

LC: Opening remarks by CS for proposed resolution under Basic Law and Hong Kong 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 9):

Mr President,

I move that the motion under my name, as printed on 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

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.

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.

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

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.

Since July 1, 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.

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.

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.

In accordance with the procedures previously endorsed by the House Committee of LegCo, the Government informed the House Committee on October 5, 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 October 28, 2020 and answered Members' questions. I would like to express my heartfelt gratitude to Dr Honourable Priscilla Leung Mei-fun, Chairman of the Subcommittee, and other Members of the Subcommittee for their support of the proposed appointment.

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