

# Appeal court judges have proven ability in complex cases

By Debbie Annells

THE names of the judges who will sit on the new Court of Final Appeal were announced two weeks ago.

As readers may already know, this will replace the Privy Council in Britain as the ultimate appeal court for cases in Hong Kong.

Exactly who would be sitting on the Court of Final Appeal was the subject of much discussion and controversy.

In fact, the three judges who have finally been named, Justice Charles Ching, Justice Kemal Bokhary and Justice Henry Litton are all highly regarded.

They were all born in Hong Kong and can speak Cantonese.

These three judges appear to be a successful choice.

The Chief Judge of the High Court, Mr Patrick Chan will not be sitting on the Court of Final Appeal; but it is possible that in due course additional judges may be named to sit on the new court.

Speaking from the tax practitioners' point of view, the choice of these judges for the Court Final Appeal is very important.

The whole tax collection process involves that ability

## Tax Notes

of the taxpayers to appeal against tax assessments raised.

In the first instance, Hong Kong taxpayers can appeal to the Board of Review and then if matters need to proceed, on a point of law, this can then be taken to the High Court, and then finally to the Court of Final Appeal.

This process has to be in place to ensure quality and equity in the tax system.

Indeed one of the reasons why the system for collecting taxation on the mainland does not work



smoothly at present is that there is no suitable appeal process or system of courts or tribunals through which the taxpayer can get a fair hearing.

The choice of, in particular Mr Justice Bokhary and Mr Justice Litton is interesting, as both sat on the Court of Appeal in the recent and important Magna Industrial tax case.

Regular readers, will know that this important case dealt with the treatment of profits as onshore/offshore in Hong Kong; a vital element of the success in Hong Kong being the ability to make an offshore claim.

Their understanding of the tax position was key to a good decision in that particular case.

There has been discussion that we should have a dedicated tax bar and tax judiciary; but the size of Hong Kong means it is not possible to achieve critical mass in this area.

Therefore in reality we could only have a judiciary that is competent in tax matters as well as other matters.

We appear to have been successful in the choice of judges for the new Court of Final Appeal and everyone is to be congratulated on this.

— Debbie Annells is director of international tax services at Grant Thornton

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