

LC: Opening remarks by CS for proposed resolution under Basic Law and Court of Final Appeal Ordinance

Following is the opening remarks (translated from Chinese) made by the Chief Secretary for Administration, Mr Matthew Cheung Kin-chung, for the proposed resolution under Article 73(7) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and section 7A of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) in the Legislative Council today (December 4):

Mr President,

I move that the first motion under my name, as printed in the Agenda, be passed, that this Council endorses the appointment of the Right Honourable Lord Jonathan Sumption (Lord Sumption) as a non-permanent judge from another common law jurisdiction (CLNPJ) of the Court of Final Appeal (CFA). I will subsequently move that the second motion under my name, as printed in the Agenda, be passed, that this Council endorses the appointment of the Honourable Mr Justice Jeremy Poon Shiu-chor (Mr Justice Poon) as the Chief Judge of the High Court (CJHC).

Constitutional and statutory framework

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 (PJs). 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 PJs, and one non-permanent Hong Kong judge (HKNPJ) or one CLNPJ. Since July 1, 1997, apart from very few exceptions, one of the judges has invariably been drawn from the list of CLNPJs to hear a substantive appeal on the CFA.

CJHC is the President of the Court of Appeal and the Court Leader of the High Court. CJHC presides in the Court of Appeal in the most important appeals. As the Court Leader of the High Court, CJHC has to lead the High Court administratively and is accountable to the Chief Justice who is the Head of the Judiciary and is charged with the administration of the Judiciary.

Pursuant to Article 88 of the Basic Law and the Judicial Officers Recommendation Commission Ordinance (Cap. 92), judges of the courts of the Hong Kong Special Administrative Region (HKSAR) shall be appointed by the Chief Executive on the recommendation of the Judicial Officers Recommendation Commission (JORC). 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. In

addition, Article 90 of the Basic Law provides that CJHC shall be a Chinese citizen who is a permanent resident of the HKSAR with no right of abode in any foreign country; and the Chief Executive shall obtain the endorsement of the Legislative Council (LegCo) in the case of the appointment of judges of the CFA and CJHC.

The current appointments

Non-permanent Judge of the Court of Final Appeal

At present, the CFA has 18 non-permanent judges, comprising four HKNPJs and 14 CLNPJs. A CLNPJ is normally required to come to Hong Kong for a period of four weeks each time. The JORC noted that the availability of the 14 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.

The JORC has recommended the appointment of Lord Sumption as a CLNPJ for a term of three years. 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. With the appointment of Lord Sumption, the panel of CLNPJs will consist of 15 eminent judges from the United Kingdom, Australia and Canada. The presence of these non-permanent judges manifests the judicial independence and international status of Hong Kong.

Chief Judge of the High Court

Mr President, The office of CJHC became vacant on October 25, 2018 when the Honourable Mr Justice Andrew Cheung Kui-nung, who was the CJHC immediately prior to that date, assumed office as PJ of the CFA and vacated the office of CJHC on the same date. To meet essential operational needs, the Honourable Mr Justice Wally Yeung Chun-kuen, Vice-President and Justice of Appeal of the Court of Appeal of the High Court, acted in the office of CJHC for the period from October 25, 2018 to July 31, 2019. With effect from August 1, 2019, Mr Justice Poon, Justice of Appeal of the Court of Appeal of the High Court, has been acting in the office of CJHC until the CJHC vacancy is substantively filled.

The JORC has recommended the appointment of Mr Justice Poon as CJHC. Mr Justice Poon joined the Judiciary as Magistrate in 1993. He was appointed as Deputy Registrar of the High Court in 1999, Judge of the Court of First Instance of the High Court in 2006, and Justice of Appeal of the Court of Appeal of the High Court in 2015.

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. We are confident that Mr Justice Poon, if appointed, will discharge his duties as the Court Leader of the High Court with distinction.

The Chief Executive has accepted the recommendations of the JORC on the appointment of Lord Sumption as a CLNPJ and the appointment of Mr Justice Poon as CJHC. Subject to the endorsement of this Council, the two appointments shall take effect in December 2019.

In accordance with the procedures previously endorsed by the House Committee of LegCo, the Government informed the House Committee on May 22, 2019 that the Chief Executive had accepted the recommendations of the JORC on the two appointments. Representatives from the Government and the Secretary to the JORC attended the meeting of the Subcommittee on Proposed Senior Judicial Appointments on June 11, 2019 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 scrutinising and supporting the two appointments.

Mr President, I invite Members to endorse the two appointments. Thank you.