

**立法會**  
**Legislative Council**

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From : Clerk to the Legislative Council

To : All Members of the Legislative Council

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**Council meeting of 9 December 2020**

**Proposed resolution under Article 73(7) of the Basic Law and  
section 7A of the Hong Kong Court of Final Appeal Ordinance (Cap. 484)  
on appointment of a judge from another common law jurisdiction of  
the Court of Final Appeal**

The Chief Secretary for Administration will move the above proposed resolution (**Appendix 1**) at the above meeting. The President has directed that the proposed resolution be printed in the terms in which it was handed in on the Agenda of the Council.

2. The speech which the Chief Secretary for Administration will deliver when moving the proposed resolution is in **Appendix 2**.

(Dora WAI)  
for Clerk to the Legislative Council

Encls.

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

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**Resolution**

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

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**Resolved** that the appointment of the Right Honourable Lord Patrick Hodge  
as a judge of the Hong Kong Court of Final Appeal from another common  
law jurisdiction pursuant to section 9 of the Hong Kong Court of Final  
Appeal Ordinance (Cap. 484) be endorsed.

(Translation)

**Speech by the Chief Secretary for Administration  
at the meeting of the Legislative Council on 9 December 2020**

**Resolution under Article 73(7) of the Basic Law and  
Section 7A of the Hong Kong Court of Final Appeal Ordinance  
(Cap. 484)**

**Appointment of a non-permanent judge from another common law  
jurisdiction of the Court of Final Appeal**

Mr President,

I move that the motion under my name, as printed in the Agenda, be passed, that is, this Council endorses the appointment of the Right Honourable Lord Patrick Hodge (Lord Hodge) as a non-permanent judge from another common law jurisdiction (CLNPJ) of the Court of Final Appeal (CFA).

**Constitutional and statutory framework**

2. The CFA is the final appellate court in Hong Kong, hearing both civil and criminal appeals. It consists of the Chief Justice (CJ) and the permanent judges. Non-permanent judges may be invited to sit and they may come from Hong Kong or other common law jurisdictions. When hearing and determining appeals, the CFA is constituted by five judges, comprising the CJ, three permanent judges, and one non-permanent Hong Kong judge (HKNPJ) or one CLNPJ. The total number of non-permanent judges shall not at any one time exceed 30.

3. Article 88 of the Basic Law provides that judges of the courts of the Hong Kong Special Administrative Region (HKSAR) shall be appointed by the Chief Executive on the recommendation of an independent commission composed of local judges, persons from the legal profession and eminent persons from other sectors. The Judicial Officers Recommendation Commission (JORC) is the statutory body constituted by the Judicial Officers Recommendation Commission Ordinance (Cap. 92) to perform the functions of the independent

commission referred to in Article 88 of the Basic Law. Pursuant to Article 92 of the Basic Law, 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.

4. In the case of the appointment of judges of the CFA, Article 90 of the Basic Law provides that the Chief Executive shall, in addition to following the procedures prescribed in Article 88 of the Basic Law, obtain the endorsement of the Legislative Council (LegCo) and report such appointment to the Standing Committee of the National People's Congress for the record.

#### The current appointment

5. At present, the CFA has 17 non-permanent judges, comprising four HKNPJs and 13 CLNPJs. A CLNPJ is normally required to come to Hong Kong for a period of four weeks each time. The JORC has noted that the availability of these CLNPJs to come to Hong Kong for four weeks to sit on the CFA is somewhat limited. All of them have extensive professional commitments, including judicial duties, arbitration, mediation and lecturing work, as well as personal and family commitments. 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. In order to give greater flexibility for dealing with the heavy caseload of the CFA and to ensure its effective operation, there is a need to increase the number of CLNPJs.

6. Since 1 July 1997, the CFA has invited a CLNPJ to sit on the Court to hear and determine almost all of the substantive appeals, save for very few exceptions. The presence of these esteemed non-permanent judges manifests the judicial independence of Hong Kong, helps maintain a high degree of confidence in our legal system, and allows Hong Kong to maintain strong links with other common law jurisdictions.

7. The JORC has recommended the appointment of Lord Hodge as a CLNPJ for a term of three years. Lord Hodge was appointed as a Justice of the Supreme Court of the United Kingdom in October 2013.

Since February 2020, he has been serving as the Deputy President of the Supreme Court of the United Kingdom. He is a judge of eminent standing and reputation and his appointment will be a great asset to the CFA. With the appointment of Lord Hodge, the panel of CLNPJs will consist of 14 eminent judges from overseas.

8. The Chief Executive has accepted the recommendation of the JORC on the appointment of Lord Hodge as a CLNPJ. Subject to the endorsement of this Council, the appointment shall take effect in January 2021 for a term of three years.

9. In accordance with the procedures previously endorsed by the House Committee of LegCo, the Government informed the House Committee on 5 October 2020 that the Chief Executive had accepted the recommendation of the JORC on this appointment. Representatives from the Government and the Secretary to the JORC attended the meeting of the Subcommittee on Proposed Senior Judicial Appointment on 28 October 2020 and answered Members' questions. I would like to thank Dr Honourable Priscilla Leung Mei-fun, Chairman of the Subcommittee, and other Members of the Subcommittee for their support of the proposed appointment.

10. I invite Members to endorse the appointment.