

**立法會**  
**Legislative Council**

LC Paper No. CB(3) 688/12-13

Ref. : CB(3)/M/OR

Tel : 3919 3302

Date : 17 June 2013

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

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**Council meeting of 26 June 2013**

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

The Chief Secretary for Administration will move, at the Council meeting of 26 June 2013, a proposed resolution under Article 73(7) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and section 7A of the Hong Kong Court of Final Appeal Ordinance (Cap. 484). The proposed resolution is attached for Members' consideration. The President has directed that it be printed in the terms in which it was handed in on the Agenda of the Council.

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

(Ms Dora WAI)  
for Clerk to the Legislative Council

Encl.

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

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**Resolution**

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

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**Resolved** that the following appointments be endorsed—

- (a) the appointment of the Honourable Mr. Justice Joseph Paul Fok as a permanent judge of the Hong Kong Court of Final Appeal pursuant to section 7 of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) (*the Ordinance*);
- (b) the appointment of the Honourable Mr. Justice Patrick Chan Siu-oi as a non-permanent Hong Kong judge of the Hong Kong Court of Final Appeal pursuant to section 8 of the Ordinance;
- (c) the appointment of the Honourable James Spigelman as a judge of the Hong Kong Court of Final Appeal from another common law jurisdiction pursuant to section 9 of the Ordinance; and

- (d) the appointment of the Honourable William Gummow as a judge of the Hong Kong Court of Final Appeal from another common law jurisdiction pursuant to section 9 of the Ordinance.

**Speech by the Chief Secretary for Administration  
at the meeting of the Legislative Council on 26 June 2013**

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

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

Mr President,

I move that the motion under my name, as printed in the Agenda, be passed, that this Council endorses the appointments of the Honourable Mr Justice Joseph Paul Fok as a Permanent Judge, the Honourable Mr Justice Patrick Chan Siu-oi as a non-permanent Hong Kong judge, the Honourable James Spigelman and the Honourable William Gummow as non-permanent judges from other common law jurisdictions to the Hong Kong Court of Final Appeal (CFA).

## Constitutional and statutory framework

2. The CFA is the final appellate court in Hong Kong, hearing both civil and criminal appeals. It consists of the Chief Justice (CJ) and the permanent judges. Non-permanent judges may be invited to sit and they may come from Hong Kong or from other common law jurisdictions. When hearing and determining appeals, the CFA is constituted by five judges, comprising the CJ, three permanent judges, and one non-permanent Hong Kong judge or one non-permanent common law judge.

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

### The current appointments

4. With regard to the current appointment exercise, Mr Justice Chan will retire as a Permanent Judge in October 2013. JORC has recommended to the CE to appoint Mr Justice Fok, Justice of Appeal of the Court of Appeal of the High Court to fill the vacancy. 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. The appointment will be for a term of three years with effect from 21 October 2013.

5. As for non-permanent judges, at present, there are 15 non-permanent judges, comprising five non-permanent Hong Kong judges and 10 non-permanent judges from other common law jurisdictions. Considering the heavy caseload of the CFA and in order to provide more flexibility in judicial deployment, there is merit in increasing the number of both non-permanent Hong Kong

judges and non-permanent judges from other common law jurisdictions.

6. JORC noted that Mr Justice Chan will become eligible for appointment as a non-permanent Hong Kong judge upon his retirement as a Permanent Judge. Mr Justice Chan 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 would be an invaluable addition to the list of HKNPJs, and would continue to have tremendous contributions to the CFA. Accordingly, JORC has recommended to the CE his appointment as a non-permanent Hong Kong judge for a term of three years with effect from 21 October 2013.

7. At the same time, JORC has recommended the appointments of the Honourable James Spigelman and the Honourable William Gummow as non-permanent common law judges. 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. As judges of considerable eminent standing and reputation, they will be a great asset to the CFA.

8. The CE is pleased to accept the recommendations of JORC on the appointments of the four judges as judges to the CFA. Subject to the endorsement of this Council, the appointment of the two non-permanent common law judges would take effect in July 2013.

9. In accordance with the procedures previously endorsed by the House Committee, the Administration issued a paper on 8 April 2013 to inform the House Committee that the CE had accepted the recommendations of the JORC on these appointments. The curriculum vitae of the four judges were also set out in the paper. Representatives from the Administration and the Secretary to JORC attended the meeting of the Subcommittee on Proposed Senior Judicial Appointments on 23 April and answered Members'

questions. I would like to thank the Honourable Dennis Kwok, Chairman of the Subcommittee, and other Members of the Subcommittee for their support of the proposed appointments.

10. I invite Members to endorse the appointments.

Ends