

**立法會**  
***Legislative Council***

LC Paper No. LS 110/00-01

**Paper for the House Committee Meeting  
of the Legislative Council  
on 15 June 2001**

**Legal Service Division Report on  
Hong Kong Court of Final Appeal (Amendment) Bill 2001**

**Object(s) of the Bill**

To amend the Hong Kong Court of Final Appeal Ordinance (Cap. 484) ("the Ordinance") to provide for an appeal mechanism, commonly known as the "leapfrog appeal", whereby civil appeals may be brought directly from the Court of First Instance to the Court of Final Appeal.

**LegCo Brief Reference**

2. CSO/ADM CR 10/4/3222/85(01) issued by the Administration Wing, Chief Secretary for Administration's Office in May 2001.

**Date of First Reading**

3. 13 June 2001.

**Comments**

4. Under Clause 4 of the Bill, an appeal may lie to the Court of Final Appeal (CFA) at the discretion of the Court of First Instance (CFI) and the CFA from any judgment of CFI in any civil cause or matter. An appeal would be admitted if a certificate has been issued by the trial judge of CFI and leave to appeal is granted by CFA.

**Certificate by trial judge**

5. The trial judge may, on application, grant a certificate if he is satisfied :-

- (a) that a point of law of great general or public importance is involved in his decision in the proceedings and that -
  - (i) it relates wholly or mainly to the construction of an Ordinance or subsidiary legislation, and has been fully argued in the proceedings and fully considered in the judgment of the judge in the proceedings; or
  - (ii) it is one in respect of which the judge is bound by a decision of the Court of Appeal (CA) or CFA in previous proceedings, and was fully considered in the judgments given by CA or CFA in those previous proceedings; or
  - (iii) if it relates wholly or mainly to the construction of the Basic Law, such point of law is one in respect of which the judge is bound by a decision of the Court of Appeal (CA) or CFA in previous proceedings, and was fully considered in the judgments given by CA or CFA in those previous proceedings;
- (b) a sufficient case for appeal has been made out; and
- (c) all parties to the proceedings consent to the grant of the certificate.

6. An application for the certificate shall be made immediately after the trial judge gives judgment in the proceedings. However, the judge may in any particular case entertain such application within 14 days after the judgment is given or within such other period as may be prescribed by rules of court. The decision of the judge is final.

Leave to appeal

7. Within 28 days from the date on which the certificate is granted, or such extended time as may be allowed, an application for leave to appeal may be made to the Appeal Committee of CFA. The Appeal Committee may determine the application without a hearing. If it appears to the Committee that it is expedient to grant leave, it may do so and may impose such conditions as it considers necessary.

Cases excluded

8. No appeal shall lie under the new section 27B :

- (a) where by virtue of any enactment, no appeal would lie from the decision of the judge of CFI or from the decision of the Court of Appeal;

- (b) unless it appears to the judge that it would be a proper case for granting leave to appeal where by virtue of any enactment no appeal would lie except with leave;
- (c) where the decision of the judge or order is made in the exercise of jurisdiction to punish for contempt of court.

9. If the Bill is passed, it would come into operation on a day to be appointed by the Chief Justice by notice in the Gazette. It would not apply to any judgment of CFI given before the commencement of the proposed amendments.

### **Public Consultation**

10. According to the Brief, the Law Society of Hong Kong and the Hong Kong Bar Association have been consulted and supported the Bill.

### **Consultation with the LegCo Panel**

11. An information paper has been circulated to Members of the LegCo Panel on Administration of Justice and Legal Services in May 2001. The proposed amendments were discussed by Panel Members of the last Term and an extract of minutes of the Panel meeting on 18 April 2000 is at the **Annex**.

### **Conclusion**

12. The Legal Service Division is seeking clarification from the Administration on certain technical issues. A further report will be issued.

Encl

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14 June 2001

**立法會  
Legislative Council**

LC Paper No. CB(2)1956/99-00

(These minutes have been  
seen by the Administration)

Ref : CB2/PL/AJLS

**Legislative Council  
Panel on Administration of Justice and Legal Services**

**Minutes of meeting  
held on Tuesday, 18 April 2000 at 4:30 pm  
in Conference Room A of the Legislative Council Building**

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**V. "Leapfrog" appeals to the Court of Final Appeal**

(LC Paper No. CB(2)1969/98-99(05) - Submission dated 7 May 1999 from the Law Society of Hong Kong (issued for the meeting on 15 June 1999)  
(LC Paper No. CB(2)1698/99-00(04))

24. The Chairman said that during the passage of the Court of Final Appeal Ordinance (Cap. 484) in 1995, the proposal of introducing a leapfrog procedure by which civil appeals could, in certain cases, bypass the Court of Appeal and go direct to the CFA was proposed by the Bar Association. The Administration did not agree with the Bar Association's proposal. Its preference was to allow the CFA to operate, at least initially, according to the system which prevailed in respect of the Privy Council. The Administration agreed, however, that the possibility of introducing a leapfrog procedure could be revisited after the CFA had been established for a number of years and its reputation established. At the Panel meeting on 15 June 1999, the Administration agreed to review the proposal and had now prepared a paper which set out its provisional views for members' consideration.

25. Referring to the paragraph 33 of the Administration's paper which detailed the leapfrog procedure proposed by the Administration, SG(Ag) said that the Administration's proposal was similar to that proposed by the Bar Association and the Law Society, which in effect broadly followed the United Kingdom (UK)'s leapfrog procedure under sections 12 and 13 of the Administration of Justice Act 1969. SG(Ag) however proposed that questions of the interpretation of the Basic Law would

be excluded from the leapfrog procedure, except where the Court of Appeal was bound either by its own decision or a decision of the CFA. SG(Ag) further said that in coming up with the leapfrog procedure proposal, research had been undertaken to see if other jurisdictions, i.e. Australia, Malaysia, New Zealand, Singapore, South Africa and Canada, had comparable leapfrog procedures. The findings showed that although Canada was the only other jurisdiction having a formal leapfrog procedure, its procedure was rather widely drafted and infrequently used. As such, the Administration concluded that the Canadian leapfrog procedure was not a good model and had therefore chosen the tighter approach of the UK system.

26. In reply to the Chairman's enquiry about the advantages and disadvantages of a leapfrog procedure, SG(Ag) referred members to paragraphs 8 and 9 of the paper which set out the detailed arguments for and against a leapfrog procedure. In essence, SG(Ag) said that the advantages were that the parties were spared the need of first appealing to the Court of Appeal by going straight to the CFA thereby saving time and costs. On the other side, there were concerns that the CFA should not be deprived of the expository judgments of the Court of Appeal. Also, it was in practice not easy to identify at first instance the cases which were suitable to go straight to the CFA or the points which required to be argued there. As such, the approach that was adopted in the UK was only to allow leapfrogging in restricted circumstances, namely, it should firstly be a civil case, and secondly the issue either had to be related to a matter of statutory interpretation which by definition involved a very confined issue or to a point of law which had been the subject of a previous decision of the Court of Appeal or the House of Lords.

27. The Chairman further asked whether the Administration had sought the views of the Judiciary on the leapfrog procedure. SG(Ag) replied that the Judiciary had no objection to the introduction of a leapfrog procedure with the same requirements as applied in the UK, adapted as appropriate to Hong Kong, including the requirements that leave be obtained from the Appeal Committee of the CFA. The procedure would not apply to District Court cases or other cases where appeals went to the Court of Appeal. SG(Ag) however pointed out that the Judiciary had expressed the view that questions concerning the interpretation of the Basic Law should be excluded from the leapfrog procedure for the time being, given that the Basic Law was the constitution under the new order and the jurisprudence had to be developed.

28. Deputy Judiciary Administrator (Development) (DJA(D)) said that the Judiciary was generally agreeable to the proposed leapfrog procedure, save for a minor modification to paragraph 33(6) of the paper by replacing the word "will" in "which will determine without a hearing" with "may" so as not to restrict the discretion of the Appeal Committee of the CFA as to whether a hearing should be ordered or not. DJA(D) said that the Administration was agreeable to this amendment proposed by the Judiciary.

29. The Chairman agreed that a point of law relating to the Basic Law might only leapfrog if, in respect of it, the trial judge was bound by a decision of the Court of Appeal or the CFA and it had been fully considered in the judgments given by the Court of Appeal or the CFA. She however pointed out that the LAU Kong-yung case was heard by the CFA without first being considered by the Court of Appeal. SG(Ag) expressed the view that this case was not concerned with leapfrogging, since the Court of Appeal had heard the case before it went to the CFA.

30. Mr Martin LEE expressed support for the proposed leapfrog procedure as set out in paragraph 33 of the Administration's paper to avoid abuse of the system. He however was of the view that where a quick resolution was needed to restore public order, such as a strike, consideration could be given to allowing the case to go straight to the CFA for a ruling if all parties to the proceedings agreed to leapfrog.

31. Mr LEE further said that if at the outset the cases which were suitable to go to the CFA and the points which were required to be argued there could be identified, the judges who would preside at the trial should be told of such situation at the pre-trial review stage. Mr LEE pointed out that there were two advantages for doing so. Apart from the fact that the judges would not decide the cases on another point of law, the counsels would be encouraged to have full arguments in the proceedings thereby satisfying one of the conditions for a leapfrog appeal to the CFA as set out in the first half of paragraph 33(3) of the Administration's paper which stated that the point of law must have been fully argued in the proceedings and fully considered in the judgment of the trial judge in the proceedings.

32. SG(Ag) agreed to consider Mr LEE's suggestions. He further said that prior to the introduction of the leapfrog procedure, the Administration would consult the Bar Association, the Law Society and the Panel on the implementational details of the leapfrog procedure.

33. Mrs Miriam LAU said that the suggestion made by Mr Martin LEE in paragraph 30 above warranted consultation with the Bar Association and the Law Society, as it would invariably impose an obligation on counsel to decide at the very beginning whether a case was suitable to go to the CFA and the points of law to be argued. The Chairman echoed Mrs LAU's view, and further expressed reservation about the desirability of encouraging this kind of decision at so early a stage. Moreover, any sensible judge, having heard the views of counsel at the pre-trial review stage, would most likely adopt a wait and see attitude.

34. Noting that the leapfrog procedure would be introduced by way of amending the CFA Ordinance, the Chairman asked about the legislative timetable. Assistant Director of Administration replied that it was the Administration's aim to introduce the amendments into LegCo in the next legislative session.

35. Mrs Miriam LAU enquired of the circumstances under which the Appeal Committee of the CFA would grant an application for leave to leapfrog, and the position of the parties concerned if the application for leave to leapfrog was turned down by the Appeal Committee of the CFA.

36. SG(Ag) replied that if an application for leave to leapfrog was refused by the Appeal Committee of the CFA, the appeal case concerned would be heard by the Court of Appeal in the ordinary way. As regards the basis for determining whether an application for leave to leapfrog should be granted, SG(Ag) said that the fundamental questions which the CFA would most likely ask when considering an application were whether justice would be done to the parties and to the point of law, and whether the CFA would be assisted if the appeal case were to go to the Court of Appeal first.

37. In summing up, the Chairman hoped that the leapfrog procedure would only be used in those rare suitable cases to cut out unnecessary tedium and expense where a point in issue had been fully argued and fully considered in the judgment appealed from or where the point in issue had been the subject of previous decision of the Court of Appeal, and not to be used for the purpose of expediency or as a quick way of dealing with a crisis situation, such as that suggested by Mr Martin LEE in paragraph 30 above.

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Legislative Council Secretariat  
8 May 2000