

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
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Chief Secretary for Administration's Office

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8 April 2013

Urgent by Hand

The Hon Andrew LEUNG Kwan-yuen, GBS, JP
Chairman of the House Committee
Legislative Council
Room 819, Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

Dear Chairman,

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 Joseph Paul Fok as a Permanent Judge of the Court of Final Appeal;
- (b) The Honourable Mr Justice Patrick Chan Siu-oi as a non-permanent Hong Kong judge of the Court of Final Appeal; and
- (c) The Honourable James Spigelman and the Honourable William Gummow as non-permanent judges from other common law jurisdictions of the Court of Final Appeal ("non-permanent common law judges").

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 judges 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,



(Ms Kitty Choi)
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. C Y Leung, has accepted the recommendation of the Judicial Officers Recommendation Commission (JORC) on the appointment of The Honourable Mr. Justice Joseph Paul Fok, 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 21 October 2013. Subject to the endorsement of the Legislative Council, the Chief Executive will make the appointment under Article 88 of the Basic Law.

Mr. Leung said, "I am pleased to accept the JORC's recommendation on the appointment of The Honourable Mr. Justice Joseph Paul Fok as a permanent judge of the Court of Final Appeal. Mr. Justice Fok is an outstanding lawyer who has considerable experience in handling civil (including constitutional) cases and criminal 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 Joseph Paul Fok**

1. Personal Background

Mr. Justice Joseph Paul FOK (“Mr. Justice Fok”) was born in Hong Kong on 24 September 1962. He is married and has three children.

2. Education

Mr. Justice Fok obtained LL.B.(Hons) from University College London in the United Kingdom in 1984. He attended the Inns of Court School of Law and passed the Bar Examination in 1985.

3. Legal Experience

Mr. Justice Fok was called to the English Bar in 1985 and to the Hong Kong Bar in 1986. He was admitted as an Advocate and Solicitor of the Supreme Court of Singapore in 1991. He became a Fellow of the Chartered Institute of Arbitrators in 1997. He was appointed Senior Counsel in 1999.

Mr. Justice Fok was in private practice in Hong Kong from January 1987, and on a part-time *ad hoc* basis in Singapore between March 2002 and March 2006, until he joined the Judiciary as a Judge of the Court of First Instance of the High Court (“CFI Judge”) on 1 February 2010.

4. Judicial Experience

Mr. Justice Fok was appointed a Recorder of the Court of First Instance of the High Court from 2003 to 2009, before his appointment as a CFI Judge in February 2010. Mr. Justice Fok was appointed Justice of Appeal of the Court of Appeal of the High Court on 1 February 2011.

5. Services and Activities related to the Legal Field

June 1998 – February 2002	Member, Subcommittee on Contracts for the Supply of Goods, Law Reform Commission
October 2001 – January 2010	Member, Civil Court Users' Committee
July 2002 – July 2005	Member, Inland Revenue Board of Review Panel
October 2005 – September 2010	Chairman, Mandatory Provident Fund Schemes Appeal Board (Member from October 1999 to October 2005)
October 2006 – October 2010	Chairman, Occupational Retirement Schemes Appeal Board (Deputy Chairman from October 2005 to October 2006; Member from October 2004 to October 2005)
November 2006 – October 2012	Member, Subcommittee on Class Actions, Law Reform Commission
January 2008 – January 2010	Member, Witness Protection Review Board Panel
January 2008 – January 2010	Member, Operations Review Committee, Independent Commission Against Corruption
November 2008 – November 2010	Member, Telecommunications (Competition Provisions) Appeal Board
April 2009 – January 2010	Member, Civil Justice Reform Monitoring Committee
July 2010 –	Member, Committee on Information Technology

6. Publications

- (1) Hong Kong Law Reports & Digest (Pub. Sweet & Maxwell), Consultant Editor 1997 to present; Hong Kong Law Digest Yearbook, Consultant Editor 1994-1996; Hong Kong Law Yearbook, Consultant Editor 1989-1993;
- (2) Hong Kong Civil Procedure (Pub. Sweet & Maxwell), Contributing Editor 2001-2010 and Advisory Editor 2011 to present;
- (3) Hong Kong Cases (Pub. Butterworths Asia): Associate Editor for Series 1946-1994; and
- (4) Halsbury's Laws of Hong Kong, 2nd Edition, 2011 (Pub. Lexis Nexis Butterworths): Member, Editorial Advisory Board.

7. Awards

Mr. Justice Fok was appointed Justice of the Peace under section 3(1)(b) of the Justices of the Peace Ordinance (Cap. 510) in July 2006.

Press Statement

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

The Chief Executive, Mr. C Y Leung, has accepted the recommendation of the Judicial Officers Recommendation Commission (JORC) on the appointment of The Honourable Mr. Justice Patrick Chan Siu-oi, 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 21 October 2013. Subject to the endorsement of the Legislative Council, the Chief Executive will make the appointment under Article 88 of the Basic Law.

Mr. Leung said, “I am pleased to accept the JORC’s recommendation on the appointment of The Honourable Mr. Justice Patrick Chan Siu-oi 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 Chan is a judge of the highest quality and utmost integrity. He has been instrumental in promoting the use of Chinese in judicial proceedings. Elevated to the Court of Final Appeal in 2000, he would be an invaluable addition to the list of non-permanent Hong Kong judges having regard to his long established judicial experience in the Court of Final Appeal. 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.

Past	Chairman, the Chief Justice's Working Party on the Use of Chinese in the District Court
Past	Chairman, the Chief Justice's Working Party on Civil Procedure Reform in the High Court
Past	Member and then Chairman, Release Under Supervision Board
Past	Member, Judicial Service Commission
Past	Member, Judicial Officers Recommendation Commission
Past	Member, Law Reform Commission
Current	Member, Rules Committee of the Court of Final Appeal
Current	Vice-Chairman, Working Group on the Use of Chinese
Current	Chairman, the Chief Justice's Committee on Judicial Remuneration
Current	Chairman, Standing Committee on Legal Education and Training

6. **Awards**

Mr. Justice Chan was conferred Honorary Fellowships by the University of Hong Kong (2003) and the Chinese University of Hong Kong (2011). He was conferred with an Honorary Doctor of Laws degree by the City University of Hong Kong (2008) and an Honorary Doctor of Laws degree by the University of Hong Kong (2011).

7. Activities Outside the Legal Field

- | | |
|------|--|
| Past | Member, Council of the University of Hong Kong |
| Past | Chairman, Joint Examination Board on PCLL for the University of Hong Kong and City University of Hong Kong |
| Past | Chairman, Advisory Committee on Legal Education and Training |
| Past | Member, Standing Committee on Legal Education and Training |
| Past | Chairman, Department of Applied Social Studies Advisory Committee, City University of Hong Kong |
| Past | Member and then Vice-Chairman, Board of Directors of the Christian Family Service Centre |
| Past | Member, Social Work Committee of Caritas – Hong Kong |
| Past | Member, Management Committee of Caritas – Hong Kong |
| Past | Member, Caritas Medical Centre Hospital Governing Committee |
| Past | Member, Catholic Diocese Commission on Education |
| Past | Member, Department of Applied Social Studies Advisory Committee, Polytechnic University |

Past	Member, Advisory Committee on Social Work Training and Manpower Planning
Past	President, Scout Association of Hong Kong
Current	Member, Council of the City University of Hong Kong
Current	Member, Board of Trustees for the Staff Terminal Benefits Scheme of the University of Hong Kong
Current	Member, Board of Directors of the Centennial College of the University of Hong Kong
Current	Honorary Lecturer, Department of Professional Legal Education, University of Hong Kong
Current	Adjunct Professor and Honorary Lecturer, Department of Social Work, Chinese University of Hong Kong
Current	Chairman, Advisory Committee, Department of Social Work, Chinese University of Hong Kong
Current	Patron, Hong Kong Social Workers Association
Current	President, The Boys' and Girls' Clubs Association of Hong Kong
Current	Honorary Vice-President, Scout Association of Hong Kong
Current	Member, Advisory Board of the Hong Kong Red Cross

Press Statement

**Senior Judicial Appointment:
Non-Permanent Judges from Other Common Law Jurisdictions
of the Court of Final Appeal**

The Chief Executive, Mr. C Y Leung, has accepted the recommendation of the Judicial Officers Recommendation Commission (JORC) on the appointment of The Honourable James Spigelman and The Honourable William Gummow as non-permanent judges from other common law jurisdictions 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. Leung said, “I am pleased to accept the JORC’s recommendation on the appointment of Mr. James Spigelman and Mr. William Gummow as non-permanent judges from other common law jurisdictions of the Court of Final Appeal. Mr. Spigelman has been the Chief Justice of the Supreme Court of New South Wales and has retired from that office since May 2011. Mr. Gummow has been a Justice of the High Court of Australia and has retired from that office since October 2012. They are judges of considerable eminent standing and reputation. I am confident that they 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 appointments in due course.

The curricula vitae of the recommended appointees are at Annex.

**Curriculum Vitae of
The Honourable James Spigelman AC**

1. Personal Background

Mr. James Spigelman is a citizen of Australia. He was born on 1 January 1946. He is married with three adult children.

2. Education

Mr. Spigelman was educated at Sydney Boys High School and the University of Sydney, from which he graduated as Bachelor of Arts with First Class Honours in 1967 and Bachelor of Laws with First Class Honours and the University Medal in Law in 1971.

3. Legal Experience

Mr. Spigelman was admitted as a barrister in 1976. He practised as a barrister from 1980 to 1998. He was appointed Queens Counsel in 1986. He served as acting Solicitor General of New South Wales in 1997.

4. Judicial Experience

Mr. Spigelman was appointed Chief Justice of New South Wales in May 1998 and served in that office until May 2011. He sat in appeals on the full range of the Court's civil and criminal jurisdiction. In 2003 he sat as a judge of the Supreme Court of Fiji on a constitutional case challenging the legal legitimacy of the Government of Fiji.

5. Services and Activities related to the Legal Field

Mr. Spigelman was a member of the Australian Law Reform Commission from 1976 to 1979. He was the President of the Judicial Commission of New South Wales from 1998 to 2011. During those years he represented New South Wales on the Council of Chief Justices of Australia.

6. Publications

Mr. Spigelman is the author of three books including *Statutory Interpretation and Human Rights* (2008), co-author of a fourth and of five pamphlets including *National Lecture Series on Administrative Law* (2004) and *Are Lawyers Lemons: Competition Principles and Professional Regulation* (2002). Three collections of his speeches as Chief Justice are published. He is the author of some 170 published articles, including in the *Australian Law Journal*, *Australian Bar Review*, *Australian and New Zealand Journal of Criminology*, *Insurance Law Journal*, *University of NSW Law Journal*, *Federal Law Review*, *Criminal Law Journal*, *Australian Business Law Review*, *Australian Journal of Administrative Law*, *Companies and Securities Law Journal*, *Public Law Review*, *The Judicial Review*, *Journal of Judicial Administration*, *Journal of Japanese Law*, *Hong Kong Law Journal*, *Singapore Academy of Law Journal*, *Civil Justice Quarterly*, *International and Comparative Law Quarterly*, *Law Quarterly Review* and *Revue Internationale de Droit Compare*.

7. Awards

Mr. Spigelman was appointed a Companion of the Order of Australia in 2000. He has received honorary degrees as Doctor of Laws from the University of Sydney and the Australian Catholic University and the degree of Doctor of Letters from Macquarie University.

8. Activities Outside the Legal Field

Mr. Spigelman is the chair of the Australian Broadcasting Corporation (since April 2012). He has served on the Boards of a number of cultural and educational institutions including Chair, National Library of Australia (2010-2012), Chair, Australian Film Finance Corporation (1990-1992), President, Museum of Applied Arts and Sciences (1996-1998).

**Curriculum Vitae of
The Honourable William Gummow AC**

1. Personal Background

Mr. William Gummow is an Australian citizen. He was born in Sydney on 9 October 1942 and is unmarried. His father died on active service in The Royal Australian Navy, on HMAS Perth sunk in the Battle of the Sunda Strait March 1942.

2. Education

Mr. Gummow was educated at The Sydney Grammar School and The University of Sydney and graduated as Bachelor of Arts and Master of Laws.

3. Legal Experience

Mr. Gummow practised as a solicitor from 1965 to 1976 and was a partner of Allen Allen & Hemsley from 1969 to 1976. He was admitted to the New South Wales Bar in 1976 and appointed Queen's Counsel in 1986.

4. Judicial Experience

Mr. Gummow was Judge of the Federal Court of Australia from 1986 to 1995 and Justice of the High Court of Australia from 1995 to 2012.

5. Services and Activities related to the Legal Field

Mr. Gummow was a member of the American Law Institute since 1997. From 1965 to 1995 he lectured (part time) at the University of Sydney; in Intellectual Property from 1965 to 1986 and in Principles of Equity from 1970 to 1995.

6. Publications

Mr. Gummow is the co-editor of "Jacobs' Law of Trusts in Australia" (second, third, fourth and fifth editions). He is the co-

author of "Equity Doctrines and Remedies" (first, second and third editions; he will be resuming co-authorship of planned fifth edition). He is also the co-author of "Cases and Materials on Equity and Trusts" (first, second, third and fourth editions). He is the author of "Change and Continuity", being the Clarendon Lectures delivered at Oxford in 1999.

7. Awards

Mr. Gummow was appointed a Companion of the Order of Australia (AC) in 1997. He has received honorary degrees as Doctor of Laws (honoris causa) from the University of Sydney in 1992. He became a Life Member of the Australian Bar Association in 2012.

8. Activities Outside the Legal Field

Mr. Gummow took the view that the position of High Court Justice made it inappropriate to undertake other functions of a public nature; for this reason also University teaching was in abeyance 1995-2012.

**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 Joseph Paul FOK, Justice of Appeal of the Court of Appeal of the High Court (“Mr. Justice Fok JA”) as a Permanent Judge (“PJ”) of the Court of Final Appeal (“CFA”) with effect from 21 October 2013, when Mr. Justice Patrick CHAN Siu-oi, 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 Fok JA 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 CFA).

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 (“JA”);
- (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.

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 appointments 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 Fok JA as PJ of the CFA. 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 7(1) of the Ordinance, the Chief Executive has accepted the recommendation of the JORC on the appointment of Mr. Justice Fok JA 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

18. The JORC had held a meeting in the first quarter of 2013 to consider the recommendation of the person to be appointed as PJ.

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. 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 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 PJ position and they had not been invited, under section 3(5B) of the JORC Ordinance, to declare their interest in filling such position.

21. Mr. Justice Andrew CHEUNG (“Mr. Justice Cheung”), the CJHC 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 Cheung CJHC 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

22. 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 9 above), all High Court judges (i.e., the CJHC, JAs and CFI Judges) are eligible candidates for consideration.

23. The JORC noted that the long list of candidates comprises the 37 serving Judges of the High Court. Excluding the JORC member who had made declaration, i.e. the CJHC (paragraph 21 above), 36 Judges of the High Court on the long list was considered.

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

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

26. The JORC gave detailed consideration to the suitability of the two Judges. Having regard to the qualities required of a PJ and all relevant factors, the JORC considered that Mr. Justice Fok JA was the most suitable for the PJ vacancy. Mr. Justice Fok JA is a proven lawyer of very high standard. He is versatile with experience in handling both civil (including constitutional) and criminal matters.

The JORC's Resolution

27. The JORC resolved to recommend to the Chief Executive the appointment of Mr. Justice Fok JA as PJ of the CFA.

The Chief Executive's Acceptance of the Recommendation

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

ENDORSEMENT OF THE LEGISLATIVE COUNCIL

29. 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
April 2013

The Honourable Mr. Justice Joseph Paul FOK

1. Personal Background

Mr. Justice Joseph Paul FOK (“Mr. Justice Fok”) was born in Hong Kong on 24 September 1962. He is married and has three children.

2. Education

Mr. Justice Fok obtained LL.B.(Hons) from University College London in the United Kingdom in 1984. He attended the Inns of Court School of Law and passed the Bar Examination in 1985.

3. Legal Experience

Mr. Justice Fok was called to the English Bar in 1985 and to the Hong Kong Bar in 1986. He was admitted as an Advocate and Solicitor of the Supreme Court of Singapore in 1991. He became a Fellow of the Chartered Institute of Arbitrators in 1997. He was appointed Senior Counsel in 1999.

Mr. Justice Fok was in private practice in Hong Kong from January 1987, and on a part-time *ad hoc* basis in Singapore between March 2002 and March 2006, until he joined the Judiciary as a Judge of the Court of First Instance of the High Court (“CFI Judge”) on 1 February 2010.

4. Judicial Experience

Mr. Justice Fok was appointed a Recorder of the Court of First Instance of the High Court from 2003 to 2009, before his appointment as a CFI Judge in February 2010. Mr. Justice Fok was appointed Justice of Appeal of the Court of Appeal of the High Court on 1 February 2011.

5. Services and Activities related to the Legal Field

June 1998 – February 2002	Member, Subcommittee on Contracts for the Supply of Goods, Law Reform Commission
October 2001 – January 2010	Member, Civil Court Users' Committee
July 2002 – July 2005	Member, Inland Revenue Board of Review Panel
October 2005 – September 2010	Chairman, Mandatory Provident Fund Schemes Appeal Board (Member from October 1999 to October 2005)
October 2006 – October 2010	Chairman, Occupational Retirement Schemes Appeal Board (Deputy Chairman from October 2005 to October 2006; Member from October 2004 to October 2005)
November 2006 – October 2012	Member, Subcommittee on Class Actions, Law Reform Commission
January 2008 – January 2010	Member, Witness Protection Review Board Panel
January 2008 – January 2010	Member, Operations Review Committee, Independent Commission Against Corruption
November 2008 – November 2010	Member, Telecommunications (Competition Provisions) Appeal Board
April 2009 – January 2010	Member, Civil Justice Reform Monitoring Committee
July 2010 –	Member, Committee on Information Technology

6. Publications

- (1) Hong Kong Law Reports & Digest (Pub. Sweet & Maxwell), Consultant Editor 1997 to present; Hong Kong Law Digest Yearbook, Consultant Editor 1994-1996; Hong Kong Law Yearbook, Consultant Editor 1989-1993;
- (2) Hong Kong Civil Procedure (Pub. Sweet & Maxwell), Contributing Editor 2001-2010 and Advisory Editor 2011 to present;
- (3) Hong Kong Cases (Pub. Butterworths Asia): Associate Editor for Series 1946-1994; and
- (4) Halsbury's Laws of Hong Kong, 2nd Edition, 2011 (Pub. Lexis Nexis Butterworths): Member, Editorial Advisory Board.

7. Awards

Mr. Justice Fok was appointed Justice of the Peace under section 3(1)(b) of the Justices of the Peace Ordinance (Cap. 510) in July 2006.

**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 Patrick CHAN Siu-oi (“Mr. Justice Chan 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 Chan 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 CFA).

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 of Appeal (“JA”) or retired JA; 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 Chan PJ as a HKNPJ of the CFA for a term of three years with effect from 21 October 2013. 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 Chan 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 2013 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), none of the judicial Members of the Commission was an eligible candidate and they had not been invited, under section 3(5B) of the JORC Ordinance, to declare their interest in filling such position. 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 15 non-permanent judges, comprising five HKNPJs and 10 CLNPJs. A list of the serving non-permanent judges is at Appendix 2.

Caseload of the CFA

Appendix 3

22. The JORC noted the statistics for applications for leave to appeal and substantive appeals in the past three years from 2010 to 2012 as set out in Appendix 3. Applications for leave to appeal are dealt with by the Appeal Committee¹ 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, the number of cases has been on an increasing trend in the past three years. The JORC noted that with the caseload of the CFA at these levels, the CFA had 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 “5th 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 five HKNPJs comprises four HKNPJs who are retired judges of the CFA or Court of Appeal of the High Court, and one HKNPJ who is a serving judge of the Court of Appeal of the High Court.

25. The JORC noted that of the four retired judges, two (Mr. Justice

¹ 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.

John Barry MORTIMER and Mr. Justice Henry Denis LITTON) are resident outside Hong Kong. Although they are retired, they are not always available as they are often tied up in various commitments. One of them has judicial duties in another jurisdiction (Mr. Justice John Barry MORTIMER has to sit from time to time in the Court of Appeal in Brunei). For the other two retired judges who are residing in Hong Kong, one (Mr. Justice Michael John HARTMANN) has commitments as the Chairperson of The Higher Rights Assessment Board and as the Representative of the Asia Pacific Regional Office of the Hague Conference on Private International Law.

26. The JORC noted that for the serving judge who is a JA, in nominating him 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 the serving JA is 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, JA (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 under the statute and there is in practice insufficient number of PJs available (please see paragraph

4 above). On these occasions in the past three years or so (January 2010 – January 2013), all of the five HKNPJs have been selected to sit.

28. The JORC noted that the existing small number of HKNPJs and the situation described in paragraphs 24 – 27 above does not allow sufficient flexibility in listing appeals, and agreed that the number of HKNPJs should be increased to give greater flexibility for dealing with the CFA caseload and to ensure its effective operation.

Considerations

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

30. The JORC noted that Mr. Justice Chan PJ will become eligible to be appointed as a HKNPJ under section 12(3) of the Ordinance on 21 October 2013 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 Chan PJ is a judge of the highest quality and utmost integrity. Elevated to the CFA in 2000, he is versatile with experience in handling appeals in both civil and criminal matters. He has been instrumental in promoting the use of Chinese in judicial proceedings. He would be an invaluable addition to the list of HKNPJs having regard to his long established judicial experience in the CFA, and his appointment would provide greater flexibility in judicial deployment. If appointed, the total number of HKNPJs will be increased to six.

The JORC's Resolution

31. The JORC resolved to recommend to the Chief Executive the appointment of Mr. Justice Chan PJ as a HKNPJ for a term of three years with effect from 21 October 2013.

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
April 2013

The Honourable Mr. Justice Patrick CHAN Siu-oi

1. Personal Background

Mr. Justice Patrick CHAN Siu-oi (“Mr. Justice Chan”) was born in Hong Kong on 21 October 1948. He is married with no children.

2. Education

Mr. Justice Chan obtained a Bachelor of Laws degree in 1974 and a Postgraduate Certificate in Laws in 1975 from the University of Hong Kong.

3. Legal Experience

Mr. Justice Chan was called to the Hong Kong Bar in 1976. He was appointed an Honorary Bencher of the Inner Temple (England and Wales) in 2001. He was in private practice since 1977 until he joined the Judiciary as a District Judge in 1987.

4. Judicial Experience

Mr. Justice Chan was appointed a District Judge on 9 November 1987. He was appointed Deputy Registrar, Supreme Court in January 1991 and a High Court Judge in May 1992. In July 1997, he was appointed the Chief Judge of the High Court. He was elevated to the Court of Final Appeal as a Permanent Judge on 1 September 2000.

5. Service and Activities related to the Legal Field

Past	Member, District Court Rules Committee
Past	President, Lands Tribunal
Past	Chairman, the Chief Justice’s Working Party on the Use of Chinese in the District Court
Past	Chairman, the Chief Justice’s Working Party on Civil Procedure Reform in the High Court

Past	Member and then Chairman, Release Under Supervision Board
Past	Member, Judicial Service Commission
Past	Member, Judicial Officers Recommendation Commission
Past	Member, Law Reform Commission
Current	Member, Rules Committee of the Court of Final Appeal
Current	Vice-Chairman, Working Group on the Use of Chinese
Current	Chairman, the Chief Justice's Committee on Judicial Remuneration
Current	Chairman, Standing Committee on Legal Education and Training

6. Awards

Mr. Justice Chan was conferred Honorary Fellowships by the University of Hong Kong (2003) and the Chinese University of Hong Kong (2011). He was conferred with an Honorary Doctor of Laws degree by the City University of Hong Kong (2008) and an Honorary Doctor of Laws degree by the University of Hong Kong (2011).

7. Activities Outside the Legal Field

Past	Member, Council of the University of Hong Kong
Past	Chairman, Joint Examination Board on PCLL for the University of Hong Kong and City University of Hong Kong
Past	Chairman, Advisory Committee on Legal Education and Training

Past	Member, Standing Committee on Legal Education and Training
Past	Chairman, Department of Applied Social Studies Advisory Committee, City University of Hong Kong
Past	Member and then Vice-Chairman, Board of Directors of the Christian Family Service Centre
Past	Member, Social Work Committee of Caritas – Hong Kong
Past	Member, Management Committee of Caritas – Hong Kong
Past	Member, Caritas Medical Centre Hospital Governing Committee
Past	Member, Catholic Diocese Commission on Education
Past	Member, Department of Applied Social Studies Advisory Committee, Polytechnic University
Past	Member, Advisory Committee on Social Work Training and Manpower Planning
Past	President, Scout Association of Hong Kong
Current	Member, Council of the City University of Hong Kong
Current	Member, Board of Trustees for the Staff Terminal Benefits Scheme of the University of Hong Kong
Current	Member, Board of Directors of the Centennial College of the University of Hong Kong
Current	Honorary Lecturer, Department of Professional Legal Education, University of Hong Kong
Current	Adjunct Professor and Honorary Lecturer, Department of Social Work, Chinese University of Hong Kong

- Current Chairman, Advisory Committee, Department of Social Work, Chinese University of Hong Kong
- Current Patron, Hong Kong Social Workers Association
- Current President, The Boys' and Girls' Clubs Association of Hong Kong
- Current Honorary Vice-President, Scout Association of Hong Kong
- Current Member, Advisory Board of the Hong Kong Red Cross

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

A. Non-Permanent Hong Kong Judges

	Date of First Appointment	Expiry Date of Present Appointment
1. The Honourable Mr. Justice John Barry MORTIMER	28.7.1997	27.7.2015
2. The Honourable Mr. Justice Henry Denis LITTON	14.9.2000	13.9.2015
3. The Honourable Mr. Justice Frank STOCK VP	1.9.2010	31.8.2013
4. The Honourable Mr. Justice Michael John HARTMANN	1.9.2010	31.8.2013
5. The Honourable Mr. Justice Syed Kemal Shah BOKHARY	25.10.2012	24.10.2015

B. Non-permanent Judges from Other Common Law Jurisdictions

	Date of First Appointment	Expiry Date of Present Appointment
1. The Honourable Sir Anthony MASON	28.7.1997	27.7.2015
2. The Right Honourable The Lord HOFFMANN	12.1.1998	11.1.2016
3. The Right Honourable The Lord MILLETT	28.7.2000	27.7.2015
4. The Right Honourable Sir Thomas Munro GAULT	1.7.2006	30.6.2015
5. The Honourable Mr. Justice Murray GLEESON	1.3.2009	28.2.2015
6. The Right Honourable The Lord WALKER of Gestingthorpe*	1.3.2009	28.2.2015
7. The Right Honourable The Lord NEUBERGER of Abbotsbury§	1.3.2009	28.2.2015
8. The Right Honourable The Lord COLLINS of Mapesbury	30.6.2011	29.6.2014
9. The Right Honourable The Lord CLARKE of Stone-cum-Ebony#	30.6.2011	29.6.2014
10. The Right Honourable The Lord Phillips of Worth Matravers	1.10.2012	30.9.2015

* Subsequent to the JORC meeting, The Right Honourable The Lord WALKER of Gestingthorpe has retired from the office of Justice of the Supreme Court of the United Kingdom

§ President of the Supreme Court of the United Kingdom

Serving Justice of the Supreme Court of the United Kingdom

Appendix 3

**Statistics on the Court of Final Appeal
from 2010 to 2012**

	1.1.2010 to 31.12.2010			1.1.2011 to 31.12.2011			1.1.2012 to 31.12.2012		
	Filed	Disposed of	Withdrawn	Filed	Disposed of	Withdrawn	Filed	Disposed of	Withdrawn
	Application for leave to appeal								
- Civil	47	41	0	46	49	1	46	47	3
- Criminal	101	89	4	76	73	0	67	57	1
(Total)	(148)	(130)	(4)	(122)	(122)	(1)	(113)	(104)	(4)
Substantive appeal									
- Civil	17	13	2	21	23	1	27	15	0
- Criminal	14	13	0	12	12	0	14	13	0
(Total)	(31)	(26)	(2)	(33)	(35)	(1)	(41)	(28)	0

**APPOINTMENT OF NON-PERMANENT JUDGES
OF THE COURT OF FINAL APPEAL –
JUDGES FROM OTHER COMMON LAW JURISDICTIONS**

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 James SPIGELMAN (“Mr. Spigelman”) and The Honourable William GUMMOW (“Mr. Gummow”) to the Court of Final Appeal (“CFA”) as non-permanent judges from other common law jurisdictions (“CLNPJs”). The curricula vitae of Mr. Spigelman and Mr. Gummow are at Appendices 1 and 2.

**Appendices
1 and 2**

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 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 CFA).

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 Recommendations

15. Pursuant to Article 88 of the Basic Law and section 6(a) of the JORC Ordinance, the JORC has recommended the appointment of Mr. Spigelman and Mr. Gummow as CLNPJs of the CFA for a term of three years. The recommendations have been communicated to the Chief Executive.

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

16. 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 Mr. Spigelman and Mr. Gummow as CLNPJs 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 appointments.

The JORC Process

The JORC Meeting

17. The JORC had held a meeting in the first quarter of 2013 to consider the recommendations of the persons to be appointed as CLNPJs.

Quorum

18. 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

19. In view of the qualifications required of CLNPJs under section 12(4) of the Ordinance (as detailed in paragraph 7 above), none of the members of the JORC could reasonably be regarded as a candidate 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 15 non-permanent judges comprising five HKNPJs and 10 CLNPJs. A list of the serving non-permanent judges is at Appendix 3.

Appendix 3

21. The JORC noted that the list of 10 CLNPJs comprises the current President and two serving Justices of the Supreme Court of the United Kingdom (“Justices of the Supreme Court”) and seven retired judges from England, Australia and New Zealand¹. A CLNPJ is normally required to come to Hong Kong for a period of four weeks at a time. In the past three years or so (January 2010 – January 2013), all except one² of the 10 CLNPJs have been selected to sit.

¹ Subsequent to the JORC meeting, one of the serving Justices of the Supreme Court (namely, The Right Honourable The Lord WALKER of Gestingthorpe (“Lord Walker”)) has retired from the Supreme Court. The JORC has noted the Chief Justice’s view that this development does not affect the recommendations made by the JORC at the said meeting. While Lord Walker will no longer have judicial commitments in the United Kingdom after his retirement, his personal and family commitments will remain. There will also likely be professional or work-related commitments, such as the possibility of arbitration, mediation, academic and other work. This has been the position with other non-permanent judges who have retired from being full time judges. The view above has been noted by the Chief Executive.

² The CLNPJ who has not yet been invited to sit was only first appointed on 1 October 2012.

Caseload of the CFA

Appendix 4

22. The JORC noted the statistics for applications for leave to appeal and substantive appeals in the past three years from 2010 to 2012 as set out in Appendix 4. Applications for leave to appeal are dealt with by the Appeal Committee³ 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, the number of cases has been on an increasing trend in the past three years. The JORC noted that with the caseload of the CFA at these levels, the CFA had 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 “5th 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 The Right Honourable The Lord NEUBERGER of Abbotsbury (“Lord Neuberger”) would unlikely be available to sit on a frequent basis. Lord Neuberger was appointed as the Master of the Rolls of England and Wales on 1 October 2009 and then as President of the Supreme Court of the United Kingdom on 1 October 2012. Despite his heavy schedule, Lord Neuberger managed to sit

³ 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.

in October/November 2010 and August/September 2012. As Lord Neuberger may not be available to sit on a frequent basis, shorter stints would be arranged for him to secure his valuable contribution.

25. The JORC noted that with Lord Neuberger unlikely to be available to sit on a frequent basis in the foreseeable future, the CFA will effectively be operating with only nine CLNPs. These nine CLNPs comprise two serving Justices of the Supreme Court and seven 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 Gestingthorpe⁴ 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 10 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.

⁴ Please see Footnote 1 above.

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 “5th 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 agreed that the number of CLNPJs should be increased to give greater flexibility for dealing with the CFA caseload and to ensure its effective operation.

Considerations

29. The JORC considered the proposed appointment of Mr. Spigelman and Mr. Gummow as CLNPJs of the CFA and noted their curricula vitae.

30. The JORC noted that Mr. Spigelman had been the Chief Justice of the Supreme Court of New South Wales since May 1998 and he retired from the office on 31 May 2011; and Mr. Gummow had been a Justice of the High Court of Australia since 1995 and he retired from the office on reaching his 70th birthday in October 2012. They are judges of considerable eminent standing and reputation and their appointment will be a great asset to the CFA. If appointed, the total number of CLNPJs will increase to 12 (including one who would unlikely be available 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 Mr. Spigelman and Mr. Gummow as CLNPIs for a term of three years.

The Chief Executive's Acceptance of the Recommendations

32. The Chief Executive accepted the recommendations 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
April 2013

The Honourable James SPIGELMAN AC

1. Personal Background

Mr. James Spigelman is a citizen of Australia. He was born on 1 January 1946. He is married with three adult children.

2. Education

Mr. Spigelman was educated at Sydney Boys High School and the University of Sydney, from which he graduated as Bachelor of Arts with First Class Honours in 1967 and Bachelor of Laws with First Class Honours and the University Medal in Law in 1971.

3. Legal Experience

Mr. Spigelman was admitted as a barrister in 1976. He practised as a barrister from 1980 to 1998. He was appointed Queens Counsel in 1986. He served as acting Solicitor General of New South Wales in 1997.

4. Judicial Experience

Mr. Spigelman was appointed Chief Justice of New South Wales in May 1998 and served in that office until May 2011. He sat in appeals on the full range of the Court's civil and criminal jurisdiction. In 2003 he sat as a judge of the Supreme Court of Fiji on a constitutional case challenging the legal legitimacy of the Government of Fiji.

5. Services and Activities related to the Legal Field

Mr. Spigelman was a member of the Australian Law Reform Commission from 1976 to 1979. He was the President of the Judicial Commission of New South Wales from 1998 to 2011. During those years he represented New South Wales on the Council of Chief Justices of Australia.

6. Publications

Mr. Spigelman is the author of three books including *Statutory Interpretation and Human Rights* (2008), co-author of a fourth and of five pamphlets including *National Lecture Series on Administrative Law* (2004) and *Are Lawyers Lemons: Competition Principles and Professional Regulation* (2002). Three collections of his speeches as Chief Justice are published. He is the author of some 170 published articles, including in the *Australian Law Journal*, *Australian Bar Review*, *Australian and New Zealand Journal of Criminology*, *Insurance Law Journal*, *University of NSW Law Journal*, *Federal Law Review*, *Criminal Law Journal*, *Australian Business Law Review*, *Australian Journal of Administrative Law*, *Companies and Securities Law Journal*, *Public Law Review*, *The Judicial Review*, *Journal of Judicial Administration*, *Journal of Japanese Law*, *Hong Kong Law Journal*, *Singapore Academy of Law Journal*, *Civil Justice Quarterly*, *International and Comparative Law Quarterly*, *Law Quarterly Review* and *Revue Internationale de Droit Compare*.

7. Awards

Mr. Spigelman was appointed a Companion of the Order of Australia in 2000. He has received honorary degrees as Doctor of Laws from the University of Sydney and the Australian Catholic University and the degree of Doctor of Letters from Macquarie University.

8. Activities Outside the Legal Field

Mr. Spigelman is the chair of the Australian Broadcasting Corporation (since April 2012). He has served on the Boards of a number of cultural and educational institutions including Chair, National Library of Australia (2010-2012), Chair, Australian Film Finance Corporation (1990-1992), President, Museum of Applied Arts and Sciences (1996-1998).

The Honourable William GUMMOW AC

1. Personal Background

Mr. William Gummow is an Australian citizen. He was born in Sydney on 9 October 1942 and is unmarried. His father died on active service in The Royal Australian Navy, on HMAS Perth sunk in the Battle of the Sunda Strait March 1942.

2. Education

Mr. Gummow was educated at The Sydney Grammar School and The University of Sydney and graduated as Bachelor of Arts and Master of Laws.

3. Legal Experience

Mr. Gummow practised as a solicitor from 1965 to 1976 and was a partner of Allen Allen & Hemsley from 1969 to 1976. He was admitted to the New South Wales Bar in 1976 and appointed Queen's Counsel in 1986.

4. Judicial Experience

Mr. Gummow was Judge of the Federal Court of Australia from 1986 to 1995 and Justice of the High Court of Australia from 1995 to 2012.

5. Services and Activities related to the Legal Field

Mr. Gummow was a member of the American Law Institute since 1997. From 1965 to 1995 he lectured (part time) at the University of Sydney; in Intellectual Property from 1965 to 1986 and in Principles of Equity from 1970 to 1995.

6. Publications

Mr. Gummow is the co-editor of "Jacobs' Law of Trusts in Australia" (second, third, fourth and fifth editions). He is the co-author of "Equity Doctrines and Remedies" (first, second and third editions; he will be resuming co-authorship of planned fifth edition). He is also the co-author of "Cases and Materials on Equity and Trusts" (first, second, third and fourth editions). He is the author of "Change and Continuity", being the Clarendon Lectures delivered at Oxford in 1999.

7. Awards

Mr. Gummow was appointed a Companion of the Order of Australia (AC) in 1997. He has received honorary degrees as Doctor of Laws (honoris causa) from the University of Sydney in 1992. He became a Life Member of the Australian Bar Association in 2012.

8. Activities Outside the Legal Field

Mr. Gummow took the view that the position of High Court Justice made it inappropriate to undertake other functions of a public nature; for this reason also University teaching was in abeyance 1995-2012.

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

A. Non-Permanent Hong Kong Judges

	Date of First Appointment	Expiry Date of Present Appointment
1. The Honourable Mr. Justice John Barry MORTIMER	28.7.1997	27.7.2015
2. The Honourable Mr. Justice Henry Denis LITTON	14.9.2000	13.9.2015
3. The Honourable Mr. Justice Frank STOCK VP	1.9.2010	31.8.2013
4. The Honourable Mr. Justice Michael John HARTMANN	1.9.2010	31.8.2013
5. The Honourable Mr. Justice Syed Kemal Shah BOKHARY	25.10.2012	24.10.2015

B. Non-permanent Judges from Other Common Law Jurisdictions

	Date of First Appointment	Expiry Date of Present Appointment
1. The Honourable Sir Anthony MASON	28.7.1997	27.7.2015
2. The Right Honourable The Lord HOFFMANN	12.1.1998	11.1.2016
3. The Right Honourable The Lord MILLETT	28.7.2000	27.7.2015
4. The Right Honourable Sir Thomas Munro GAULT	1.7.2006	30.6.2015
5. The Honourable Mr. Justice Murray GLEESON	1.3.2009	28.2.2015
6. The Right Honourable The Lord WALKER of Gestingthorpe*	1.3.2009	28.2.2015
7. The Right Honourable The Lord NEUBERGER of Abbotsbury§	1.3.2009	28.2.2015
8. The Right Honourable The Lord COLLINS of Mapesbury	30.6.2011	29.6.2014
9. The Right Honourable The Lord CLARKE of Stone-cum-Ebony#	30.6.2011	29.6.2014
10. The Right Honourable The Lord Phillips of Worth Matravers	1.10.2012	30.9.2015

*Subsequent to the JORC meeting, The Right Honourable The Lord WALKER of Gestingthorpe has retired from the office of Justice of the Supreme Court of the United Kingdom

§ President of the Supreme Court of the United Kingdom

Serving Justice of the Supreme Court of the United Kingdom

Appendix 4

**Statistics on the Court of Final Appeal
from 2010 to 2012**

	1.1.2010 to 31.12.2010			1.1.2011 to 31.12.2011			1.1.2012 to 31.12.2012		
	Filed	Disposed of	Withdrawn	Filed	Disposed of	Withdrawn	Filed	Disposed of	Withdrawn
	Application for leave to appeal								
- Civil	47	41	0	46	49	1	46	47	3
- Criminal	101	89	4	76	73	0	67	57	1
(Total)	(148)	(130)	(4)	(122)	(122)	(1)	(113)	(104)	(4)
Substantive appeal									
- Civil	17	13	2	21	23	1	27	15	0
- Criminal	14	13	0	12	12	0	14	13	0
(Total)	(31)	(26)	(2)	(33)	(35)	(1)	(41)	(28)	0