

Statement by Chief Justice of Court of Final Appeal

The following is issued on behalf of the Judiciary:

On June 30, 2020, the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region ("National Security Law") was passed to take effect in Hong Kong.

Under Article 44, the Chief Executive shall designate judges at each level of court to handle cases and appeals in relation to the National Security Law. As stated in the Government booklet on the National Security Law issued on July 1, 2020, judges are to be designated by the Chief Executive after consultation with the Chief Justice of the Court of Final Appeal. As far as the Judiciary is concerned, Chief Justice Geoffrey Ma would like to state some general principles regarding the designation of judges and the operation of the courts in handling cases under the National Security Law. It is inappropriate to comment on other aspects of the Law.

1. It is important to bear in mind that as far as the designation of judges and the operation of the courts are concerned, these two aspects must be subject to the requirements of the Basic Law. Accordingly, for example, designated judges can only comprise judges (this term to include judicial officers) who have been appointed pursuant to the requirements of the Basic Law. All designated judges therefore will come from the existing ranks of the Judiciary. This is prescribed under Article 44 of the National Security Law. Appointments of judges under Article 88 of the Basic Law are made by the Chief Executive on the recommendation of the Judicial Officers Recommendation Commission, which is chaired by the Chief Justice. This has always been the position in Hong Kong.
2. Another relevant provision of the Basic Law is Article 92. As the Chief Executive has recently made clear, designated judges, like all judges, are to be appointed on the basis of their judicial and professional qualities. These are the only criteria relevant to the appointment of judges. This therefore means, for example, that judges should not be designated on the basis of any political considerations. This reinforces the principle that in the handling or determination of any legal dispute, only the law and legal principle will be considered.
3. Judges of foreign nationality are not excluded. They are expressly permitted to be appointed as judges in Hong Kong under the Basic Law. Such judges include the Non-Permanent Judges of the Court of Final Appeal from common law jurisdictions, whose immense contribution to Hong Kong has repeatedly been acknowledged by the Chief Executive.
4. Article 44 of the National Security Law refers to the designation of a number of judges. This is not automatically to suggest the unsuitability of

the other judges in the Judiciary. In considering the suitability of judges to be designated, any legal objections will have to be taken into account, such as those set out in Article 44 or any objections based on bias or reasonable perceptions of bias or other legal objections. It is intended that once the term of designated judges comes to an end, other suitable judges may be designated. This will in particular apply as far as the Non-Permanent Judges of the Court of Final Appeal from common law jurisdictions are concerned.

5. The listing and handling of cases, the assignment of which judge or judges are to handle cases or appeals will be determined by the court leader of the relevant level of court. These are matters within the sole responsibility of the Judiciary.

The independence of the Judiciary and the rule of law are cornerstones of the Hong Kong community, and they are guaranteed under the Basic Law. It remains the mission and the constitutional duty of the Hong Kong Judiciary to maintain and protect them.