

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

**Right to Sue in Person
Under Order 5 Rule 6 of the Rules of the High Court**

Purpose

The Legislative Council Panel on Administration of Justice and Legislative Services has requested the Judiciary to –

- (a) provide information on the number of applications made by a body corporate for leave to be represented by one of its directors under Order 5 rule 6 of the Rules of the High Court (Cap. 4A) in the past three years and the outcome of these applications; and
- (b) advise on the policy considerations for -
 - (i) requiring corporations to obtain leave to be represented by one of its directors in High Court proceedings; and
 - (ii) the non-appealable nature of the Registrar's decision in respect of such leave applications.

This paper seeks to provide the information requested.

Background

2. Order 5 rule 6(2) of the Rules of the High Court provides that a body corporate may not begin or carry on any such proceedings in the High Court otherwise than by a solicitor except as expressly provided by or under any enactment; or where leave is given by the Registrar to be represented by one of its directors.

3. Order 5 rule 6(4) provides that no appeal shall lie from an order of the Registrar giving or refusing leave.

4. Order 5 rule 6(5) further provides that leave given by a Registrar under rule 6(3) may be revoked by the Court at any time.

Number and Outcome of Leave Applications

5. Information on the number and outcome of applications made by a body corporate for leave to be represented by one of its directors under Order 5 rule 6 of the Rules of the High Court in the past three years is not available.

Policy Considerations for the Leave Requirement

6. The Judiciary considers that requiring corporations to obtain leave to be represented by one of its directors in High Court proceedings is justified. A limited company may not be able to compensate those who litigate with them as assets of a limited company's shareholders and directors are not at risk as to the consequences of litigation. To permit a limited company to pursue proceedings without legal representation, at no financial risk to its shareholders and directors, is inherently unfair to the other parties to the litigation. This would put the other parties to the litigation at a considerable disadvantage because it is most unlikely that anybody will be able to recover costs against a company that cannot afford legal representation. At the root of the company law, insolvent companies should not be permitted and insolvency is the classic ground for a company to be wound up. It is therefore considered appropriate that limited companies should be required to obtain leave to be represented by one of its directors in proceedings in fairness to their potential creditors and other parties to the litigation. It is also highly undesirable for limited companies to act without legal advisors. Reference may be made to *Collier v. Hick* 109 ER 1290 at 1293; *Radford v. Freeway Classics Ltd* [1994] 1 BCLC 445 at 448; *Silver City International (Holdings) Ltd. v. Sino Luck Investment Ltd & another*, CACV 103 of 2004.

Policy Considerations for the Non-appealable Nature of the Registrar's Decision for Such Leave Applications

7. Leave to be represented by a director under Order 5 Rule 6(2) is an exception to the general prohibition against a corporation beginning or carrying on proceedings otherwise than by a solicitor. Absence of an appeal procedure is to prevent delay to the action or appeal. It is noted that though there is no right of appeal against a Registrar's decision, the Court of First Instance and the Court of Appeal in fact can revoke such leave given by the Registrar under Rule 6(5).