed. 1980; 3rd ed. 1984; 4th ed. 1990), and *Essays in International Litigation and the Conflict of Laws* (1994), and many articles on public and private international law.

## 7. Awards

In 1994 Lord Collins was awarded the degree of Doctor of Laws by Cambridge University (for distinction by original contribution to the advancement of the science or study of law). He has also been elected Associate (1989-1993) and Member (1993) of the Institut de Droit International; a Bencher, Inner Temple (2000); Honorary Fellow, Downing College, Cambridge (2000); Honorary Fellow, Wolfson College, Cambridge (2009); Honorary Member, Society of Public Teachers of Law (now Society of Legal Scholars) (1993); Honorary Life Member, Law Society of England and Wales (2000); and has been awarded Hon LL.D., College of Law (2008); City of London Solicitors' Company Lifetime Achievement Award (2009).

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**Curriculum Vitae of  
The Right Honourable the Lord CLARKE of Stone-cum-Ebony**

**1. Personal Background**

Lord (Anthony) Clarke is a citizen of the United Kingdom. He was born in Scotland on 13 May 1943 and is married with three children and two grandchildren.

**2. Education**

Lord Clarke was educated at Oakham School and King's College Cambridge, where he graduated in 1964 having read economics and law.

**3. Legal Experience**

Lord Clarke was called to the Bar of England and Wales in 1965 and, after practising as a barrister for 14 years, he was appointed Queen's Counsel in 1979. He practised principally in the fields of maritime and commercial law, mostly in London but occasionally in Singapore and Hong Kong. He also sat frequently as an arbitrator.

**4. Judicial Experience**

Between 1981 and 1993 Lord Clarke sat first as an Assistant Recorder and then, from 1985, as a Recorder trying criminal and civil cases on a part time basis. He was appointed a High Court Judge in 1993. He sat in the Admiralty Court (as the Admiralty Judge) and in the Commercial Court (as one of the judges of that court). In addition he sat in the Court of Appeal Criminal Division. He was appointed to the Court of Appeal in October 1998. In 1999 and 2000 he conducted a public inquiry, first into safety on the River Thames and then into the collision on the river between the Marchioness and The Bow Belle and its aftermath. He became Master of the Rolls in 2005, when he stopped sitting in the Court of Appeal Criminal Division and focused on the civil cases of particular importance, including public law cases, which came before the Civil Division. Since October 2009 he has been a member of the new Supreme Court.

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

Lord Clarke has been a Bencher of the Middle Temple since 1987. As Master of the Rolls, he was Head of Civil Justice, which involved a

number of different facets including: as *de jure* chairman of the Civil Procedure Rules Committee and as chairman of the Civil Justice Council. In particular Lord Clarke set up the Jackson Review of costs, which produced a comprehensive report written by Lord Justice Jackson, which will inform the way costs should be approached. Lord Clarke was a member of the Judicial Executive Board. He also played a part in the appointment of judges to the Court of Appeal.

## 6. **Publications**

In recent years, Lord Clarke has given a considerable number of lectures 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/2010/index>. They include: the Differing Approach to Commercial Litigation in the European Court of Justice and the Courts of England and Wales; Claims against Professionals: Negligence, Dishonesty and Fraud; Vexatious Litigants & Access to Justice: Past, Present and Future, the Supercase – Problems and Solutions: Reflections on *BCCI* and *Equitable Life*; the Future of Civil Mediation; the Role of the Expert after Woolf; the Importance of Civil Justice, Nationally and Internationally; the Law Lords: a Rose as Sweet by Any Other Name? Reflections on the new UK Supreme Court and 21<sup>st</sup> Century Constitutional Change; the Rule of Law and our Changing Constitution; Constitutional Justice: Lessons from Magna Carta; the Continuing Importance of Magna Carta; Open Societies and the Rule of Law; the Woolf Reforms: a Singular Event or an Ongoing Process? *Kadi*, Fundamental Rights and the Rule of Law; Mediation – an Integral Part of our Litigation Culture; Proportionate Costs from Woolf to Jackson; Access to Justice – Hope Springs Eternal; Selecting Judges: Merit, Moral Courage, Judgment & Diversity; and The Importance of Civil Justice.

## 7. **Other Public Services**

Lord Clarke was chairman of the Magna Carta Trust. Lord Clarke was also the chairman of the Lord Chancellor's Advisory Committee.

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**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. Gerald Paul NAZARETH	28.7.1997	27.7.2012
2. Mr. John Barry MORTIMER	28.7.1997	27.7.2012
3. Mr. 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. Michael McHUGH	1.7.2006	30.6.2012
8. The Right Honourable Sir Thomas Munro GAULT	1.7.2006	30.6.2012
9. Mr. Murray GLEESON	1.3.2009	29.2.2012
10. The Right Honourable the Lord WALKER of Gestingthorpe	1.3.2009	29.2.2012
11. The Right Honourable the Lord NEUBERGER of Abbotsbury	1.3.2009	29.2.2012

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# Appendix 3

## Statistics on the Court of Final Appeal from 2006 to 2010 (up to September 2010)

	No. of cases														
	1.1.2006 to 31.12.2006			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 30.9.2010		
	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	50	51	4	75	62	0	82	66	1	60	86	1	30	23	0
- Criminal	63	81	1	64	61	3	76	74	3	76	75	6	74	56	3
<b>(Total)</b>	<b>(113)</b>	<b>(132)</b>	<b>(5)</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>(104)</b>	<b>(79)</b>	<b>(3)</b>
Substantive appeal															
- Civil	23	26	2	34	23	2	30	37	5	22	25	2	10	6	2
- Criminal	12	15	0	10	12	0	12	8	1	11	10	0	12	10	0
<b>(Total)</b>	<b>(35)</b>	<b>(41)</b>	<b>(2)</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>(22)</b>	<b>(16)</b>	<b>(2)</b>

## **APPOINTMENT OF THE CHIEF JUDGE OF THE HIGH COURT**

### **INTRODUCTION**

Pursuant to Article 90 of the Basic Law of the Hong Kong Special Administrative Region (“HKSAR”), 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 Andrew CHEUNG Kui-nung (“Mr. Justice Cheung”), Judge of the Court of First Instance of the High Court (“CFI Judge”), as the Chief Judge of the High Court (“CJHC”). The curriculum vitae of Mr. Justice Cheung is at Appendix.

Appendix

### **BACKGROUND**

#### **The High Court**

2. The High Court of the HKSAR consists of the Court of Appeal (“CA”) and the Court of First Instance (“CFI”). Subject to the provisions of the High Court Ordinance (Cap. 4) (“the Ordinance”), the High Court is a court of unlimited civil and criminal jurisdiction.

3. Section 5(3) of the Ordinance provides that the CJHC shall be the president of the CA. Under section 5(1) of the Ordinance, the CA consists of –

- (a) the CJHC (who is the president); and



- (b) such Justices of Appeal (“JAs”) as the Chief Executive may appoint.

4. Under section 4(1) of the Ordinance, the CFI consists of—

- (a) the CJHC;
- (b) such judges as the Chief Executive may appoint;
- (c) such recorders as the Chief Executive may appoint; and
- (d) such deputy judges as the Chief Justice may appoint.

5. As at 1 April 2011, there are nine JAs, 31 CFI Judges, nine recorders of the Court of First Instance and eight deputy judges of the High Court.

### **The Office of CJHC**

6. The office of CJHC became vacant on 1 September 2010 when the Honourable Chief Justice Geoffrey MA, who was the CJHC immediately prior to that date, assumed the position of Chief Justice and vacated the office of CJHC on the same date.

7. The Chief Executive has given approval for the Honourable Mr. Justice Robert TANG Ching (“Mr. Justice Tang”), JA and Vice-President of the CA of the High Court, to act in the office of CJHC to meet

essential operational requirements with effect from 1 September 2010 until the CJHC vacancy is substantively filled. Mr. Justice Tang started acting as CJHC since 1 September 2010.

## **Duties, Qualifications and Requirements for the CJHC**

### Duties

8. The CJHC is the court leader of the High Court. In summary, the CJHC has the following duties –

- (a) Judicial duties: Under section 5(3) of the Ordinance, the CJHC is the president of the CA. The CJHC will preside in the CA in the more important appeals as well as other appeals. Under sections 5(1) and 4(1) of the Ordinance, the CA and CFI respectively are constituted by judges including the CJHC. Both levels of court have unlimited jurisdiction –
  - (i) the CA hears appeals on civil and criminal matters from the CFI and the District Court, as well as appeals from the Lands Tribunal. It also makes rulings on questions of law referred to it by the lower courts; and
  - (ii) the CFI has unlimited jurisdiction in both civil and criminal matters. In its appellate jurisdiction, the CFI hears appeals from the Magistrates' Courts and certain Tribunals.
- (b) Administrative duties: As court leader of the High Court, the CJHC has to lead the High Court administratively. The CJHC is

responsible for the administration of the High Court and is accountable to the Chief Justice who is the Head of the Judiciary and is charged with the administration of the Judiciary. The CJHC has to ensure the smooth operation of the High Court and the efficient utilization of judicial resources and court time and to advise the Chief Justice on policies, legislation and practices relating to the High Court.

- (c) Statutory duties: The CJHC has statutory powers and functions under various ordinances, including –
- (i) under section 55 of the High Court Ordinance, the CJHC is the Chairman of the High Court Rules Committee, which has the power to make rules of court regulating and prescribing the procedure and the practice to be followed in the High Court;
  - (ii) under section 9 of the Criminal Procedure Ordinance (Cap. 221), the CJHC is the Chairman of the Criminal Procedure Rules Committee, which has the power to make rules and orders regulating the practice and procedure under the Criminal Procedure Ordinance;
  - (iii) under section 17 of the District Court Ordinance (Cap. 336), the CJHC is the Chairman of the District Court Rules Committee, which has the power to make rules of court regulating and prescribing the procedure and the practice to be followed in the District Court; and

- (iv) under the Legal Practitioners Ordinance (Cap. 159), the CJHC has the power to admit barristers and solicitors and various powers under the rules made under the Legal Practitioners Ordinance.

## Qualifications

### Basic Law Requirements

- 9. Article 92 of the Basic Law stipulates that judges of the HKSAR shall be chosen on the basis of their judicial and professional qualities.

### Eligibility Requirements

#### *(A) Professional Requirements*

- 10. The professional qualifications for the CJHC are the same as those for a Judge of the High Court. These are stipulated in section 9 of the Ordinance. Potential candidates can broadly be classified into the following categories –

- (a) serving JAs and CFI Judges, and some District Judges and permanent magistrates who meet the requirements as prescribed under section 9(2)(a) or (b) and 9(2)(iv), (iva), (ivb), (ivc), (v), (va), (vb) or (vc) of the Ordinance;
- (b) barristers who have practised as a barrister or solicitor in Hong Kong or any other common law jurisdiction having unlimited

jurisdiction either in civil or criminal matters for a period of at least 10 years;

- (c) solicitors who have practised as a solicitor of the High Court for a period of at least 10 years; and
- (d) some public officials with legal experience who meet the requirements as prescribed under section 9(1), 9(1A), 9(2)(a) or (b) and 9(2)(vi), (viii), (ix) or (x), or 9(2A) of the Ordinance.

(B) *Nationality Requirement*

11. Article 90 of the Basic Law stipulates that the CJHC shall be a Chinese citizen who is a permanent resident of the HKSAR with no right of abode in any foreign country.

12. A candidate must meet the eligibility requirements laid down by law, i.e. both the professional and nationality requirements as set out in paragraphs 10 and 11, for appointment as CJHC.

**Constitutional and Legal Framework for the Appointment**

The Chief Executive

13. 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.

14. 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.

15. In the case of the appointment of the CJHC, 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.

#### Judicial Officers Recommendation Commission

16. 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 (“SJ”) 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

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

18. 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 the CJHC under Article 90 of the Basic Law.

## **THE CURRENT APPOINTMENT EXERCISE**

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

19. 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 Cheung as the CJHC. The recommendation has been communicated to the Chief Executive.

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

20. In accordance with Article 88 of the Basic Law, the Chief Executive has accepted the recommendation of the JORC on the appointment of Mr. Justice Cheung as the CJHC. Subject to the endorsement of the

Legislative Council pursuant to Article 90 of the Basic Law, the Chief Executive will make the recommended appointment.

## **The JORC Process**

### The JORC Meetings

21. The JORC had held three meetings during the period from September 2010 to December 2010 to consider the recommendation of the person to be appointed as the CJHC.

### Quorum

22. A quorum as required by section 3(3) of the JORC Ordinance was present at each of the three JORC meetings at which the recommended appointment was considered.

### Statutory Disclosure

23. The Chief Justice has made a general declaration that he does not wish to be considered as a candidate for appointment to judicial offices below the office of Chief Justice for as long as he holds the office of Chief Justice.

24. In view of the professional qualifications for the CJHC stipulated in section 9 of the Ordinance (please see paragraph 10 above), five Members of the JORC, namely –



- (a) Mr. Justice Roberto Alexandre Vieira RIBEIRO, Permanent Judge of the Court of Final Appeal;
- (b) Mr. Justice Louis TONG Po-sun, CFI Judge;
- (c) Mr. WONG Yan Lung, SJ;
- (d) Mr. Rimsky YUEN, Senior Counsel; and
- (e) Mr. Michael LINTERN-SMITH

are or may reasonably be regarded as eligible candidates.

25. For the purpose of section 3(5B) of the JORC Ordinance, each of them had been asked to indicate in writing whether he wished to be considered as a candidate for appointment as the CJHC. All of them replied in the negative. Hence, all members were issued with the relevant papers and took part in the deliberations on the matter.

#### The First JORC Meeting

26. At the first meeting, the JORC noted and decided on various matters as described in paragraphs 27 to 31 below.

27. The JORC decided on the procedures for selecting the candidate to be recommended for appointment as the CJHC, which were followed in the selection process as described in paragraphs 28 to 46 below.

28. In accordance with the agreed procedures, the JORC noted the duties of the CJHC as described in paragraph 8 and the eligibility requirements for appointment as described in paragraphs 10 and 11 above.

29. In accordance with the agreed procedures, and having regard to the responsibilities of the CJHC, the JORC decided to adopt the appointment criteria set out below for considering the recommendation for appointment of the CJHC –

- (a) the person should be an individual of high integrity, and should be able to command respect both within the Judiciary, the High Court in particular, and outside the Judiciary including the legal profession;
- (b) the person should be an outstanding lawyer whose judgments will command respect and who has exemplary judicial temperament;
- (c) the person should have proven ability of or the potential to be a good administrator, being able to get on with the judges and staff, with a view to discharging the responsibility as Court Leader of the High Court; and
- (d) preferably, the person should have the knowledge, experience and understanding as a judge of the High Court of how the High Court is administered and how the judges function.

30. In accordance with the agreed procedures, the JORC also decided on the method of compiling the long list of candidates, having

regard to the professional eligibility requirements for appointment but leaving aside the nationality requirement. Having regard to the size of the pool of potentially qualified candidates, and the duties and qualities required for the CJHC post, the JORC decided that a long list should be compiled to include the following categories of candidates –

- (a) Judges –
  - (i) serving JAs; and
  - (ii) serving CFI Judges;
- (b) Qualified barristers –
  - (iii) Senior Counsel who are on the Bar List or are practising as an advocate while holding office as a legal officer within the meaning of the Legal Officers Ordinance (Cap. 87);
- (c) Qualified solicitors –
  - (iv) qualified solicitors who have temporary judicial experience at the High Court; and
  - (v) past and present Presidents of the Law Society of Hong Kong; and
- (d) Qualified public officers –
  - (vi) qualified public officers who are occupying posts at or above the rank of Law Officer (Directorate (Legal) Pay Scale 6) or equivalent.

The long list so drawn up is not meant to be exhaustive. Any member of the JORC is at liberty to put forward further names of eligible persons for consideration by the JORC.

31. The JORC also noted that subject to the confidentiality provisions in the JORC Ordinance, the Chief Justice, the SJ and the barrister and solicitor members (“the two professional Members”) would conduct such consultations with Judges, Law Officers in the Department of Justice (“DoJ”) and barristers and solicitors respectively as they consider appropriate for dealing with the recommendation for appointment of the CJHC.

#### After the First JORC Meeting

32. After the first meeting, in accordance with the agreed procedures, the long list was compiled and circulated to JORC members and consultations were carried out as described in paragraphs 33 to 37 below.

#### Compilation of the Long List

33. In accordance with the method of compiling the long list of candidates as decided by the JORC (please see paragraph 30 above), the long list was compiled. It comprised a total of 148 names.

34. In accordance with the agreed procedures, the Secretary of the JORC circulated the long list to JORC members before the second JORC meeting, informing them that they were at liberty to add names of eligible persons to the long list.

Consultations Carried Out

35. The Chief Justice conducted appropriate consultations with Judges and Judicial Officers within the Judiciary on the CJHC appointment.

36. The SJ consulted the Law Officers in the DoJ.

37. The two professional Members conducted consultations with barristers and solicitors respectively as they considered appropriate. Pursuant to their requests, the Bar Council and the Law Society Council each issued a circular to its members, inviting them to give their views on the appointment of the CJHC to the respective professional Members of the JORC directly.

The Second JORC Meeting

38. At the second meeting, the JORC considered the long list and arrived at a short list of persons as described in paragraphs 39 to 41 below.

39. The JORC noted that the long list circulated to JORC members had 148 names; and no name had been added by JORC members to the long list. Of the five JORC Members who had made declaration, four are on the long list (see paragraph 24(b) to (e) above). Excluding these four Members, the number of persons on the long list is 144.

40. The Chief Justice informed JORC members that Madam Justice Maria Candace YUEN, JA, who is one of the persons on the long list of candidates to be considered, is his spouse.

41. In accordance with the agreed procedures, the JORC went through the long list of persons and agreed that seven persons should be placed on the short list (not in any order of priority) for further consideration, having regard to the appointment criteria (please see paragraph 29 above) and with the benefit of inputs from the Chief Justice, the SJ and the two professional Members in the light of the consultations they had conducted.

#### After the Second JORC Meeting

42. After the second meeting, in accordance with the agreed procedures, the Chief Justice ascertained from each of the seven persons on the short list whether (a) the person is willing to serve; and (b) the person complies or is able and willing to comply with the nationality eligibility requirement in Article 90 of the Basic Law (i.e. Chinese citizen who is a permanent resident with no right of abode in any foreign country) if appointed.

#### The Third JORC Meeting

43. At the third meeting, the JORC noted matters as described in paragraph 44 and, after detailed consideration, decided on the person to recommend for appointment as the CJHC as described in paragraphs 45 to 46 below.

44. The Chief Justice informed JORC members that of the seven persons on the short list, four preferred not to be considered. The remaining three persons are willing to serve; and have stated that they are able and willing to comply with the nationality requirement if appointed.

45. In accordance with the agreed procedures, the JORC gave detailed consideration to the suitability of the three persons by reference to the appointment criteria (paragraph 29 above).

46. After discussion, the JORC decided to recommend to the Chief Executive the appointment of Mr. Justice Cheung, CFI Judge, as the CJHC. In putting forward the recommendation, the JORC considered Mr. Justice Cheung the most suitable candidate having regard to the appointment criteria –

- (a) he is without doubt a man of high integrity. He certainly commands the respect of Judges and also enjoys the respect of the legal profession. He is highly regarded as a fair and able Judge who has dealt with a number of high profile (and at times controversial) cases;
- (b) he is without doubt an outstanding lawyer. He has the proven ability to handle difficult, complex and high profile cases. He controls his court well. His judicial temperament is exemplary;
- (c) he has the potential of being a good administrator. He would not encounter any difficulties dealing with Judges or staff; and
- (d) he is familiar with the administration of the High Court.

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

47. The Chief Executive accepted the recommendation of the JORC. The Chief Executive was satisfied that the resolution of the JORC on the

recommended appointment was effective in accordance with section 3(3A) of the JORC Ordinance and that the procedure was proper and appropriate. The Chief Executive noted that in putting forward the recommendation, the JORC considered Mr. Justice Cheung the most suitable candidate having regard to the appointment criteria.

48. The Chief Executive also noted that Mr. Justice Cheung is a Chinese citizen who is a permanent resident of the HKSAR with no right of abode in any foreign country, and therefore complies with the requirement set out in Article 90 of the Basic Law.

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

49. Subject to the endorsement of the Legislative Council, the Chief Executive will make the recommended appointment. The Chief Executive 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

April 2011



**Curriculum Vitae  
of The Honourable Mr. Justice Andrew CHEUNG Kui-nung  
Judge of the Court of First Instance of the High Court**

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**1. Personal Background**

Mr. Justice Andrew CHEUNG (“Mr. Justice Cheung”) was born in Hong Kong in September 1961 (now 49). He is married and has three children.

**2. Education**

Mr. Justice Cheung received his education in Hong Kong. He obtained his LL.B and P.C.LL from the University of Hong Kong in 1983 and 1984 respectively. He obtained his Master degree in law at Harvard University, U.S.A. in 1985.

**3. Legal Experience**

Mr. Justice Cheung was called to the Hong Kong Bar in 1985. He was admitted as Advocate and Solicitor of the Supreme Court of Singapore in 1995.

**4. Judicial Experience**

Mr. Justice Cheung was in private practice in Hong Kong from 1986 until he joined the Judiciary as District Judge in 2001. He started sitting as a deputy High Court judge in December 2001. He was appointed Judge of the Court of First Instance of the High Court in 2003.

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

2004-07      Member, Working Party on Solicitors’ Right of Audience

2004-08      Probate Judge

Since 2004      Judge in charge of supervising the transfer of unclaimed moneys in court under the High Court Suitors’ Funds Rules and similar rules of the District Court and tribunals, including the compilation of an internal manual on the

transfer of moneys.

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|------------|--|
| Since 2005 | Member, High Court Rules Committee   |
| Since 2008 | Judge in charge of the Constitutional and Administrative Law List                      |
| Since 2008 | Member, The Chief Justice's Committee on Judicial Remuneration                         |
| Since 2010 | Chairman, Working Group on Civil Matters under the Committee on Information Technology |

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