

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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22 May 2019

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

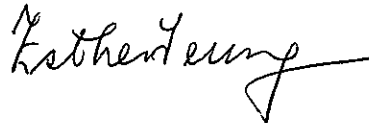
I write to inform you that in accordance with Article 88 of the Basic Law, the Chief Executive has accepted the recommendations of the Judicial Officers Recommendation Commission (JORC) to appoint –

- (a) the Right Honourable Lord Jonathan Sumption as a non-permanent judge from another common law jurisdiction (CLNPJ) of the Court of Final Appeal; and
- (b) the Honourable Mr. Justice Jeremy Poon Shiu-chor as the Chief Judge of the High Court (CJHC).

_____ 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 and B** 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 appointment of judges agreed by the House Committee in May 2003, papers on the appointments of the CLNPJ and the CJHC are at **Enclosures C and D** for Members' reference. Subject to the deliberation of the House Committee, the Government will move motions to seek LegCo's endorsement of the appointments at the earliest opportunity.

Yours sincerely,



(Ms Esther Leung)
Director of Administration

Encl.

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

Press Statement

**Senior Judicial Appointment:
Non-Permanent Judge from Another Common Law Jurisdiction 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 Right Honourable Lord Jonathan Sumption (Lord Sumption) as a non-permanent judge from another common law jurisdiction 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.

Mrs Lam said, “I am pleased to accept the JORC’s recommendation to appoint Lord Sumption as a non-permanent judge from another common law jurisdiction of the Court of Final Appeal. Lord Sumption was a Justice of the Supreme Court of the United Kingdom since January 2012 until he retired from the office in December 2018. 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.”

“With the appointment of Lord Sumption, the panel of non-permanent judges from other common law jurisdictions will consist of 15 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, one of the judges has invariably been drawn from the list of non-permanent judges from other common law jurisdictions to hear a substantive appeal on 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 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 Lord Sumption is at Annex.

**Curriculum Vitae of
The Right Honourable Lord Jonathan Sumption**

1. Personal Background

Lord (Jonathan) Sumption is a citizen of the United Kingdom. He was born there on 9 December 1948. He married in 1971, and has three children.

2. Education

Lord Sumption was educated at Eton College and Magdalen College, Oxford. He obtained a degree in history with 1st class honours at Oxford in 1970. He was elected to a fellowship in history at Magdalen College in 1971, and studied and taught history there until 1975. In the latter part of his fellowship he combined his duties in Oxford with studying for the bar.

3. Legal Experience

Lord Sumption was called to the bar of England and Wales by Inner Temple in 1975. He was appointed Queen's Counsel in 1986. He practised mainly in commercial law (shipping, insurance and financial markets). As Queen's Counsel, he also developed an extensive practice in public and constitutional law.

4. Judicial Experience

Lord Sumption sat as an Assistant Recorder and the Recorder of the Crown Court between 1991 and 2001 and served as a Deputy Judge of the High Court from 1993 to 2011. He was a judge of the Courts of Appeal of Jersey and Guernsey from 1995 to 2011. These were all part-time appointments. In January 2012, he was appointed directly from the Bar to the Supreme Court of the United Kingdom, one of only five persons to be so honoured since the 1870s. He retired from the Supreme Court on reaching the statutory retirement age in December 2018.

5. Services and Activities related to Law

Lord Sumption was joint head of his chambers, 2005-2011. He served as a member of the Judicial Appointments Commission for England from its inception in 2006 until October 2011. He lectures regularly to academic and professional audiences on legal topics.

6. Activities outside the Legal Field

Lord Sumption is the author of a number of scholarly works on English and western European history, and is Fellow of the Royal Historical Society. He has for many years been a regular book reviewer for various newspapers and academic journals. He has been a director of several cultural organisations including, currently, the Royal Academy of Music and English National Opera. He is fluent in French and reads in French, German, Italian and Spanish. Lord Sumption was appointed OBE in 2003, for services to Anglo-French cultural relations.

Press Statement

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

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 Jeremy Poon Shiu-chor (Mr Justice Poon), Justice of Appeal of the Court of Appeal of the High Court, as the Chief Judge of the High Court. Subject to the endorsement of the Legislative Council, the Chief Executive will make the appointment under Article 88 of the Basic Law.

Mrs Lam said, “I am pleased to accept the JORC’s recommendation to appoint Mr Justice Poon as the Chief Judge of the High Court. Mr Justice Poon is a highly competent judge of high integrity who commands respect within the Judiciary and from the legal profession. He is experienced in both civil and criminal appeals and possesses rich administrative experience. I am confident that Mr Justice Poon, if appointed, will discharge his duties as the Court Leader of the High Court with distinction.”

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

The curriculum vitae of Mr Justice Poon is at Annex.

**Curriculum Vitae of
Mr Justice Jeremy Poon Shiu-chor
Justice of Appeal of the Court of Appeal of the High Court**

1. Personal Background

Mr Justice Jeremy Poon Shiu-chor (“Mr Justice Poon”) was born in Hong Kong in February 1962 (now 57). He is married and has two children.

2. Education

Mr Justice Poon was educated in Hong Kong and in the United Kingdom. He obtained a Bachelor of Laws degree and a Postgraduate Certificate in Laws both from the University of Hong Kong in 1985 and 1986 respectively. He further acquired a Master of Laws degree from University of London in 1987.

3. Legal Experience

Mr Justice Poon was called to the Hong Kong Bar in 1986.

4. Judicial Experience

Mr Justice Poon was in private practice before joining the Judiciary as Magistrate in 1993. He was appointed Deputy Registrar, High Court in 1999 and Judge of the Court of First Instance of the High Court in 2006. He was appointed Justice of Appeal of the Court of Appeal of the High Court in 2015.

Between 2011 and 2015, Mr. Justice Poon was the Civil Listing Judge, and the Judge in charge of the Probate List, the Family Law List and the Mental Health List in the Court of First Instance.

In the Court of Appeal, Mr. Justice Poon hears civil, criminal and public law appeals.

5. Services and Activities related to the Legal Field

| | |
|-----------------------|---|
| Between 2000 and 2004 | Secretary, Chief Justice's Working Party on Civil Justice Reform |
| Between 2012 and 2015 | Chairman, Chief Justice's Working Party on Family Procedure Rules, recommending the introduction of a unified procedure code for all family and matrimonial proceedings |
| Since 2012 | Member, Civil Court Users' Committee |
| 2013 | In his capacity as the Probate Judge, Mr. Justice Poon oversaw the preparation and publication of the Guide to Non-Contentious Probate Practice |
| Since 2013 | Member, Working Group on Integrated Court Case Management System under the Committee on Information Technology |
| Since 2014 | Member, Working Group on Family Arbitration |
| Between 2015 and 2017 | Chairman, Working Party on Review of Solicitors' Hourly Rates for Party and Party Taxation |
| Since 2015 | Chairman, Implementation Committee for the Review of Family Procedure Rules |
| Since 2015 | Member, Civil Justice Reform Monitoring Committee |
| 2016 and 2017 | Overseeing the review of practice and procedure for criminal trials and |

magistracy appeals in the Court of First Instance of the High Court and its implementation

Since 2017

Overseeing the review of practice and procedure for criminal appeals to the Court of Appeal of the High Court

Since 2018

Chairman of the Steering Committee for the Development of the High Court

Since 2018

Member of the Central Steering Committee for the Development of the High Court and the District Court

6. Publications

Mr Justice Poon has been a contributing editor of the Hong Kong Civil Procedure since 2004.

7. Awards

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8. Other Public Services

Since 2018

President of the Scout Council, Scout Association of Hong Kong

**APPOINTMENT OF NON-PERMANENT JUDGE
OF THE COURT OF FINAL APPEAL –**

JUDGE FROM ANOTHER COMMON LAW JURISDICTION

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”) for the appointment of the Right Honourable Lord Jonathan SUMPTION (“Lord Sumption”) to the Court of Final Appeal (“CFA”) as a non-permanent judge from another common law jurisdiction (“CLNPJ”). The curriculum vitae of Lord Sumption 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 decisions 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 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 a PJ.

Duties, Requirements and Qualifications for CLNPJs

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 the 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.

The JORC

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 the 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 the 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 the LegCo for the appointment of CFA judges under Article 90 of the Basic Law.

THE CURRENT APPOINTMENT EXERCISE

The JORC's Recommendation

15. Pursuant to Article 88 of the Basic Law and section 6(a) of the JORC Ordinance, the JORC has recommended the appointment of Lord Sumption as CLNPJ of the CFA for a term of three years. The recommendation has been communicated to the Chief Executive.

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

16. In accordance with Article 88 of the Basic Law and section 9(2) of the Ordinance, the Chief Executive has accepted the recommendation of the JORC on the appointment of Lord Sumption as CLNPJ of the CFA. Subject to the endorsement of the 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

17. The JORC held a meeting in the fourth quarter of 2018 to consider the recommendation of the person to be appointed as CLNPJ.

Quorum

18. 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

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 are 18 non-permanent judges comprising four HKNPJs and 14 CLNPJs. A list of the serving non-permanent judges is at **Appendix 2**.

Appendix 2

21. The JORC noted that the list of 14 CLNPJs comprises the serving President and Deputy President of the Supreme Court of the United Kingdom and 12 retired judges from England, Australia and Canada. 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 2016 to October 2018), all except two¹ of the 14 CLNPs were selected to sit on the CFA.

Caseload of the CFA

Appendix 3

22. The JORC noted the statistics for applications for leave to appeal and substantive appeals in the past four years or so (January 2015 to July 2018) as set out in *Appendix 3*. Applications for leave to appeal are dealt with by the Appeal Committee². 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 three years, and on the increase in the first half of 2018. 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 PJs³.

Present Position

23. The JORC noted that 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 substantive appeals.

24. The JORC noted that the availability of the 14 CLNPs to come to Hong Kong for four weeks to sit on the CFA is somewhat limited. All of the CLNPs have extensive professional commitments. The serving President and Deputy President of the Supreme Court of the United Kingdom (namely, the Right Honourable the Baroness HALE of Richmond and the Right Honourable Lord REED respectively) 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. Owing to their various commitments, a number of them cannot manage a four-week period once a year. There are also other logistical considerations

¹ The two CLNPs were only first appointed on 30 July 2018.

² 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. Where a sufficient number of PJ, is not available to hear and determine an application, the Chief Justice nominates a HKNPJ to sit in place of a PJ.

³ There are currently three PJs of the CFA.

affecting the availability of CLNPIs 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.

25. 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 enlarged. The JORC agreed that the number of CLNPIs should be increased to give greater flexibility for dealing with the CFA caseload and to ensure its effective operation.

Considerations

26. The JORC considered the proposed appointment of Lord Sumption as CLNPJ of the CFA having regard to his curriculum vitae. Specifically, Lord Sumption had been a Justice of the Supreme Court of the United Kingdom since January 2012 until he retired from the office in December 2018. He is a judge of eminent standing and reputation and his appointment will be a great asset to the CFA.

The JORC’s Resolution

27. The JORC resolved to recommend to the Chief Executive the appointment of Lord Sumption as a CLNPJ for a term of three years. If appointed, the total number of CLNPIs will increase to 15.

The Chief Executive’s Acceptance of the Recommendation

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

ENDORSEMENT OF THE LEGISLATIVE COUNCIL

29. Subject to the endorsement of the 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
May 2019

The Right Honourable Lord SUMPTION

1. Personal Background

Lord (Jonathan) Sumption is a citizen of the United Kingdom. He was born there on 9 December 1948. He married in 1971, and has three children.

2. Education

Lord Sumption was educated at Eton College and Magdalen College, Oxford. He obtained a degree in history with 1st class honours at Oxford in 1970. He was elected to a fellowship in history at Magdalen College in 1971, and studied and taught history there until 1975. In the latter part of his fellowship he combined his duties in Oxford with studying for the bar.

3. Legal Experience

Lord Sumption was called to the bar of England and Wales by Inner Temple in 1975. He was appointed Queen's Counsel in 1986. He practised mainly in commercial law (shipping, insurance and financial markets). As Queen's Counsel, he also developed an extensive practice in public and constitutional law.

4. Judicial Experience

Lord Sumption sat as an Assistant Recorder and the Recorder of the Crown Court between 1991 and 2001 and served as a Deputy Judge of the High Court from 1993 to 2011. He was a judge of the Courts of Appeal of Jersey and Guernsey from 1995 to 2011. These were all part-time appointments. In January 2012, he was appointed directly from the Bar to the Supreme Court of the United Kingdom, one of only five persons to be so honoured since the 1870s. He retired from the Supreme Court on reaching the statutory retirement age in December 2018.

5. Services and Activities related to Law

Lord Sumption was joint head of his chambers, 2005-2011. He served as a member of the Judicial Appointments Commission for England from its inception in 2006 until October 2011. He lectures regularly to academic and professional audiences on legal topics.

6. Activities outside the Legal Field

Lord Sumption is the author of a number of scholarly works on English and western European history, and is Fellow of the Royal Historical Society. He has for many years been a regular book reviewer for various newspapers and academic journals. He has been a director of several cultural organisations including, currently, the Royal Academy of Music and English National Opera. He is fluent in French and reads in French, German, Italian and Spanish. Lord Sumption was appointed OBE in 2003, for services to Anglo-French cultural relations.

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

(As at 1.4.2019)

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 | 24.10.2021 |
| 3. The Honourable Mr. Justice Patrick CHAN Siu-oi | 21.10.2013 | 20.10.2019 |
| 4. The Honourable Mr. Justice Robert TANG Ching | 25.10.2018 | 24.10.2021 |

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 | 11.1.2022 |
| 2. The Right Honourable the Lord MILLETT | 28.7.2000 | 27.7.2021 |
| 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 | 30.9.2021 |
| 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 |
| 13. The Right Honourable the Baroness HALE of Richmond# | 30.7.2018 | 29.7.2021 |
| 14. The Right Honourable Madam Justice Beverley McLACHLIN | 30.7.2018 | 29.7.2021 |

* Deputy President of the Supreme Court of the United Kingdom

President of the Supreme Court of the United Kingdom

Appendix 3**Statistics on the Court of Final Appeal
(from 2015 to July 2018)**

| | No. of cases | | | | | | | | | | | |
|---------------------------------|------------------------|--------------|------------|------------------------|--------------|------------|------------------------|--------------|------------|-----------------------|-------------|------------|
| | 1.1.2015 to 31.12.2015 | | | 1.1.2016 to 31.12.2016 | | | 1.1.2017 to 31.12.2017 | | | 1.1.2018 to 31.7.2018 | | |
| | Filed | Disposed of | Withdrawn | Filed | Disposed of | Withdrawn | Filed | Disposed of | Withdrawn | Filed | Disposed of | Withdrawn |
| Application for leave to appeal | | | | | | | | | | | | |
| - Civil | 56 | 62 | 0 | 68 | 63 | 4 | 47 | 68 | 1 | 34 | 19 | 2 |
| - Criminal | 71 | 70 | 3 | 61 | 68 | 4 | 65 | 57 | 2 | 47 | 40 | 2 |
| (Total) | (127) | (132) | (3) | (129) | (131) | (8) | (112) | (125) | (3) | (81) | (59) | (4) |
| Substantive appeal | | | | | | | | | | | | |
| - Civil | 22 | 19 | 0 | 13 | 15 | 1 | 15 | 18 | 0 | 7 | 8 | 0 |
| - Criminal | 9 | 7 | 0 | 19 | 18 | 0 | 11 | 13 | 0 | 17 | 10 | 0 |
| (Total) | (31) | (26) | (0) | (32) | (33) | (1) | (26) | (31) | (0) | (24) | (18) | (0) |

APPOINTMENT OF THE CHIEF JUDGE OF THE HIGH COURT

INTRODUCTION

Pursuant to Article 90 of the Basic Law of the Hong Kong Special Administrative Region (“HKSAR”), the Government intends to give notice in due course to move a motion to obtain the endorsement of the Legislative Council (“LegCo”) for the appointment of the Honourable Mr. Justice Jeremy POON Shiu-chor (“Mr. Justice Poon”), Justice of Appeal of the Court of Appeal of the High Court, as the Chief Judge of the High Court (“CJHC”). The curriculum vitae of Mr. Justice Poon is at *Appendix*.

Appendix

BACKGROUND

The High Court

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

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

- (a) the CJHC (the president); and
- (b) such Justices of Appeal (“JAs”) as the Chief Executive may appoint.

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

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

5. As at 15 April 2019, there are 13 JAs, 28 CFI Judges, eight recorders and 11 deputy judges of the CFI.

The Office of CJHC

6. The office of CJHC became vacant on 25 October 2018 when the Honourable Mr. Justice Andrew CHEUNG Kui-ning (“Mr. Justice Cheung”), who was the CJHC immediately prior to that date, assumed office as Permanent Judge of the Court of Final Appeal and vacated the office of CJHC on the same date.

7. The Chief Executive has given approval for the Honourable Mr. Justice Wally YEUNG Chun-kuen (“Mr. Justice Yeung”), Vice-President and JA of the CA of the High Court, to act in the office of CJHC to meet essential operational requirements with effect from 25 October 2018 until the CJHC vacancy is substantively filled. Mr. Justice Yeung started acting as the CJHC since 25 October 2018.

Duties, Requirements and Qualifications for the CJHC

Duties

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

Judicial duties

- (a) under section 5(3) of the Ordinance, the CJHC is the president of the CA. The CJHC presides in the CA in the most important appeals. Under sections 5(1) and 4(1) of the Ordinance, the CA and CFI respectively are constituted by judges including the CJHC. Both levels of court have unlimited jurisdiction –
 - (i) the CA hears appeals on civil and criminal matters from the CFI and the District Court, as well as appeals from the Lands Tribunal. It also makes rulings on questions of law referred to it by the lower courts; and
 - (ii) the CFI has unlimited jurisdiction in both civil and criminal matters. In its appellate jurisdiction, the CFI hears appeals from the Magistrates’ Courts and certain Tribunals;

Administrative duties

- (b) as the Court Leader of the High Court, the CJHC has to lead the High Court administratively. The CJHC is responsible for the administration of the High Court and is accountable to the Chief Justice who is the Head of the Judiciary and is charged with the administration of the Judiciary. The CJHC has to ensure the smooth operation of the High Court and the efficient utilisation of judicial resources and court time and to advise the Chief Justice on policies, legislation and practices relating to the High Court; and

Statutory duties

- (c) the CJHC has statutory powers and functions under various Ordinances, including –
 - (i) under section 55 of the Ordinance, the CJHC is the Chairman of the High Court Rules Committee, which has the power to make rules of court regulating and prescribing the procedure and the practice to be followed in the High Court;
 - (ii) under section 9 of the Criminal Procedure Ordinance (Cap. 221), the CJHC is the Chairman of the Criminal Procedure Rules Committee, which has the power to make rules and orders regulating the practice and procedure under the Criminal Procedure Ordinance;
 - (iii) under section 17 of the District Court Ordinance (Cap. 336), the CJHC is the Chairman of the District Court Rules Committee, which has the power to make rules of court regulating and prescribing the procedure and the practice to be followed in the District Court; and
 - (iv) under the Legal Practitioners Ordinance (Cap. 159), the CJHC has the power to admit barristers and solicitors and various powers under the rules made under the Legal Practitioners Ordinance.

Basic Law Requirements

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

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

Professional Qualifications

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

- (a) serving JAs and CFI Judges, and some District Judges and permanent magistrates who meet the requirements as prescribed under section 9(2)(a) or (b) and 9(2)(iv), (iva), (ivb), (ivc), (v), (va), (vb) or (vc) of the Ordinance;
- (b) barristers who have practised as a barrister or solicitor in Hong Kong or any other common law jurisdiction having unlimited jurisdiction either in civil or criminal matters for a period of at least 10 years;
- (c) solicitors who have practised as a solicitor of the High Court for a period of at least 10 years; and
- (d) some public officials with legal experience who meet the requirements as prescribed under section 9(1), 9(1A), 9(2)(a) or (b) and 9(2)(vi), (viii), (ix) or (x), or 9(2A) of the Ordinance.

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

Constitutional and Legal Framework for the Appointment

The Chief Executive

13. Article 48(6) of the Basic Law stipulates that the Chief Executive shall exercise the power and function to appoint judges of the courts at all levels in accordance with legal procedures.

14. Article 88 of the Basic Law stipulates that judges of the courts of the HKSAR shall be appointed by the Chief Executive on the recommendation of an independent commission. The Judicial Officers Recommendation Commission (“JORC”) is the statutory body constituted by the Judicial Officers Recommendation Commission Ordinance (Cap. 92) (“JORC Ordinance”) to perform the functions of the independent commission referred to in Article 88 of the Basic Law.

15. In the case of the appointment of the CJHC, Article 90 of the Basic Law provides that the Chief Executive shall, in addition to following the procedures prescribed in Article 88 of the Basic Law, obtain the endorsement of the LegCo and report such appointment to the Standing Committee of the National People’s Congress for the record.

The JORC

16. Pursuant to Article 88 of the Basic Law and the JORC Ordinance, the JORC is entrusted with the function of making recommendations to the Chief Executive regarding the appointment of judges. The JORC consists of the Chief Justice as the Chairman, the Secretary for Justice (“SJ”) and seven other members appointed by the Chief Executive (two judges, one barrister appointed after consultation with the Bar Council of the Hong Kong Bar Association, one solicitor appointed after consultation with the Council of the Law Society of Hong Kong and three persons not connected with the practice of law). Under section 3(3A) of the JORC Ordinance, a resolution 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

17. Article 73(7) of the Basic Law stipulates that the LegCo shall exercise the power and function to endorse the appointment of the CJHC.

Article 90 of the Basic Law provides that the Chief Executive shall obtain the endorsement of the LegCo for the appointment of the CJHC.

18. Thus, the system of judicial appointment provides for the Chief Executive to make an appointment on the recommendation of an independent commission, viz. the JORC, as laid down in Article 88 of the Basic Law, and to obtain the endorsement of the LegCo for the appointment of the CJHC under Article 90 of the Basic Law.

THE CURRENT APPOINTMENT EXERCISE

The JORC's Recommendation

19. Pursuant to Article 88 of the Basic Law and section 6(a) of the JORC Ordinance, the JORC has recommended the appointment of Mr. Justice Poon as the CJHC. The recommendation has been communicated to the Chief Executive.

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

20. In accordance with Article 88 of the Basic Law, the Chief Executive has accepted the recommendation of the JORC on the appointment of Mr. Justice Poon as the CJHC. Subject to the endorsement of the LegCo pursuant to Article 90 of the Basic Law, the Chief Executive will make the recommended appointment.

The JORC Process

The JORC Meetings

21. The JORC held three meetings during the period from August 2018 to February 2019 to consider the recommendation of a suitable person for appointment as the CJHC.

Quorum

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

Statutory Disclosure

23. The Chief Justice, Mr. Justice Cheung, Permanent Judge of the Court of Final Appeal and Madam Justice Carlye CHU, JA of the CA of the High Court have each signed a general declaration that he/she would not wish to be considered as a candidate for appointment to judicial offices at or below his/her substantive office.

24. Ms. Teresa CHENG, SJ has signed a general declaration that she would not wish to be considered as a candidate for appointment to all judicial offices for as long as she holds the office of SJ.

25. In view of the professional qualifications for the CJHC stipulated in section 9 of the Ordinance (as detailed in paragraph 11 above), three Members of the JORC, namely –

- (a) Madam Justice Carlye CHU, JA of the CA of the High Court;
- (b) Mr. Philip John DYKES, Senior Counsel; and
- (c) Mr. Stephen HUNG, Solicitor,

are or may reasonably be regarded as eligible candidates.

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

The First JORC Meeting

27. At the first meeting, the JORC noted and decided on various matters as described in paragraphs 28 to 32 below.

28. The JORC decided on the procedures for selecting the candidate to be recommended for appointment as the CJHC, which were followed in the selection process as described in paragraphs 29 to 47 below.

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

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

- (a) as the most senior judge of the High Court, the person should be an individual of high integrity, and should be able to command respect both within the Judiciary, the High Court in particular, and outside the Judiciary including the legal profession;
- (b) as the President of the CA of the High Court, the person should possess the professional and judicial qualities of being a highly competent judge, whose judgements will command respect and who has exemplary judicial temperament;
- (c) as the Court Leader of the High Court, the person should have proven ability of or the good potential to be a good administrator. This includes the possession of good leadership qualities, effective communication skills and good interpersonal skills, being able to get on and work with the judges and staff; and
- (d) preferably, the person should have the knowledge, experience and understanding as a judge of the High Court of how the High Court is administered and how the judges function.

31. In accordance with the agreed procedures, the JORC also decided on the method of compiling the long list of candidates, having regard to the professional qualifications requirements for appointment but leaving aside the nationality requirement. Having regard to the size of the pool of potentially qualified candidates, and the duties and qualities required for the CJHC post, the JORC decided that the long list should be compiled to include only the following categories of candidates –

- (a) Judges –
 - (i) Serving JAs; and
 - (ii) Serving CFI Judges;

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

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

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

After the First JORC Meeting

33. After the first meeting, in accordance with the agreed procedures, the long list was compiled and circulated to JORC members and consultations were carried out as described in paragraphs 34 to 38 below.

Compilation of the Long List

34. In accordance with the method of compiling the long list of candidates as decided by the JORC (please see paragraph 31 above), the long list was compiled. It comprised a total of 179 names.

35. In accordance with the agreed procedures, the Secretary of the JORC circulated the long list to JORC members before the second JORC

meeting, informing them that they were at liberty to add names of eligible persons to the long list.

Consultations Carried Out

36. The Chief Justice conducted consultations with all High Court Judges and Court Leaders on the CJHC appointment.

37. The SJ consulted some senior officers in the DoJ.

38. The two professional Members conducted consultations with barristers and solicitors respectively as they considered appropriate.

The Second JORC Meeting

39. At the second meeting, the JORC considered the long list and arrived at a short list of persons as described in paragraphs 40 to 42 below.

40. The JORC noted that the long list circulated to JORC members had 179 names; and no name had been added by JORC members to the long list. Excluding the four JORC members on the long list who have made the declaration (see paragraphs 24 and 25 above), the number of persons on the long list is 175.

41. JORC members were informed that Madam Justice Maria Candace YUEN, JA of the CA of the High Court, who is one of the persons on the long list of candidates to be considered, is the spouse of the Chief Justice.

42. In accordance with the agreed procedures, the JORC went through the long list of persons and agreed that two persons should be placed on the short list (not in any order of priority) for further consideration, having regard to the appointment criteria (please see paragraph 30 above) and with the benefit of inputs from the Chief Justice, the SJ and the two professional Members in the light of the consultations they had conducted. All two persons placed on the short list are serving judges.

After the Second JORC Meeting

43. After the second meeting, in accordance with the agreed procedures, the Chief Justice ascertained from each of the two persons on the short list whether (a) the person is willing to serve as the CJHC; and (b) the

person complies or is able and willing to comply with the nationality eligibility requirement in Article 90 of the Basic Law (i.e. Chinese citizen who is a permanent resident with no right of abode in any foreign country) if appointed.

The Third JORC Meeting

44. At the third meeting, the JORC noted matters as described in paragraph 45 and, after detailed consideration, decided on the person to be recommended for appointment as the CJHC as described in paragraphs 46 to 47 below.

45. The Chief Justice informed JORC members that of the two persons on the short list, only Mr. Justice Poon, JA, is willing to serve and has stated that he is able and willing to comply with the nationality eligibility requirement if appointed.

46. In accordance with the agreed procedures, the JORC gave detailed consideration to the suitability of Mr. Justice Poon by reference to the appointment criteria (paragraph 30 above).

47. After discussion, the JORC decided to recommend to the Chief Executive the appointment of Mr. Justice Poon, JA of the CA of the High Court, as the CJHC. In putting forward the recommendation, the JORC considered Mr. Justice Poon the most suitable candidate having regard to the appointment criteria –

- (a) he is certainly a judge of high integrity and should be able to command respect within the Judiciary and from the legal profession;
- (b) he is a highly competent judge with exemplary judiciary temperament. He is experienced in both civil and criminal appeals. He has written many important judgments on major and high profile cases. His judgments have commanded respect from the legal professionals;
- (c) he has rich administrative experience and is highly commended by other High Court judges; and
- (d) he has a comprehensive and good understanding of the Judiciary.

The Chief Executive's Acceptance of the Recommendation

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

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

ENDORSEMENT OF THE LEGISLATIVE COUNCIL

50. Subject to the endorsement of the 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
May 2019

Mr. Justice Jeremy POON Shiu-chor
Justice of Appeal of the Court of Appeal of the High Court

1. Personal Background

Mr. Justice Jeremy POON Shiu-chor (“Mr. Justice Poon”) was born in Hong Kong in February 1962 (now 57). He is married and has two children.

2. Education

Mr. Justice Poon was educated in Hong Kong and in the United Kingdom. He obtained a Bachelor of Laws degree and a Postgraduate Certificate in Laws both from the University of Hong Kong in 1985 and 1986 respectively. He further acquired a Master of Laws degree from University of London in 1987.

3. Legal Experience

Mr. Justice Poon was called to the Hong Kong Bar in 1986.

4. Judicial Experience

Mr. Justice Poon was in private practice before joining the Judiciary as Magistrate in 1993. He was appointed Deputy Registrar, High Court in 1999 and Judge of the Court of First Instance of the High Court in 2006. He was appointed Justice of Appeal of the Court of Appeal of the High Court in 2015.

Between 2011 and 2015, Mr. Justice Poon was the Civil Listing Judge, and the Judge in charge of the Probate List, the Family Law List and the Mental Health List in the Court of First Instance.

In the Court of Appeal, Mr. Justice Poon hears civil, criminal and public law appeals.

5. Services and Activities related to the Legal Field

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| Between 2000 and 2004 | Secretary, Chief Justice's Working Party on Civil Justice Reform |
| Between 2012 and 2015 | Chairman, Chief Justice's Working Party on Family Procedure Rules, recommending the introduction of a unified procedure code for all family and matrimonial proceedings |
| Since 2012 | Member, Civil Court Users' Committee |
| 2013 | In his capacity as the Probate Judge, Mr. Justice Poon oversaw the preparation and publication of the Guide to Non-Contentious Probate Practice |
| Since 2013 | Member, Working Group on Integrated Court Case Management System under the Committee on Information Technology |
| Since 2014 | Member, Working Group on Family Arbitration |
| Between 2015 and 2017 | Chairman, Working Party on Review of Solicitors' Hourly Rates for Party and Party Taxation |
| Since 2015 | Chairman, Implementation Committee for the Review of Family Procedure Rules |
| Since 2015 | Member, Civil Justice Reform Monitoring Committee |
| 2016 and 2017 | Overseeing the review of practice and procedure for criminal trials and magistracy appeals in the Court of First Instance of the High Court and its implementation |

