

香港特別行政區政府
政務司司長辦公室轄下行政署



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

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21 March 2018

The Hon Starry LEE Wai-king, SBS, JP
Chairman of the House Committee
Legislative Council
Room 602, 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 and sections 7(1), 8(2) and 9(2) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484), the Chief Executive has accepted the recommendations of the Judicial Officers Recommendation Commission (JORC) to appoint –

- (a) the Honourable Mr. Justice Andrew Cheung Kui-nung as a Permanent Judge (PJ) of the Court of Final Appeal (CFA);
- (b) the Honourable Mr. Justice Robert Tang Ching as a non-permanent Hong Kong judge (HKNPJ) of the CFA; and
- (c) the Right Honourable the Baroness Brenda Hale of Richmond and the Right Honourable Beverley McLachlin, P.C. as non-permanent judges from other common law jurisdictions (CLNPJs) of the CFA.

The Chief Executive will announce her acceptance of the JORC's recommendations around noon today. Advance copies of the press statements on the above appointments are at **Enclosures 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 procedures for endorsement of judicial appointment of judges agreed by the House Committee in May 2003, papers on the appointments of the PJ, HKNPJ and CLNPJs are at **Enclosures D, E and F** for Members' reference. Subject to the deliberation of the House Committee, the Government will move a motion to seek LegCo's endorsement of the appointments at the earliest opportunity.

Yours sincerely,



(Ms Kitty Choi)
Director of Administration

Encl.

c.c. All LegCo Members
Clerk to the House Committee

Press Statement

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

The Chief Executive, Mrs. Carrie Lam, has accepted the recommendation of the Judicial Officers Recommendation Commission (JORC) on the appointment of the Honourable Mr. Justice Andrew Cheung Kui-nung, Chief Judge of the High Court, as a permanent judge of the Court of Final Appeal with effect from 25 October 2018. Subject to the endorsement of the Legislative Council, the Chief Executive will make the appointment under Article 88 of the Basic Law.

Mrs. Lam said, “I am pleased to accept the JORC’s recommendation on the appointment of the Honourable Mr. Justice Andrew Cheung Kui-nung (Mr. Justice Cheung) as a permanent judge of the Court of Final Appeal. Mr. Justice Cheung is an outstanding lawyer who has dealt with many high profile cases in the Court of Appeal particularly in the area of administrative and constitutional law. He is a judge of eminent standing and reputation. 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 Government will seek the endorsement of the Legislative Council of the recommended appointment in due course.

The curriculum vitae of Mr. Justice Cheung is at the Annex.

**Curriculum Vitae of
The Honourable Mr. Justice Andrew Cheung Kui-nung**

1. Personal Background

Mr. Justice Andrew Cheung Kui-nung (“Mr. Justice Cheung”) was born in Hong Kong in September 1961. 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. Mr. Justice Cheung was in private practice in Hong Kong from 1986 until he joined the Judiciary as a District Judge in 2001.

4. Judicial Experience

Mr. Justice Cheung was appointed as a Judge of the Court of First Instance of the High Court in 2003. He was appointed as the Chief Judge of the High Court on 20 June 2011.

5. Services and Activities related to the Legal Field

2004-07	Member, Working Party on Solicitors' Right of Audience
2004-08	Probate Judge
2008-11	Judge in charge of the Constitutional and Administrative Law List
Since 2008	Member, The Chief Justice's Committee on Judicial Remuneration
Since 2012	Member, Judicial Officers Recommendation Commission
Since 2013	Member, The Governing Body of the Hong Kong Judicial Institute
Since 2014	Member, The Chief Justice's Working Group on Retirement Ages of Judges and Judicial Officers

6. Activities Outside the Legal Field

Member of the Eldership Board of a local church.

Press Statement

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

The Chief Executive, Mrs. Carrie Lam, has accepted the recommendation of the Judicial Officers Recommendation Commission (JORC) on the appointment of the Honourable Mr. Justice Robert Tang Ching, permanent judge of the Court of Final Appeal, as a non-permanent Hong Kong judge of the Court of Final Appeal for a term of three years with effect from 25 October 2018, upon the expiry of his current (final) extended term of office as permanent judge on 24 October 2018. Subject to the endorsement of the Legislative Council, the Chief Executive will make the appointment under Article 88 of the Basic Law.

Mrs. Lam said, “I am pleased to accept the JORC’s recommendation on the appointment of the Honourable Mr. Justice Robert Tang Ching (Mr. Justice Tang) as a 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 Tang is a judge of the highest quality and utmost integrity. He is versatile with experience in handling appeals in both civil and criminal matters. He is highly respected by judges, the legal profession and the community. 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,

and continue to make valuable contribution to the Court of Final Appeal,” she said.

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 Government will seek the endorsement of the Legislative Council of the recommended appointment in due course.

The curriculum vitae of Mr Justice Tang is at the Annex.

**Curriculum Vitae of
The Honourable Mr. Justice Robert Tang Ching**

1. Personal Background

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

2. Education

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

3. Legal Experience

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

4. Judicial Experience

Mr. Justice Tang deputised in the District Court in 1982 and in the High Court in 1986, and had been appointed as one of the first Recorders of the Court of First Instance of the High Court in September 1995 until his appointment as a CFI Judge in April 2004. Mr. Justice Tang was appointed as a Justice of Appeal of the Court of Appeal of the High Court on 3 January 2005 and Vice-President of the Court of Appeal of the High Court on

1 November 2006. He was appointed as a Non-Permanent Hong Kong Judge of the Court of Final Appeal on 1 September 2010. He was appointed as a Permanent Judge of the Court of Final Appeal on 25 October 2012.

5. Service and Activities related to the Legal Field

- | | |
|--------------|------------------------------------------------------------------------------------------------------------------------|
| 1978-92 | Criminal and Law Enforcement Injuries Compensation Boards (1978-86 Member, 1986-92 Chairman) |
| 1985-Present | Hong Kong International Arbitration Centre (1985-2011 Director, 2011-Present Member, The International Advisory Board) |
| 1988-90 | Chairman, The Hong Kong Bar Association |
| 1988-90 | Member, Standing Committee on Legal Aid |

6. Awards

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

7. Activities Outside the Legal Field

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

1994-98	Chairman, Takeovers Appeal Committee
1995-97	Member, Appeal Board on Public Meetings and Processions
1996-Present	The S.K. Yee Medical Foundation (1996-2014 Chairman, 2014-Present Trustee)
1998-2004	Non-Executive Director, Mandatory Provident Fund Schemes Authority
2000-04	Chairman, Independent Police Complaints Council
2000-04	Member, ICAC Complaints Committee
2001-04	Member, Exchange Fund Advisory Committee, Hong Kong Monetary Authority

Press Statement

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

The Chief Executive, Mrs. Carrie Lam, has accepted the recommendation of the Judicial Officers Recommendation Commission (JORC) on the appointments of the Right Honourable the Baroness Brenda Hale of Richmond and the Right Honourable Beverley McLachlin, P.C. 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 appointments under Article 88 of the Basic Law.

Mrs. Lam said, “I am pleased to accept the JORC’s recommendation on the appointments of the Right Honourable the Baroness Brenda Hale of Richmond (Baroness Hale) and the Right Honourable Beverley McLachlin, P.C. (Ms. McLachlin) as non-permanent judges from other common law jurisdictions of the Court of Final Appeal. Baroness Hale has been appointed as President of the Supreme Court of the United Kingdom in September 2017. Ms. McLachlin had been the Chief Justice of the Supreme Court of Canada since 7 January 2000 until she retired from the office on 15 December 2017. They are judges of eminent standing and reputation.”

“As the first female Chief Executive of the Hong Kong Special Administrative Region, I am thrilled that if appointed, Baroness

Hale and Ms. McLachlin will be the first female judges to the Court of Final Appeal. Their appointment is a historic moment in Hong Kong,” Mrs. Lam added.

In addition, upon the appointment of Ms. McLachlin, she will be the first non-permanent judge from Canada, a common law jurisdiction with which Hong Kong shares many common legal approaches.

“With the appointment of the two eminent judges, the panel of non-permanent judges from other common law jurisdictions will consist of 14 eminent judges from the United Kingdom, Australia and Canada. The presence of these non-permanent judges manifests the judicial independence of Hong Kong,” Mrs. Lam said.

The Court of Final Appeal is constituted by five judges when hearing and determining appeals. Since 1 July 1997, apart from very few exceptions, there is always a judge drawn from the list of non-permanent judges from other common law jurisdictions to hear a substantive appeal in 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 Government will seek the endorsement of the Legislative Council of the recommended appointments in due course.

The curricula vitae of Baroness Hale and Ms. McLachlin are at the Annex.

Curriculum Vitae of The Right Honourable the Baroness Hale of Richmond

1. Personal Background

Baroness Hale is a citizen of the United Kingdom, born in Leeds, Yorkshire, on 31 January 1945. She is married to Dr. Julian Farrand QC and between them they have four children and seven grandchildren.

2. Education

Baroness Hale was educated at school in Richmond, North Yorkshire, and at Girton College, University of Cambridge, where she graduated with a starred first in the Law Tripos in 1966. She then read for the Bar through a self-tuition correspondence course, passing top in the 1967 Bar Final.

3. Professional History

After graduation, Baroness Hale became an academic lawyer at the University of Manchester, eventually becoming a Professor. She was also called to the Bar by Gray's Inn in 1969 and practised part time at the Manchester Bar until leaving to concentrate on her academic career (and raising a family). She has authored books on Mental Health Law (now in its 6th edition), Parents and Children, The Family, Law and Society (also in its 6th edition), Women and the Law, and From the Test-tube to the Coffin: Choice and Regulation in Family Life (the 1996 Hamlyn lectures), as well as many articles and conference papers. She was joint founding editor of the Journal of Social Welfare and Family Law, soon to celebrate its 40th anniversary. Although eventually specialising in those subjects, she also taught Constitutional and Administrative Law, Contract, Tort, Personal Property and Roman Law while at Manchester.

In 1984, she was appointed a member of the Law Commission for England and Wales, the statutory body which promotes reform of the law. She led the team whose recommendations led to the

Children Act 1989, the Family Law Act 1996 and the Mental Capacity Act 2005, among others.

4. Judicial Experience

Baroness Hale's first judicial appointment, in 1979, was as a presiding member of Mental Health Review Tribunals in the North-West region. In 1982, she was appointed an Assistant Recorder, a part-time judge in the Crown and county courts. She became a Recorder in 1989, the year in which she was also appointed Queen's Counsel. In 1994, she was appointed a High Court Judge, assigned to the Family Division; in 1999, she was appointed to the Court of Appeal; and in 2004, she became the first and only female Lord of Appeal in Ordinary. The "Law Lords" became Supreme Court Justices when the Supreme Court of the United Kingdom was established in 2009. In 2013, she became its Deputy President and in 2017 its President.

5. Services and Activities related to the Law

In addition to her long involvement in legal education, legal writing and law reform, Baroness Hale was a member of the Council on Tribunals, the statutory body which safeguarded the fairness and independence of administrative tribunals and inquiries, from 1980 to 1984. She was chair of the management committee of National Family Mediation from 1987 to 1994 and is now its President. She was a founder member of the Human Fertilisation and Embryology Authority, chairing the committee which drafted its first Code of Practice, from 1980 to 1994. She has served on the civil and family justice committee of the Judicial Studies Board and on the committee responsible for judicial training on the Human Rights Act 1998. She was chair of the Royal Courts of Justice Advice Bureau from 2002 to 2004. She has been President of the United Kingdom Association of Women Judges since helping to set it up in 2003 and has also been actively involved in the International Association of Women Judges, of which she was President from 2010 to 2012. She is this year's Treasurer of Gray's Inn.

6. **Other Activities**

She was a trustee of the Nuffield Foundation which gives grants for research and practical projects in many fields, including access to justice and family law, from 1987 to 2002. She was Chancellor of the University of Bristol from January 2004 to December 2016. She is involved in many charitable activities in her home town of Richmond, including the Company of Fellmongers, the Richmondshire Landscape Trust, the Richmondshire Museum and North Country Theatre.

**Curriculum Vitae of
The Right Honourable Beverley McLachlin, P.C.**

1. Personal Background

The Right Honourable Beverley McLachlin, P.C. (“Ms. McLachlin”) is a Canadian citizen. She was born on September 7, 1943 in Pincher Creek, Alberta. She is married to Mr. Frank McArdle. Ms. McLachlin has one son.

2. Education

Ms. McLachlin spent her formative years in Pincher Creek, Alberta, and was educated at the University of Alberta where she received a B.A. (Honours) in philosophy in 1965, and both an M.A. in philosophy and an LL.B. in 1968. She was called to the Bar of Alberta in 1969 and to the Bar of British Columbia in 1971.

3. Legal Experience

Ms. McLachlin practiced in Edmonton Alberta from 1969 to 1971, then moved to British Columbia where, in 1974, she joined the faculty of Law at the University of British Columbia as a tenured associate professor.

4. Judicial Experience

Ms. McLachlin’s judicial career began in April 1981, when she was appointed to the Vancouver County Court. In September of that same year, she was appointed to the Supreme Court of British Columbia. She was elevated to the British Columbia Court of Appeal in December 1985 and was appointed Chief Justice of the Supreme Court of British Columbia in September 1988. Seven months later, she was sworn in as a Justice of the Supreme Court of Canada. On January 7, 2000, she made history by being the first woman to be appointed Chief Justice of Canada. She is the longest-serving Chief Justice in the Court’s history. Ms. McLachlin retired from the Supreme Court on December 15, 2017.

5. Services and Activities related to the Law

Upon being sworn into the Supreme Court of Canada, Ms. McLachlin also became a Deputy of the Governor General of Canada. She was the Chairperson of the Canadian Judicial Council, on the Board of Governors of the National Judicial Institute, and on the Advisory Council of the Order of Canada. Ms. McLachlin is a Member of the Queen's Privy Council for Canada. She was made a Commander of the Legion of Honour by the Government of France in 2008. On December 15, 2006, Ms. McLachlin was appointed Commander of the Venerable Order of Saint John.

6. Other Activities

Ms. McLachlin is the Honorary Patron of the Institute of Parliamentary and Political Law. She has also been awarded the Yes She Can Award from Balmoral Hall School in 2005. Ms. McLachlin is currently the Visitor of Massey College, an interdisciplinary graduate college for students of distinguished ability at the University of Toronto. She is also the Visitor of Queen's College, Cambridge University. Throughout her career, Ms. McLachlin has been awarded over 31 Honorary Degrees from various universities. She is a honorary Bencher of The Hon. Society of Gray's Inn, The Hon. Society of Lincoln's Inn, The Hon. Society of the Inner Temple and The Hon. Society of the Middle Temple.

**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 Government intends to give notice in due course to move a motion to obtain the endorsement of the Legislative Council (“LegCo”) of the appointment of the Honourable Mr. Justice Andrew CHEUNG Kui-nung, Chief Judge of the High Court (“Mr. Justice Cheung CJHC”) as a Permanent Judge (“PJ”) of the Court of Final Appeal (“CFA”) with effect from 25 October 2018, when the Honourable Mr. Justice Robert TANG Ching, PJ, vacates his judicial office upon the expiry of his current (final) extended term of office on 24 October 2018. The curriculum vitae of Mr. Justice Cheung CJHC 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 non-permanent 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 unless otherwise provided for under subsection (4); 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 hear an appeal, he designates a PJ to preside at the appeal in his place. Where a sufficient number of PJs are not available to hear an appeal, the Chief Justice nominates a HKNPJ to sit in place of the 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 under Part II of the Ordinance and any other law, as provided for in section 21 of the Ordinance; and
- (b) any criminal cause or matter that falls under the criminal jurisdiction of the CFA under Part III of the Ordinance, as provided for in section 30 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 LegCo 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 at a meeting of the JORC 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 LegCo 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 LegCo 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 LegCo 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 Cheung CJHC as a PJ of the CFA with effect from 25 October 2018. 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 Cheung CJHC as a PJ of the CFA. Subject to the endorsement of LegCo 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 held a meeting in the fourth quarter of 2017 to consider the recommendation of the person to be appointed as a 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 Cheung CJHC is the only member of JORC who is an eligible candidate. In accordance with section 3(5B) of the JORC Ordinance, he had been asked to indicate in writing whether he wished to be considered as a candidate for appointment as a PJ of the CFA on this occasion. As Mr. Justice Cheung CJHC had replied in the affirmative, according to section 3(5C) of the JORC Ordinance, the relevant JORC paper

was not issued to him and he did not take part in the deliberation 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 40 serving Judges of the High Court including the JORC member who had made declaration, i.e. Mr. Justice Cheung CJHC (paragraph 21 above).

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

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

26. The JORC gave detailed consideration to the suitability of the three Judges. Having regard to the qualities required of a PJ and all relevant factors, the JORC considered that Mr. Justice Cheung CJHC was the most suitable candidate for the PJ vacancy.

27. Mr. Justice Cheung CJHC is an outstanding lawyer. He has dealt with many high profile cases in the Court of Appeal particularly in the area of administrative and constitutional law. He commands the highest respect from fellow judges and the legal profession. His judgments have made a significant impact on Hong Kong jurisprudence. As CJHC, he has demonstrated considerable administrative and management skills.

The JORC's Resolution

28. The JORC resolved to recommend to the Chief Executive the appointment of Mr. Justice Cheung CJHC as a PJ of the CFA with effect from 25 October 2018.

The Chief Executive's Acceptance of the Recommendation

29. The Chief Executive has accepted the recommendation of the JORC.

ENDORSEMENT OF THE LEGISLATIVE COUNCIL

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

Administration Wing
Chief Secretary for Administration's Office
March 2018

The Honourable Mr. Justice Andrew Cheung Kui-nung

1. Personal Background

Mr. Justice Andrew Cheung Kui-nung (“Mr. Justice Cheung”) was born in Hong Kong in September 1961. 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. Mr. Justice Cheung was in private practice in Hong Kong from 1986 until he joined the Judiciary as a District Judge in 2001.

4. Judicial Experience

Mr. Justice Cheung was appointed as a Judge of the Court of First Instance of the High Court in 2003. He was appointed as the Chief Judge of the High Court on 20 June 2011.

5. Services and Activities related to the Legal Field

- | | |
|------------|----------------------------------------------------------------------------------------------|
| 2004-07 | Member, Working Party on Solicitors' Right of Audience |
| 2004-08 | Probate Judge |
| 2008-11 | Judge in charge of the Constitutional and Administrative Law List |
| Since 2008 | Member, The Chief Justice's Committee on Judicial Remuneration |
| Since 2012 | Member, Judicial Officers Recommendation Commission |
| Since 2013 | Member, The Governing Body of the Hong Kong Judicial Institute |
| Since 2014 | Member, The Chief Justice's Working Group on Retirement Ages of Judges and Judicial Officers |

6. Activities Outside the Legal Field

Member of the Eldership Board of a local church.

**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 Government intends to give notice in due course to move a motion to obtain the endorsement of the Legislative Council (“LegCo”) of the appointment of the Honourable Mr. Justice Robert TANG Ching, (“Mr. Justice Tang 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 Tang 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 non-permanent 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 at any one time.

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 unless otherwise provided for under subsection (4); 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 hear an appeal, he designates a PJ to preside at the appeal in his place. Where a sufficient number of PJs are not available to hear an appeal, the Chief Justice nominates a HKNPJ to sit in place of the 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 under Part II of the Ordinance and any other law, as provided for in section 21 of the Ordinance; and
- (b) any criminal cause or matter that falls under the criminal jurisdiction of the CFA under Part III of the Ordinance, as provided for in section 30 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 LegCo 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 at a meeting of the JORC 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 LegCo 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 LegCo 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 LegCo 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 Tang PJ as a HKNPJ of the CFA for a term of three years with effect from 25 October 2018. 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 Tang PJ as a HKNPJ of the CFA. Subject to the endorsement of LegCo 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 held a meeting in the fourth quarter of 2017 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. Under section 12(3) of the Ordinance (as detailed in 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 HKNPJ. As the Judiciary’s current policy is 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.

21. Mr. Justice Tang PJ is the only member of JORC who will become an eligible candidate when he retires from his current (final) extended term of office as a PJ on 25 October 2018. In accordance with section 3(5B) of the JORC Ordinance, he had been asked to indicate in writing whether he wished to be considered as a candidate for appointment as a HKNPJ of the CFA on this occasion. As Mr. Justice Tang PJ had replied in the affirmative, according to section 3(5C) of the JORC Ordinance, the relevant JORC paper was not issued to him and he did not take part in the deliberation on the matter.

The JORC's Deliberations

The Non-Permanent Judges

Appendix 2

22. The JORC noted that there are 15 non-permanent judges, comprising three HKNPJs and 12 CLNPJs. A list of the serving non-permanent judges is at Appendix 2.

Caseload of the CFA

Appendix 3

23. The JORC noted the statistics for applications for leave to appeal and substantive appeals in the past four years from 2014 to 2017 (up to June 2017) 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 steady in the past four years. The JORC noted that with the caseload of the CFA at these levels, the CFA has a heavy caseload particularly bearing in mind the relatively small number of PJs.

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.

Present Position

24. The JORC noted that overall, the CFA has been functioning satisfactorily. From 1 July 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.

25. The JORC noted that the three HKNPJs are all retired judges. Although they are retired, they may not be always available as they may be tied up in various commitments.

26. 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). In the past three years or so (January 2015 – September 2017), all of the three HKNPJs have been selected to sit on these occasions.

27. The JORC noted that the existing small number of HKNPJs and the situation described in paragraphs 25 and 26 above does not provide sufficient flexibility in listing appeals, and agreed that the number of HKNPJs should be increased to retain flexibility for dealing with the CFA caseload and to ensure its effective operation.

Considerations

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

29. The JORC noted that Mr. Justice Tang PJ will become eligible to be appointed as a HKNPJ under section 12(3) of the Ordinance on 25 October 2018 by virtue of being a retired PJ, as his current (final) extended term of office as a PJ will expire on 24 October 2018 and he will retire from the office of a PJ on 25 October 2018. Mr. Justice Tang PJ is a judge of the highest quality and utmost integrity. Mr. Justice Tang (when he

was then a JA) was appointed as a HKNPJ for a period of three years from 1 September 2010 to 31 August 2013. He resigned from his appointment as a HKNPJ when he was appointed as a PJ on 25 October 2012. He is versatile with experience in handling appeals in both civil and criminal matters. He is highly respected by judges, the legal profession and the community. 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. He is fully bilingual.

The JORC's Resolution

30. The JORC resolved to recommend to the Chief Executive the appointment of Mr. Justice Tang PJ as a HKNPJ for a term of three years with effect from 25 October 2018.

The Chief Executive's Acceptance of the Recommendation

31. The Chief Executive has accepted the recommendation of the JORC.

ENDORSEMENT OF THE LEGISLATIVE COUNCIL

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

Administration Wing
Chief Secretary for Administration's Office
March 2018

The Honourable Mr. Justice Robert Tang Ching

1. Personal Background

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

2. Education

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

3. Legal Experience

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

4. Judicial Experience

Mr. Justice Tang deputised in the District Court in 1982 and in the High Court in 1986, and had been appointed as one of the first Recorders of the Court of First Instance of the High Court in September 1995 until his appointment as a CFI Judge in April 2004. Mr. Justice Tang was appointed as a Justice of Appeal of the Court of Appeal of the High Court on 3 January 2005 and Vice-President of the Court of Appeal of the High Court on 1 November 2006. He was appointed as a Non-Permanent Hong Kong Judge of the Court of Final Appeal on 1 September 2010. He was appointed as a Permanent Judge of the Court of Final Appeal on 25 October 2012.

5. Services and Activities related to the Legal Field

- 1978-92 Criminal and Law Enforcement Injuries Compensation Boards (1978-86 Member, 1986-92 Chairman)
- 1985-Present Hong Kong International Arbitration Centre (1985-2011 Director, 2011-Present Member, The International Advisory Board)
- 1988-90 Chairman, The Hong Kong Bar Association
- 1988-90 Member, Standing Committee on Legal Aid

6. Awards

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

7. Activities Outside the Legal Field

- 1983-87 Member, Judicial Service Commission
- 1989-93 Member, Independent Police Complaints Council
- 1991-2000 Town Planning Appeal Board (1991-96 Deputy Chairman, 1996-2000 Chairman)
- 1992-93 Member (Alternate), The Takeovers and Mergers Panel
- 1993-99 Securities and Futures Appeal Panel (1993-95 Deputy Chairman, 1995-99 Chairman)
- 1994-98 Chairman, Takeovers Appeal Committee
- 1995-97 Member, Appeal Board on Public Meetings and Processions
- 1996-Present The S.K. Yee Medical Foundation (1996-2014 Chairman, 2014-Present Trustee)

- 1998-2004 Non-Executive Director, Mandatory Provident Fund Schemes Authority
- 2000-04 Chairman, Independent Police Complaints Council
- 2000-04 Member, ICAC Complaints Committee
- 2001-04 Member, Exchange Fund Advisory Committee, Hong Kong Monetary Authority

List of Non-Permanent Judges of the Court of Final Appeal
(As at 1.3.2018)

A. Non-Permanent Hong Kong Judges

	Date of First Appointment	Expiry Date of Present Appointment
1. The Honourable Mr. Justice Frank STOCK	1.9.2010	31.8.2019
2. The Honourable Mr. Justice Syed Kemal Shah BOKHARY	25.10.2012	24.10.2018
3. The Honourable Mr. Justice Patrick CHAN Siu-oi	21.10.2013	20.10.2019

B. Non-permanent Judges from Other Common Law Jurisdictions

	Date of First Appointment	Expiry Date of Present Appointment
1. The Right Honourable The Lord HOFFMANN	12.1.1998	11.1.2019
2. The Right Honourable The Lord MILLETT	28.7.2000	27.7.2018
3. The Honourable Mr. Justice Murray GLEESON	1.3.2009	28.2.2021
4. The Right Honourable The Lord NEUBERGER of Abbotsbury	1.3.2009	28.2.2021
5. The Right Honourable The Lord WALKER of Gestingthorpe	1.3.2009	28.2.2021
6. The Right Honourable The Lord COLLINS of Mapesbury	30.6.2011	29.6.2020
7. The Right Honourable The Lord CLARKE of Stone-cum-Ebony	30.6.2011	29.6.2020
8. The Right Honourable The Lord PHILLIPS of Worth Matravers	1.10.2012	30.9.2018
9. The Honourable Mr. Justice James SPIGELMAN	29.7.2013	28.7.2019
10. The Honourable Mr. Justice William GUMMOW	29.7.2013	28.7.2019
11. The Honourable Mr. Justice Robert FRENCH	31.5.2017	30.5.2020

	Date of First Appointment	Expiry Date of Present Appointment
12. The Right Honourable Lord REED*	31.5.2017	30.5.2020

* Justice of the Supreme Court of the United Kingdom

Appendix 3

**Statistics on the Court of Final Appeal
from 2014 to 2017 (up to June 2017)**

	No. of cases											
	1.1.2014 to 31.12.2014			1.1.2015 to 31.12.2015			1.1.2016 to 31.12.2016			1.1.2017 to 30.6.2017		
	Filed	Disposed of	Withdrawn	Filed	Disposed of	Withdrawn	Filed	Disposed of	Withdrawn	Filed	Disposed of	Withdrawn
Application for leave to appeal												
- Civil	65	46	2	56	62	0	68	63	4	29	24	1
- Criminal	76	69	4	71	70	3	61	68	4	19	18	1
(Total)	(141)	(115)	(6)	(127)	(132)	(3)	(129)	(131)	(8)	(48)	(42)	(2)
Substantive appeal												
- Civil	12	23	0	22	19	0	13	15	1	11	5	0
- Criminal	11	11	0	9	7	0	19	18	0	4	8	0
(Total)	(23)	(34)	(0)	(31)	(26)	(0)	(32)	(33)	(1)	(15)	(13)	(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 Government intends to give notice in due course to move a motion to obtain the endorsement of the Legislative Council (“LegCo”) of the appointment of the Right Honourable the Baroness Brenda HALE of Richmond (“Baroness Hale”) and the Right Honourable Beverley MCLACHLIN, P.C. (“Ms. McLachlin”) to the Court of Final Appeal (“CFA”) as non-permanent judges from other common law jurisdictions (“CLNPJs”). The curriculum vitae of Baroness Hale and Ms. McLachlin are at Appendices 1 and 2 respectively.

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 decisions of the lower courts.

3. The CFA consists of the Chief Justice and the permanent judges (“PJ”). 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 at any one time.

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 unless otherwise provided for under subsection (4); 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 hear an appeal, he designates a PJ to preside at the appeal in his place. Where a sufficient number of PJs are not available to hear an appeal, the Chief Justice nominates a HKNPJ to sit in place of the 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 under Part II of the Ordinance and any other law, as provided for in section 21 of the Ordinance; and
- (b) any criminal cause or matter that falls under the criminal jurisdiction of the CFA under Part III of the Ordinance, as provided for in section 30 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 Judge 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 LegCo 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 at a meeting of the JORC is not effective if there are more than two votes which are 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 LegCo 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 LegCo 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 LegCo 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 Baroness Hale and Ms. McLachlin 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 Baroness Hale and Ms. McLachlin as CLNPJs of the CFA. Subject to the endorsement of LegCo 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 held a meeting in the fourth quarter of 2017 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

Appendix 3

20. The JORC noted that there are 15 non-permanent judges comprising three HKNPJs and 12 CLNPJs. A list of the serving non-permanent judges is at Appendix 3.

21. The JORC noted that the list of 12 CLNPJs comprises a serving Justice of the Supreme Court of the United Kingdom and 11 retired judges from England and Australia¹. 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 2015 to September 2017), all except one² of the 12 CLNPJs have been selected to sit on the CFA.

Caseload of the CFA

Appendix 4

22. The JORC noted the statistics for applications for leave to appeal and substantive appeals in the past four years from 2014 to 2017 (up to June 2017) 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 steady in the past four years. The JORC noted that with the caseload of the CFA at these levels, the CFA has a heavy caseload particularly bearing in mind the relatively small number of PJs.

¹ The Right Honourable the Lord NEUBERGER and The Right Honourable the Lord CLARKE retired from their former judicial offices as President and Justice of the Supreme Court of the United Kingdom respectively in September 2017.

² The CLNPJ was only first appointed on 31 May 2017.

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.

Present Position

23. The JORC noted that overall, the CFA has been functioning satisfactorily. From 1 July 1997, apart from very few exceptions, the “5th judge” (please refer to paragraph 4(c) above) has invariably been drawn from the list of CLNPs to hear a substantive appeal.

24. The JORC noted that all of the CLNPs have extensive professional commitments. The serving Justice of the Supreme Court of the United Kingdom (namely, the Right Honourable Lord REED) 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 12 CLNPs to come to Hong Kong for four weeks to sit on the CFA is somewhat limited. A number of them cannot manage a four-week period once a year.

26. The JORC noted that there are other logistical considerations in inviting CLNPs to sit on the CFA. For example, the relevant judge may simply be unavailable to sit on the CFA 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 on the CFA, the listing of the case may have 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 CLNP 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 enlarged. The JORC agreed that the number of CLNPs should be increased to give greater flexibility for dealing with the CFA caseload and to ensure its effective operation.

Considerations

28. The JORC considered the proposed appointment of Baroness Hale and Ms. McLachlin as CLNPs of the CFA and noted their curriculum vitae.

29. The JORC noted that Baroness Hale has been appointed as President of the Supreme Court of United Kingdom in September 2017. Ms. McLachlin had been the Chief Justice of the Supreme Court of Canada since 7 January 2000 until she retired from the office on 15 December 2017. They are judges of eminent standing and reputation and their appointments will be a great asset to the CFA.

30. Baroness Hale is an eminent jurist and enjoys the highest reputation in the common law world. On her appointment to the Judicial Committee of the House of Lords (the then United Kingdom's highest appellate tribunal, now the Supreme Court) in 2004, Baroness Hale was the first woman to be elevated to that rank. She is also the first woman to be appointed as the President of the Supreme Court of the United Kingdom.

31. Ms. McLachlin is likewise recognised as one of the foremost jurists in the common law world. Canada is a common law jurisdiction with which Hong Kong shares many common legal approaches, particularly in the areas of equity, commercial law and criminal law. Ms. McLachlin has written many significant judgments in these areas of law.

32. The JORC noted that:

- (a) upon the appointment of Ms. McLachlin, she will be the first CLNPJ to be appointed from Canada;
- (b) if appointed, Baroness Hale and Ms. McLachlin will be the first female judges to the Court of Final Appeal; and
- (c) the appointments will be respected and welcomed by the legal community in Hong Kong.

33. If appointed, the total number of CLNPJs will increase to 14.

The JORC's Resolution

34. The JORC resolved to recommend to the Chief Executive the appointments of Baroness Hale and Ms. McLachlin as CLNPJs for a term of three years.

The Chief Executive's Acceptance of the Recommendations

35. The Chief Executive has accepted the recommendations of the JORC.

ENDORSEMENT OF THE LEGISLATIVE COUNCIL

36. Subject to the endorsement of LegCo, the Chief Executive will make the recommended appointments and report the appointments to the Standing Committee of the National People's Congress for the record.

Administration Wing
Chief Secretary for Administration's Office
March 2018

The Right Honourable the Baroness Hale of Richmond

1. Personal Background

Baroness (Brenda) Hale is a citizen of the United Kingdom, born in Leeds, Yorkshire, on 31 January 1945. She is married to Dr. Julian Farrand QC and between them they have four children and seven grandchildren.

2. Education

Baroness Hale was educated at school in Richmond, North Yorkshire, and at Girton College, University of Cambridge, where she graduated with a starred first in the Law Tripos in 1966. She then read for the Bar through a self-tuition correspondence course, passing top in the 1967 Bar Final.

3. Professional History

After graduation, Baroness Hale became an academic lawyer at the University of Manchester, eventually becoming a Professor. She was also called to the Bar by Gray's Inn in 1969 and practised part time at the Manchester Bar until leaving to concentrate on her academic career (and raising a family). She has authored books on Mental Health Law (now in its 6th edition), Parents and Children, The Family, Law and Society (also in its 6th edition), Women and the Law, and From the Test-tube to the Coffin: Choice and Regulation in Family Life (the 1996 Hamlyn lectures), as well as many articles and conference papers. She was joint founding editor of the Journal of Social Welfare and Family Law, soon to celebrate its 40th anniversary. Although eventually specialising in those subjects, she also taught Constitutional and Administrative Law, Contract, Tort, Personal Property and Roman Law while at Manchester.

In 1984, she was appointed a member of the Law Commission for England and Wales, the statutory body which promotes reform of the law. She led the team whose recommendations led to the Children Act 1989, the Family Law Act 1996 and the Mental Capacity Act 2005, among others.

4. Judicial Experience

Baroness Hale's first judicial appointment, in 1979, was as a presiding member of Mental Health Review Tribunals in the North-West region. In 1982, she was appointed an Assistant Recorder, a part-time judge in the Crown and county courts. She became a Recorder in 1989, the year in which she was also appointed Queen's Counsel. In 1994, she was appointed a High Court Judge, assigned to the Family Division; in 1999, she was appointed to the Court of Appeal; and in 2004, she became the first and only female Lord of Appeal in Ordinary. The "Law Lords" became Supreme Court Justices when the Supreme Court of the United Kingdom was established in 2009. In 2013, she became its Deputy President and in 2017 its President.

5. Services and Activities related to the Law

In addition to her long involvement in legal education, legal writing and law reform, Baroness Hale was a member of the Council on Tribunals, the statutory body which safeguarded the fairness and independence of administrative tribunals and inquiries, from 1980 to 1984. She was chair of the management committee of National Family Mediation from 1987 to 1994 and is now its President. She was a founder member of the Human Fertilisation and Embryology Authority, chairing the committee which drafted its first Code of Practice, from 1980 to 1994. She has served on the civil and family justice committee of the Judicial Studies Board and on the committee responsible for judicial training on the Human Rights Act 1998. She was chair of the Royal Courts of Justice Advice Bureau from 2002 to 2004. She has been President of the United Kingdom Association of Women Judges since helping to set it up in 2003 and has also been actively involved in the International Association of Women Judges, of which she was President from 2010 to 2012. She is this year's Treasurer of Gray's Inn.

6. Other Activities

She was a trustee of the Nuffield Foundation which gives grants for research and practical projects in many fields, including access to justice and family law, from 1987 to 2002. She was Chancellor of the University of Bristol from January 2004 to December 2016. She is involved in many charitable activities in her home town of Richmond, including the Company of Fellmongers, the Richmondshire Landscape Trust, the Richmondshire Museum and North Country Theatre.

The Right Honourable Beverley McLachlin, P.C.

1. Personal Background

The Right Honourable Beverley McLachlin, P.C. (“Ms. McLachlin”) is a Canadian citizen. She was born on September 7, 1943 in Pincher Creek, Alberta. She is married to Mr. Frank McArdle. Ms. McLachlin has one son.

2. Education

Ms. McLachlin spent her formative years in Pincher Creek, Alberta, and was educated at the University of Alberta where she received a B.A. (Honours) in philosophy in 1965, and both an M.A. in philosophy and an LL.B. in 1968. She was called to the Bar of Alberta in 1969 and to the Bar of British Columbia in 1971.

3. Legal Experience

Ms. McLachlin practiced in Edmonton Alberta from 1969 to 1971, then moved to British Columbia where, in 1974, she joined the faculty of Law at the University of British Columbia as a tenured associate professor.

4. Judicial Experience

Ms. McLachlin’s judicial career began in April 1981, when she was appointed to the Vancouver County Court. In September of that same year, she was appointed to the Supreme Court of British Columbia. She was elevated to the British Columbia Court of Appeal in December 1985 and was appointed Chief Justice of the Supreme Court of British Columbia in September 1988. Seven months later, she was sworn in as a Justice of the Supreme Court of Canada. On January 7, 2000, she made history by being the first woman to be appointed Chief Justice of Canada. She is the longest-serving Chief Justice in the Court’s history. Ms. McLachlin retired from the Supreme Court on December 15, 2017.

5. Services and Activities related to the Law

Upon being sworn into the Supreme Court of Canada, Ms. McLachlin also became a Deputy of the Governor General of Canada. She was the Chairperson of the Canadian Judicial Council, on the Board of Governors of the National Judicial Institute, and on the Advisory Council of the Order of Canada. Ms. McLachlin is a Member of the Queen's Privy Council for Canada. She was made a Commander of the Legion of Honour by the Government of France in 2008. On December 15, 2006, Ms. McLachlin was appointed Commander of the Venerable Order of Saint John.

6. Other Activities

Ms. McLachlin is the Honorary Patron of the Institute of Parliamentary and Political Law. She has also been awarded the Yes She Can Award from Balmoral Hall School in 2005. Ms. McLachlin is currently the Visitor of Massey College, an interdisciplinary graduate college for students of distinguished ability at the University of Toronto. She is also the Visitor of Queen's College, Cambridge University. Throughout her career, Ms. McLachlin has been awarded over 31 Honorary Degrees from various universities. She is a honorary Bencher of The Hon. Society of Gray's Inn, The Hon. Society of Lincoln's Inn, The Hon. Society of the Inner Temple and The Hon. Society of the Middle Temple.

List of Non-Permanent Judges of the Court of Final Appeal
(As at 1.3.2018)

A. Non-Permanent Hong Kong Judges

	Date of First Appointment	Expiry Date of Present Appointment
1. The Honourable Mr. Justice Frank STOCK	1.9.2010	31.8.2019
2. The Honourable Mr. Justice Syed Kemal Shah BOKHARY	25.10.2012	24.10.2018
3. The Honourable Mr. Justice Patrick CHAN Siu-oi	21.10.2013	20.10.2019

B. Non-permanent Judges from Other Common Law Jurisdictions

	Date of First Appointment	Expiry Date of Present Appointment
1. The Right Honourable The Lord HOFFMANN	12.1.1998	11.1.2019
2. The Right Honourable The Lord MILLETT	28.7.2000	27.7.2018
3. The Honourable Mr. Justice Murray GLEESON	1.3.2009	28.2.2021
4. The Right Honourable The Lord NEUBERGER of Abbotsbury	1.3.2009	28.2.2021
5. The Right Honourable The Lord WALKER of Gestingthorpe	1.3.2009	28.2.2021
6. The Right Honourable The Lord COLLINS of Mapesbury	30.6.2011	29.6.2020
7. The Right Honourable The Lord CLARKE of Stone-cum-Ebony	30.6.2011	29.6.2020
8. The Right Honourable The Lord PHILLIPS of Worth Matravers	1.10.2012	30.9.2018
9. The Honourable Mr. Justice James SPIGELMAN	29.7.2013	28.7.2019
10. The Honourable Mr. Justice William GUMMOW	29.7.2013	28.7.2019
11. The Honourable Mr. Justice Robert FRENCH	31.5.2017	30.5.2020

	Date of First Appointment	Expiry Date of Present Appointment
12. The Right Honourable Lord REED*	31.5.2017	30.5.2020

* Justice of the Supreme Court of the United Kingdom

Appendix 4

**Statistics on the Court of Final Appeal
from 2014 to 2017 (up to June 2017)**

	No. of cases											
	1.1.2014 to 31.12.2014			1.1.2015 to 31.12.2015			1.1.2016 to 31.12.2016			1.1.2017 to 30.6.2017		
	Filed	Disposed of	Withdrawn	Filed	Disposed of	Withdrawn	Filed	Disposed of	Withdrawn	Filed	Disposed of	Withdrawn
Application for leave to appeal												
- Civil	65	46	2	56	62	0	68	63	4	29	24	1
- Criminal	76	69	4	71	70	3	61	68	4	19	18	1
(Total)	(141)	(115)	(6)	(127)	(132)	(3)	(129)	(131)	(8)	(48)	(42)	(2)
Substantive appeal												
- Civil	12	23	0	22	19	0	13	15	1	11	5	0
- Criminal	11	11	0	9	7	0	19	18	0	4	8	0
(Total)	(23)	(34)	(0)	(31)	(26)	(0)	(32)	(33)	(1)	(15)	(13)	(0)