

Subcommittee on Proposed Senior Judicial Appointment
List of follow-up actions arising from the discussion
at the meeting on 28 October 2020

- (a) **A selection of judgments given by Right Honourable Lord Patrick Hodge**

Tax Law

1	<i>Cotter v Commissioners for Her Majesty's Revenue & Customs</i> [2013] UKSC 69 https://www.supremecourt.uk/cases/docs/uksc-2012-0062-judgment.pdf
2	<i>Shop Direct Group v Commissioners for Her Majesty's Revenue and Customs</i> [2016] UKSC 7 https://www.supremecourt.uk/cases/docs/uksc-2014-0110-judgment.pdf
3	<i>RFC 2012 Plc (in liquidation) (formerly The Rangers Football Club Plc) v Advocate General for Scotland (Scotland)</i> [2017] UKSC 45 https://www.supremecourt.uk/cases/docs/uksc-2016-0073-judgment.pdf
4	<i>Project Blue Limited v Commissioners for Her Majesty's Revenue and Customs</i> [2018] UKSC 30 https://www.supremecourt.uk/cases/docs/uksc-2016-0137-judgment.pdf
5	<i>Commissioners for Her Majesty's Revenue and Customs v Frank A Smart & Son Ltd (Scotland)</i> [2019] UKSC 39 https://www.supremecourt.uk/cases/docs/uksc-2018-0073-judgment.pdf

Intellectual Property

6	<i>Actavis Group PTC EHF and others v ICOS Corporation and another</i> [2019] UKSC 15 https://www.supremecourt.uk/cases/docs/uksc-2017-0214-judgment.pdf
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Public Law

7	<i>R (ZH and CN) v London Borough of Newham and London Borough of Lewisham</i> [2014] UKSC 62 https://www.supremecourt.uk/cases/docs/uksc-2013-0194-judgment.pdf
8	<i>Moohan and another v The Lord Advocate</i> [2014] UKSC 67 https://www.supremecourt.uk/cases/docs/uksc-2014-0183-judgment.pdf
9	<i>Edenred (UK Group) Limited and another v Her Majesty's Treasury and others</i> [2015] UKSC 45 https://www.supremecourt.uk/cases/docs/uksc-2015-0080-judgment.pdf
10	<i>Trump International Golf Club Scotland Limited and another v The Scottish Ministers (Scotland)</i> [2015] UKSC 74 https://www.supremecourt.uk/cases/docs/uksc-2015-0160-judgment.pdf
11	<i>Aberdeen City and Shire Strategic Development Planning Authority v Elsick Development Company Limited (Scotland)</i> [2017] UKSC 66 https://www.supremecourt.uk/cases/docs/uksc-2016-0157-judgment.pdf

General Commercial Law

12	<i>Wood v Capita Insurance Services Limited</i> [2017] UKSC 24 https://www.supremecourt.uk/cases/docs/uksc-2015-0212-judgment.pdf
13	<i>Barnardo's v Buckinghamshire and others</i> [2018] UKSC 55 https://www.supremecourt.uk/cases/docs/uksc-2016-0210-judgment.pdf
14	<i>R&S Pilling t/a Phoenix Engineering v UK Insurance Ltd</i> [2019] UKSC 16 https://www.supremecourt.uk/cases/docs/uksc-2017-0096-judgment.pdf
15	<i>MacDonald and another v Carnbroe Estates Ltd (Scotland)</i> [2019] UKSC 57 https://www.supremecourt.uk/cases/docs/uksc-2018-0092-judgment.pdf

- (b) An update on the Right Honourable Lord Patrick Hodge's willingness to accept the appointment as a non-permanent judge from another common law jurisdiction of the Court of Final Appeal ("CLNPJ")**

The Judiciary has recently confirmed with Lord Hodge that he is willing to accept the appointment as a CLNPJ.

- (c) A detailed breakdown on the types of cases that may be heard by CLNPJs**

CLNPJs have been hearing all types of appeals, including both criminal and civil appeals.

- (d) Whether CLNPJs will be designated to hear cases concerning offence endangering national security and, if so, whether a list of such designated CLNPJs is available**

According to Article 44 of the Law of the People's Republic of China on Safeguarding National Security in the HKSAR, the Chief Executive shall designate a number of judges from the magistrates, the judges of the District Court, the judges of the Court of First Instance and the Court of Appeal of the High Court, and the judges of the Court of Final Appeal, and may also designate a number of judges from deputy judges or recorders, to handle cases concerning offence endangering national security. Before making such designation, the Chief Executive may consult the Committee for Safeguarding National Security of the HKSAR (the National Security Committee) and the Chief Justice of the Court of Final Appeal (CJ).

The Chief Executive is the authority to designate judges and may consult the National Security Committee and the CJ. In designating the first batch of magistrates on 3 July 2020, the Chief Executive has consulted both. The Chief Executive will proceed to designate judges of other courts as appropriate, and in that context will consider the publication of the designations.

(e) Statistics on CLNPs' caseloads in the Court of Final Appeal

During the past five years from 2015 to 2019, 148 substantive appeal cases were disposed of in the Court of Final Appeal (CFA) (including 4 cases dealt with without hearing and 1 case withdrawn), and CLNPs sat in all of the 148 cases heard.

(f) Response to the issues raised in the letter to the Subcommittee dated 28 October 2020 from Dr Hon Junius HO regarding the proposed senior judicial appointment

As stipulated under 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. In making recommendations on judicial appointments, it is important to maintain the highest standards in the Judiciary.

At present, there are 13 serving CLNPs, nine are from the United Kingdom, three are from Australia and one is from Canada. All CLNPs are judges or retired judges of the most eminent standing with profound judicial experience who enjoy the highest professional status and reputation, with good track records of judicial services in their respective jurisdictions, all of which are common law jurisdictions with whose legal systems Hong Kong has the closest connection, including the serving President of the Supreme Court of the United Kingdom.

Of all the other common law jurisdictions, Hong Kong's legal system has the closest affinity to that of the United Kingdom, Australia and New Zealand. Canada is also a common law jurisdiction with which Hong Kong shares many common legal approaches, particularly in the areas of equity, commercial law and criminal law. The legal systems in other common law jurisdictions such as Singapore and Malaysia have relatively greater differences from that of Hong Kong. Nevertheless, judges from all the above common law jurisdictions will be considered if candidates with suitable judicial and professional qualities are identified in such jurisdictions.

Under section 16(1) of the Hong Kong CFA Ordinance (Cap. 484), when hearing and determining appeals, the CFA is constituted by five judges, viz. the CJ, three permanent judges and one Hong Kong non-permanent judge or one CLNP selected by the CJ and invited by the

Court. This is in line with Article 82 of the Basic Law which prescribes that the CFA may as required invite judges from other common law jurisdictions to sit on the Court of Final Appeal. There is hence no question of replacing CLNPJ with permanent judges.

There is presently one panel to hear appeals. As the workload of the CFA has been quite stable over the past few years, with a sufficient number of non-permanent judges and flexibility in their deployment, the CJ takes the view that there should not be any undue difficulty in coping with the CFA caseload with one panel for the time being. There is no imminent need for increasing the number of permanent judges.