

**For discussion
on 11 July 2013**

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

The Administration of Justice (Miscellaneous Provisions) Bill

I. PURPOSE

This paper seeks Members' views on the legislative proposals relating to court operations in the Administration of Justice (Miscellaneous Provisions) Bill ("the Bill").

II. PROPOSALS AND JUSTIFICATIONS

2. The Judiciary proposes legislative amendments in relation to the following areas to improve various court-related matters –

- (a) appeals in civil matters to the Court of Final Appeal ("CFA");
- (b) evidence-taking by live television links for criminal proceedings;
- (c) the mode of delivery of reasons for verdicts and sentences in criminal proceedings in the District Court;
- (d) the calculation of qualifying experience for appointment of Permanent Magistrates;
- (e) the operation of the Labour Tribunal; and
- (f) the administration of suitors' funds at various courts/tribunals.

(i) *Appeals in Civil Matters to the CFA*

Present Position

3. According to sections 22(1)(a) and (b) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484)¹, an appeal lies to the CFA as of right where the matter in dispute amounts to or is worth \$1 million or more. For other cases, appeals to the CFA will only be allowed if the question involved is of great general or public importance, or otherwise.

Inadequacies of the Present System

Objectionable as a Matter of Principle

4. The present system is objectionable as a matter of principle. Linking a right of appeal to an arbitrary financial limit means that litigants involved in litigation beyond the threshold limit in effect have more rights than other litigants with smaller claims, regardless of the merits of their cases. For claims above the limit, appeals are as of right; for claims under the limit, discretionary leave is required.

Ineffective System of Appeals

5. Allowing appeals to be lodged to the CFA as of right leads to situations whereby unmeritorious appeals have to be heard by the CFA.

¹ Section 22(1)(a) and (b) of Cap. 484 reads :

- (a) an appeal lies to the CFA as of right from any final judgment of the Court of Appeal (“CA”), where the matter in dispute amounts to or is worth HK\$1 million or more; and
- (b) for other CA judgments, appeals to the CFA will only be allowed if, in the opinion of the CFA or CA, the question involved is one which, by reason of its great general or public importance, or otherwise, ought to be submitted to the CFA for decision.

This leads to uncertainty, delay and worst of all, justice being denied (or delayed) to the party who has the merits in a case².

6. In other words, allowing unmeritorious appeals to lie as of right to the CFA is not conducive to an effective system of appeals. Unmeritorious appeals do not benefit the appellants either, not to mention the respondents. Such appeals serve only to saddle the litigating parties with more legal costs to pay³.

Waste of Judicial Resources

7. As observed by the Chief Justice in *Champion Concord Ltd and Another v Lau Koon Foon and Another* in 2010 –

*“The experience of this Court has been that appeals brought [as of right] are a drain on resources, waste time and hinder in a very tangible way the resolution of other, far more meritorious proceedings.”*⁴

8. Unmeritorious appeals thus prevent the CFA from hearing in good time genuine and much more meritorious appeals (often in the public law sphere). This is highly undesirable, not to mention a waste of public resources.

² As stated by the CFA in *China Field Ltd v Appeal Tribunal (Buildings)* (2009) 12 HKCFAR 68, at paragraph 16 (Ribeiro PJ), “the role of the Court of Final Appeal is not to permit a third bite of the cherry to any litigant who wishes to have another go. An appeal to the Court as of right is in principle oppressive to the party who has won in the Court of Appeal where the further appeal is without substance. Unless the appeal involves a point of law of public importance or unless grievous injustice would be done if the final court does not intervene, a successful litigant should not be dragged before a third tier of court. This approach does not, of course, argue against the Court retaining discretion to grant leave to appeal in appropriate cases.”

³ *Wealth Duke Ltd and Others v Bank of China (Hong Kong) Ltd*, unreported, FACV 2/2011 (Court of Final Appeal, 23 November 2011), at paragraph 1 (Bokhary PJ).

⁴ *Champion Concord Ltd and Another v Lau Koon Foon and Another*, unreported, FACV 16 and 17/2010, (Court of Final Appeal, 23 November 2011), at paragraph 6 (Ma CJ).

An Anomaly in a Modern Judicial System

9. Almost every other common law jurisdiction to which Hong Kong has the closest affinity requires that “leave” be obtained before appeals can be made to their highest appellate court. These include appeals to the Australian High Court, the Supreme Court of New Zealand, and appeals from English and Wales to the Supreme Court of the United Kingdom. As for appeals to the Canadian Supreme Court, leave to appeal is required in most cases.

10. Details of the common law jurisdictions that we have looked at are shown at **Annex A**⁵.

Raising the Financial Limit is not an Option

11. Raising the financial limit of HK\$1 million would not be able to remove the anomaly of linking the rights of appeal to an arbitrary financial limit (see paragraph 4 above), and therefore should not be an option. In any event, it is doubtful whether raising the financial limit could in practice significantly reduce the number of unmeritorious appeals to the CFA, let alone eliminating them.

12. In this regard, the Canadian experience may be a useful reference for us. In 1973, the Canadian Bar Association (“CBA”) found that the overloading of cases at the Supreme Court was not acceptable as a result of the sharp increase in the number of appeals as of right. The CBA then recommended abolishing appeals as of right in civil cases to the Supreme Court. Consideration was given to simply raising the monetary minimum for such cases from C\$10,000 to some higher figure, but this solution was ultimately decided to be objectionable in principle. Money or property alone, at any figure of monetary value, was simply not acceptable as the basis of an exclusive privilege to appeal as a matter of right to the Supreme Court⁶.

⁵ In Singapore, appeals in civil matters above a certain monetary threshold lie as of right from their High Court to the Court of Appeal (being its highest appellate court). Appeals as of right to the highest appellate court is also allowed in Ireland.

⁶ Anne Roland, “Appeals to the Judicial Committee of the Privy Council: A Canadian Perspective”, *Commonwealth Law Bulletin* Vol 32 No. 4 (December 2006), 569, at 580.

Proposed Legislative Amendments

13. For the reasons highlighted above, the existing as of right appeal mechanism to the CFA is highly undesirable. The Judiciary considers it important and timely to amend the law so that all appeals in civil matters to the CFA become subject to discretionary leave.

14. It is proposed that all appeals in civil matters, whether or not the matter in dispute amounts to or is worth more than \$1 million, should only lie at the discretion of the CFA/CA. All such appeals should be heard by the CFA only if the question involved in the appeal is one which, by reason of its great general or public importance, or otherwise, ought to be submitted to the CFA for decision. This can be achieved by repealing section 22(1)(a) of Cap. 484. A marked-up version showing the proposed changes (in draft form) to Cap.484 is at **Annex B**.

15. It is important to note that the Judiciary's proposal is to repeal the "as of right" limb, without affecting other existing aspects of the leave requirement in section 22(1)(b) of Cap. 484. As such, there would be no question of any substantive erosion of the rights of appellants under the proposal.

16. It has also to be emphasized that the CFA is the final appellate court in Hong Kong. It does not operate as a second court of appeal operating on the same basis as the CA. While the CFA primarily deals with questions of "great general or public importance", there is also an "or otherwise" provision. Existing case law has established the "or otherwise" limb as an exceptional one with a limited scope of application. However, like all case law, the jurisprudence on this limb is capable of further development.

17. Where neither the "great general or public importance" nor the "or otherwise" grounds are engaged, leave will not be granted. This is to achieve the intention of the statutory provisions. The questions of merits should be seen in this context. In other words, where an application for leave is made, not only that sufficient merits must be demonstrated, but the statutory provisions also have to be satisfied.

18. Separately, it should be noted that at present, all criminal appeals are subject to the discretionary leave granted by the CFA. There is no as of right ground for criminal appeals. To abolish the as of right ground for civil appeals will bring such appeals in line with the criminal

appeal process. All appeals to the CFA should be on the basis of their merits, and all litigants or parties should be treated equally.

(ii) Evidence-Taking by Live Television Links

Present Position

19. At present, Part IIIA of the Criminal Procedure Ordinance (Cap. 221) provides for special procedures for vulnerable witnesses⁷ in criminal proceedings. Section 79B (in Part IIIA) sets out the circumstances in which a vulnerable witness is permitted to give evidence or be examined by way of a live television link.

20. The term “live television link” is defined in section 79A (in Part IIIA) of Cap. 221 in a rather narrow way. It restricts the technology to be a “closed circuit television system”.

Proposed Legislative Amendments

21. With the advancement of technologies, we propose to amend the legislation to enable other suitable audio-visual facilities, such as video conferencing facilities, to be adopted. We will also ensure that any such technologies that may be used will satisfy our requirements in terms of, for example, security (say by encryption) and reliability.

22. A marked-up version showing the proposed changes to Cap. 221 (in draft form included in our stakeholder consultation) is at **Annex C**.

(iii) Delivery of Reasons for Verdicts and Sentences in Criminal Proceedings in the District Court

Present Position

23. At present, under section 80 of the District Court Ordinance (Cap. 336), a District Judge is required to orally deliver the verdict and any sentence, as well as the reasons, in criminal proceedings. The Judge is also required to reduce the reasons to writing within 21 days after the hearing or the trial.

⁷ According to section 79B of Cap. 221, vulnerable witnesses may include children, mentally incapacitated persons and witnesses in fear.

24. There is currently no flexibility for a District Judge to directly hand down the reasons for the verdict and any sentence in writing. They have to deliver the reasons orally first. This is unnecessary and represents a waste of legal costs and court resources in many cases. For example, in a case in 2011, ten counsel sat for two days listening to a District Judge reading out the reasons. The fees of the ten counsel and their instructing solicitors, the public expense and the two days' time of the District Judge were unnecessarily spent.

Proposed Legislative Amendments

25. We propose to amend section 80 of Cap. 336 to dispense with the requirement for a District Judge to orally deliver the reasons for the verdict and any sentence. As such, the Judges would have the flexibility to hand down the reasons in writing direct in appropriate cases.

26. Under the proposed amendments, the reasons for the verdict will always have to be delivered together with the verdict at the same time. Similarly, the reasons for the sentence will have to be delivered together with the sentence.

27. When the reasons of the verdict and sentence are handed down in written form direct, we will ensure that the defendant is given sufficient time to examine them and put forward any submissions on costs and/or mitigation. The proposed detailed arrangements are at **Annex D**.

28. Moreover, to ensure that the defendant understands the written reasons so handed down, similar to the present arrangements of the higher courts, if necessary, we will make arrangements for a court interpreter to interpret the reasons in a language understood by the defendant on the day of the handing down of the reasons of the verdict/sentence.

29. Besides, the reasons for the verdicts and sentences will remain accessible to the public in future when they are handed down in written form direct. Apart from continuing with our present arrangement for uploading the written reasons onto the Judiciary's website, the written reasons will be given to each of the parties and lodged in the High Court library. They will also be made available for public inspection in the Registry of the District Court.

30. A marked-up version showing the proposed changes to Cap. 336 (in draft form included in our stakeholder consultation) is at **Annex E**.

(iv) Calculation of Qualifying Experience for Appointment as Permanent Magistrates

Present Position

31. At present, pursuant to section 5AA of the Magistrates Ordinance (Cap. 227), a person who is qualified to practise as a barrister, solicitor or advocate in a court in Hong Kong or other common law jurisdictions is eligible to be appointed as a Permanent Magistrate if he has the relevant professional experience of no less than five years.

32. Under section 5AA(1) of Cap. 227, a legally qualified person is eligible for appointment as a Permanent Magistrate if that person has, for a period of or periods totalling not less than five years, (a) practised as a barrister, solicitor or advocate; or (b) served as a legal officer or taken up a designated post (as specified in section 5AA(1)(b)(iii) to (v)) in the relevant Government departments⁸.

33. Alternatively, a legally qualified person is eligible to be appointed as a Permanent Magistrate pursuant to section 5AA(2) of Cap. 227 if he has been a Special Magistrate for a period of or periods totalling not less than five years.

34. Section 5AA(3) of Cap. 227 provides that in calculating the five-year period of legal practice or service as a legal officer/in the designated posts, periods of less than five years of such practice or service may be combined. The legislation does not, however, allow period(s) of being a Special Magistrate to be combined with other qualifying period(s).

35. The existing arrangement does not accord with our policy intent that periods of less than five years of all types of qualifying experience, be it the legal experience under section 5AA(1) or the judicial experience under section 5AA(2), should be allowed to be combined. We therefore

⁸ These Government departments include the Department of Justice, the Lands Department, the Companies Registry, the Lands Registry, the Legal Aid Department, the Official Receiver's Office and the Intellectual Property Department.

propose legislative amendments to rationalize this situation.

Proposed Legislative Amendments

36. To rationalize the above arrangements, we propose to amend Cap. 227 to allow a person's period(s) of experience as a Special Magistrate to be combined with period(s) of other types of qualifying professional experience to fulfill the requisite minimum five-year period for the eligibility to be appointed as a Permanent Magistrate .

37. A marked-up version showing the proposed changes to Cap. 227 (in draft form included in our stakeholder consultation) is at **Annex F**.

(v) Improving the Operation of the Labour Tribunal

Present Position

38. The Labour Tribunal seeks to provide a quick, simple, cheap and informal forum for resolving disputes between employers and employees.

39. We have reviewed the operation of the Labour Tribunal. We consider that there is room to improve its operation in a few areas, including clarifying its jurisdiction, enhancing its case management powers, encouraging parties' early disclosure of information and aligning the time limit for enforcing its awards or orders with other civil claims.

Proposed Changes

Clarifying the Jurisdiction

40. According to section 7 of the Labour Tribunal Ordinance (Cap. 25), the Labour Tribunal has jurisdiction to inquire into, hear and determine the claims specified in the Schedule. Paragraph 1 of that Schedule refers to a claim for a sum of money which arises from certain breaches or non-compliance under a few employment-related Ordinances⁹.

⁹ These Ordinances include the Minimum Wage Ordinance (Cap. 608), the Employment Ordinance (Cap. 57) and the Apprenticeship Ordinance (Cap. 47).

41. There are different interpretations in case law as to the meaning of the term “a sum of money”. Some legal precedents interpret it to be confined to liquidated damages (i.e. damages for which the amount has been contractually agreed between the parties or fixed by a statute). Others construe it as extending to also cover unliquidated damages (i.e. damages that are at large and fall to be assessed by the court under the general principles of law). In practice, the latter line of case law is usually followed in the Labour Tribunal.

42. In practice, it is exceptional to have terms in employment contracts fixing the amount to be paid by way of damages in the event of breach. Most employment claims will therefore be unliquidated damages. As the Labour Tribunal is intended to be a simple and informal forum for resolving employment-related disputes, the objectives of the Tribunal will be better served if it has clear power to deal with all types of monetary claims relating to employment claims, including unliquidated damages. We propose to clarify this in the law.

Enhancing Case Management Powers

43. Case management is an integral part of the adjudication process. While the Labour Tribunal is already equipped with certain case management powers to curtail some unnecessary excesses in the adjudication process, there are still instances where parties attempt to abuse the adjudication process as a delaying tactic. For example, parties deliberately fail to comply with the directions of presiding officers and tribunal officers, cause adjournment of hearings unnecessarily, and make groundless applications for review of a Tribunal’s award. All of these conducts are oppressive to other litigating parties.

44. We see the need to enhance the Tribunal’s case management powers to minimise undue delays or abuses of the adjudication process. This would in turn help ensure that claims are dealt with in an expeditious and just manner.

45. For instance, section 29A of Cap. 25 currently empowers the Labour Tribunal to impose any conditions on a party as it thinks fit on adjournment of a hearing. Section 30 of Cap. 25 however restricts the power of the Tribunal to order security upon such adjournment only to cases where the adjournment may result in prejudice to a party because of a disposal or loss of control of assets by the defendant. This is sometimes

difficult to establish. Further, a claimant's hardship caused by delays in having the sum adjudicated could not be relieved.

46. Similarly, pursuant to section 31 of Cap. 25, the Tribunal may review an award or order made and re-open the case within 14 days after the granting of an award or order. Under section 31(4) of Cap. 25, on a party's application for review, the Tribunal may order the party to make payment into the Tribunal or give security only if there is a possibility that the assets available for satisfying an award may be disposed of to the prejudice of other party. This is comparatively restrictive. By contrast, on a party's application to restore a claim or set aside an award or order made in the absence of another party, sections 20A and 21A of Cap. 25 confer on the Tribunal a general power to impose terms as it thinks just.

47. To better guard against the risk of undue delays or abuses of adjudication processes, we propose to enhance the case management powers of the Labour Tribunal. Specifically, we propose to give a general power to the Tribunal so that it can order a party to give security for the payment of any award or order, at any time during a proceeding for applying or reviewing an award or order, so long as the Tribunal considers it just and expedient to do so.

48. Possible circumstances for the Tribunal to order security from a party may include (a) there is a real risk of dissipating that party's asset to prejudice the satisfaction of an award or order; (b) that party is delaying the adjudication process; (c) that party fails to comply with the Tribunal's directions, etc without reasonable excuse; and/or (d) that party makes an application for review which is devoid of merits. If the party fails to give security upon such order, the Tribunal may dismiss his claim/application for review, stay the proceedings or enter judgment on the claim against him as appropriate.

Early Disclosure of Information

49. For the purpose of better case preparation and case management, the parties should be encouraged to adopt an open and co-operative approach and make full disclosure of information at the beginning of the Tribunal process. With more transparent information, the issues at stake can be clearly identified at an early stage for the parties to properly assess their position. Early disclosure of all the necessary and relevant information will also obviate the need for pre-trial hearings. It will also

enable the Tribunal to have a realistic estimate of the duration of the trial when listing the claim.

50. A party may be reluctant or may even refuse to provide copies of documents for the other party for fear that the documents may be misused by the latter. To address this concern, we propose that the receiving party should be imposed a general statutory duty not to use the documents and information disclosed for any purpose other than for the purpose of the Tribunal proceedings, unless the document has been put into the public domain. Moreover, similar to the other levels of court such as the High Court and the District Court, we propose that a breach of this statutory duty in the Labour Tribunal would give rise to a liability of contempt of court.

Aligning the Time Limit for Enforcing Awards

51. According to section 38 of Cap. 25, in order to enforce an award or order of the Tribunal, a person has to obtain a certificate of award or order from the Tribunal and then have it registered in the District Court. Upon registration, the award or order becomes a judgment of the District Court and may be enforced like any District Court judgment.

52. Under Rule 12(2) of the Labour Tribunal (General) Rules (Cap. 25A), registration of the award or order must be made within 12 months after the making of the award or order. Those not so registered may only be enforced by way of a separate claim commenced in the Small Claims Tribunal, the District Court or the Court of First Instance, depending on the amount of the award or order in question.

53. The time limit of 12 months for registration of the award or order does not exist for other civil judgments/orders. In the High Court and the District Court, a judgment/order for the payment of money may be enforced by a writ of execution within six years, after which leave of the court will have to be obtained for the issue of such a writ¹⁰. We do not see any reason for treating the awards or orders of the Labour Tribunal differently.

¹⁰ Order 46, rule 2(1) of the Rules of the High Court (Cap. 4A) and that of the Rules of the District Court (Cap. 336H) respectively refers.

54. This is particularly so because the judgment creditor in a Tribunal's award or order may have given indulgence to the judgment debtor by allowing the latter to pay by instalments, and inadvertently allow the 12 months to elapse. To require the judgment creditor to commence a new action for enforcement of the award or order will not be reasonable and will cause him inconvenience. We therefore propose to repeal the 12-month time limit, thereby aligning the enforcement period of the Tribunal awards or orders with that for the other civil claims (namely, six years in general).

Other Minor Drafting Changes

55. We have also taken the opportunity to enhance the drafting of the existing provisions in light of the latest drafting conventions, e.g. for section 38 of Cap 25 and rule 12 of Cap 25A. We also propose to make some very minor amendments to the subsidiary legislation of Cap 25, e.g. to delete the reference to "19xx" from the forms.

Proposed Legislative Amendments

56. A marked-up version showing the various proposed changes to Cap. 25 and its subsidiary legislation (in draft form included in our stakeholder consultation) is at **Annex G**.

(vi) Administration of Suitors' Funds

Present Position

57. Suitors are parties to suits in a court of law. They may need to pay or transfer funds into court (including tribunals) or deposit funds in court for various purposes, for example, as security against possible default on legal costs, or in satisfaction of claims or judgment debts etc.. Depending on the outcome of the lawsuits, the funds may have to be paid out of court to the persons entitled to such payment as the court orders. In general, suitors' funds may be accepted in the form of money, securities and/or movable properties.

58. Suitors' funds rules are now provided in the legislation to govern the administration of such funds, including how suitors' funds are lodged in and paid out of court, investment of the funds, provision of interest for individual suitors' accounts and preparation of annual audited financial statements for the funds.

59. At present, suitors' funds are administered in the Court of Final Appeal (CFA), the High Court, the District Court, the Lands Tribunal, the Labour Tribunal and the Small Claims Tribunal. While most of them are being operated on the basis of the respective dedicated suitors' funds rules in the subsidiary legislation¹¹, the suitors' funds for the CFA and the Lands Tribunal have been operated administratively in accordance with the rules of the other similar courts.

60. To provide a clearer legal basis like the other courts and tribunals, we propose to introduce dedicated suitors' funds rules for the CFA and the Lands Tribunal, to be supported by specific rule-making powers in the respective principal legislation. For the sake of clarity and consistency, the opportunity is also taken to provide for more specifically-worded rule-making powers for the Labour Tribunal and the Small Claims Tribunal,¹² similar to those for the High Court and the District Court.

61. Separately, following the enactment of the Competition Ordinance (Cap. 619) in June 2012, a new Competition Tribunal will be set up under the Judiciary to hear cases on alleged acts of anti-competition. Suitors' funds will also need to be administered. As the Competition Tribunal will be a superior court of record (pursuant to section 134 of the Competition Ordinance), we propose to specify the rule-making powers and detailed suitors' funds rules for the Competition Tribunal by modelling on those for the High Court.

Proposed Legislative Amendments

62. We propose to amend the relevant principal legislation to provide for the above more specifically-worded rule-making powers for the various courts and tribunals, and to make other related amendments.

¹¹ The suitors' funds rules are spelt out in the following subsidiary legislation :

- (a) the High Court Suitors' Funds Rules (Cap. 4B);
- (b) the District Court Suitors' Funds Rules (Cap. 336E);
- (c) the Labour Tribunal (Suitors' Funds) Rules (Cap. 25D); and
- (d) the Small Claims Tribunal (Suitors' Funds) Rules (Cap. 338D).

¹² The present general rule-making powers for the Labour Tribunal and the Small Claims Tribunal are set out respectively in section 45 of the Labour Tribunal Ordinance (Cap. 25) and section 36 of the Small Claims Tribunal Ordinance (Cap. 338).

The marked-up versions showing the proposed changes to the following ordinances (in draft form included in our stakeholder consultation) are at **Annex H**:

- (a) Hong Kong Court of Final Appeal Ordinance (Cap. 484);
- (b) High Court Ordinance (Cap. 4);
- (c) Competition Ordinance (Cap. 619);
- (d) District Court Ordinance (Cap. 336);
- (e) Lands Tribunal Ordinance (Cap. 17);
- (f) Labour Tribunal Ordinance (Cap. 25); and
- (g) Small Claims Tribunal Ordinance (Cap. 338).

63. After the above amendments to the ordinances have been enacted, we will amend the existing suitors' funds rules for various courts and tribunals to refine the operations. Similar changes would also be adopted for the new dedicated suitors' funds rules for the CFA, the Competition Tribunal and the Lands Tribunal. We will consult Members later.

III. CONSULTATION

64. We have consulted various stakeholders including the Hong Kong Bar Association, the Law Society of Hong Kong and the Labour Advisory Board. The two legal professional bodies are generally supportive of our proposed legislative amendments. We have also provided them with clarifications of the points they raised. The other stakeholders have also indicated general support to the Bill and some have raised minor and technical comments.

IV. WAY FORWARD

65. Subject to Members' views on the legislative proposals, we aim to finalize the Bill with a view to introducing it into the Legislative Council in late 2013.

Administration Wing
Chief Secretary for Administration's Office

Judiciary Administration
July 2013

**Appeal in Civil Matters to the Highest Appellate Court
in other Comparable Common Law Jurisdictions**

Australia

The High Court of Australia is the highest court in the Australian judicial system, and is the final court of appeal in Australia. The High Court has both original and appellate jurisdiction.

2. The appellate jurisdiction of the High Court originates from section 73 of the Australian Constitution, which stipulates that the High Court can hear appeals from the Supreme Courts of the States and from any federal court or court exercising federal jurisdiction. Section 73 allows the High Court's appellate jurisdiction to be limited "with such exceptions and subject to such regulations as the Parliament prescribes".

3. There is no automatic right to have an appeal heard by the High Court, and an appeal shall not be brought from a judgment, whether final or interlocutory, unless the High Court gives special leave to appeal.¹ Parties need to persuade the court that there are special reasons. In considering whether to grant special leave to appeal, the High Court may have regard to any matters it considers relevant but must have regard to:

"(a) whether the proceedings in which the judgment to which the application relates was pronounced involve a question of law:

(i) that is of public importance, whether because of its general application or otherwise; or

(ii) in respect of which a decision of the High Court, as the final appellate court, is required to resolve differences of opinion between different courts, or within the one court, as to the state of the law; and

(b) whether the interests of the administration of justice, either generally or in the particular case, require

¹ Section 35AA, Judiciary Act 1903.

*consideration by the High Court of the judgment to which the application relates."*²

Canada

4. The Supreme Court of Canada is the highest court in Canada. Its jurisdiction embraces both the civil law of the province of Quebec and the common law of the other nine provinces and the territories. In most cases, appeals are heard by the court only if leave to appeal is given. Such leave is given when a case involves a question which the Supreme Court is of the opinion that:

*"by reason of its public importance or the importance of any issue of law or any issue of mixed law and fact involved in that question, one that ought to be decided by the Supreme Court or is, for any other reason, of such a nature or significance as to warrant decision by it."*³

England and Wales

5. The Supreme Court of the United Kingdom is the final appellate court in almost all cases in England and Wales. The Supreme Court came into being on 1 October 2009 by virtue of Part III of the Constitutional Reform Act 2005. The Supreme Court has replaced the House of Lords in its judicial capacity,⁴ and assumed the jurisdiction of the House of Lords. Apart from appeals from England and Wales, the Supreme Court also deals with appeals from Scotland's Court of Session etc.

6. Section 40(2) of the Constitutional Reform Act 2005 stipulates that an appeal lies to the Court from any order or judgment of the Court of Appeal in England and Wales in civil proceedings. However, an "appeal under subsection (2) lies only with the permission of the Court of Appeal or the Supreme Court",⁵ subject to any other enactment restricting

² Section 35A, Judiciary Act 1903.

³ Section 40, Supreme Court Act 1985 (Canada).

⁴ See Constitutional Reform Act 2005. Before the Act, the House of Lords was the highest court of appeal. (See section 37).

⁵ Section 40(6).

such an appeal.⁶ An application for permission to appeal must be made first to the Court of Appeal. If that Court refuses permission, an application may be made to the Supreme Court.⁷

Ireland

7. The Supreme Court is the court of final appeal in all constitutional and civil matters in Ireland.⁸ The High Court is a court of first instance with full original jurisdiction in all civil and criminal matters.

8. There is no equivalent intermediate court of appeal for civil matters between the High Court and the Supreme Court. Instead, the Supreme Court is the court of final appeal and hears civil appeals from decisions of the High Court. As such, there is generally an automatic right of appeal to the Supreme Court from the decisions of the High Court for civil matters. There are however a limited number of exceptions to this right of appeal where a certificate is required from the trial judge certifying that the appeal involves a point of law of public importance.⁹

Singapore

9. The Supreme Court of Singapore is made up of the Court of Appeal and the High Court. The High Court is a court of first instance with full original jurisdiction in all civil and criminal matters. The Court of Appeal hears appeals against the decisions of the High Court in both civil and criminal matters. The Court of Appeal is also the final court of appeal in Singapore. There is no intermediate court of appeal between the High Court and the Court of Appeal.

10. There is in general an automatic right of appeal from the High Court to the Court of Appeal for civil matters for claims above a

⁶ For civil appeals, relevant statutes are:

- the Administration of Justice (Appeals) Act 1934;
- the Administration of Justice Act 1960;
- the Administration of Justice Act 1969;
- the Judicature (Northern Ireland) Act 1978;
- the Court of Session Act 1988; and
- the Access to Justice Act 1999.

⁷ www.supremecourt.gov.uk ("A guide to bringing a case to the Supreme Court").

⁸ Article 34 of the Constitution.

⁹ Website of the Supreme Court of Ireland.

monetary threshold (S\$250,000). This is set out in section 34(2)(a) of the Supreme Court of Judicature Act (Cap 322) which reads:

"(2) Except with the leave of a Judge, no appeal shall be brought to the Court of Appeal in any of the following cases:

(a) where the amount in dispute, or the value of the subject-matter, at the hearing before the High Court (excluding interest and costs) does not exceed \$250,000 or such other amount as may be specified by an order made under subsection (3);

...".

11. As stated by the Court of Appeal in one of its decisions, as the monetary threshold of S\$250,000 was the upper limit of the District Court's jurisdiction, the objective of section 34(2)(a) was to ensure that where appeals from the decision of the District Court had been heard and disposed of by the High Court, there should be no further appeals therefrom to the Court of Appeal unless (on sufficient grounds shown) leave of either the High Court or the Court of Appeal was obtained. What was contemplated by the legislature was that there should be only two tiers of hearing – the first instance hearing and an appeal. A further appeal to the Court of Appeal, Singapore's final court of appeal, is only possible with leave.

12. The Court of Appeal in another decision explained that, as a general rule, it was intended that there should only be one tier of appeal as a matter of right.¹⁰

New Zealand

13. The Supreme Court of New Zealand is the highest court and the court of last resort in New Zealand.

14. There is no automatic right of appeal to the Supreme Court.¹¹ All would-be appellants are first required to apply to the court for leave to

¹⁰ *IW v IX* [2006] 1 SLR 135 at [22].

¹¹ Section 12, Supreme Court Act 2003 (New Zealand).

appeal, which will be granted only if it is necessary in the interests of justice.¹²

15. A number of factors for determining whether an appeal is “necessary in the interests of justice” are listed in section 13 of the Supreme Court Act 2003. An appeal is necessary in the interests of justice if:

- it involves a matter of general or public importance
- a substantial miscarriage of justice may have occurred, or may occur if the appeal is not heard
- it involves a matter of general commercial significance
- it involves a significant issue relating to the Treaty of Waitangi

16. It has been pointed out that a question of general or public importance may arise even though there is only a very small amount at stake in financial terms. In *Jeffries v Attorney General*,¹³ the Supreme Court granted leave to appeal on the question whether the Court of Appeal’s order requiring the appellant to pay costs of NZ\$750 was properly made. In granting leave, the Supreme Court was satisfied that the case raised a point of general importance despite the very small amount at stake in financial terms. The Court however urged the parties to reflect on whether the matter in issue is capable of resolution without the cost of a full hearing.

¹² Section 13, Supreme Court Act 2003, cited above.

¹³ [2009] NZSC 6. Date of judgment : 4 Feb 2009.

**Proposed Amendments to
the Hong Kong Court of Final Appeal Ordinance (Cap. 484)
in Marked-up Mode**

Section 22 Civil appeals

- (1) An appeal shall lie to the Court—
- (a) ~~as of right, from any final judgment of the Court of Appeal in any civil cause or matter, where the matter in dispute on the appeal amounts to or is of the value of \$1000000 or more, or where the appeal involves, directly or indirectly, some claim or question to or respecting property or some civil right amounting to or of the value of \$1000000 or more;~~
 - (b) at the discretion of the Court of Appeal or the Court, from any ~~other~~ judgment of the Court of Appeal in any civil cause or matter, whether final or interlocutory, if, in the opinion of the Court of Appeal or the Court, as the case may be, the question involved in the appeal is one which, by reason of its great general or public importance, or otherwise, ought to be submitted to the Court for decision; and
 - (c) at the discretion of the Court, from—
 - (i) a determination of the Court of First Instance under section 37(1) of the Chief Executive Election Ordinance (Cap 569);
 - (ii) a judgment or order of the Court of First Instance in—
 - (A) an application for judicial review under section 21K of the High Court Ordinance (Cap 4); or
 - (B) any other proceedings under that Ordinance, which put in issue whether the candidate is duly determined to be not returned at an election under section 26A(4) of the Chief Executive Election Ordinance (Cap 569) or whether the candidate declared under section 28 of that Ordinance as elected at an election can lawfully assume the office of the Chief Executive;
 - (iii) a determination of the Court of First Instance under section 67 of the Legislative Council Ordinance (Cap 542);
 - (iv) a judgment or order of the Court of First Instance in—
 - (A) an application for judicial review under section 21K of the High Court Ordinance (Cap 4); or
 - (B) any other proceedings under that Ordinance, which put in issue whether a candidate declared under section 58 of the

Legislative Council Ordinance (Cap 542) as duly elected at an election can lawfully assume the office of a Member of the Legislative Council;

- (v) a determination of the Court of First Instance under section 55 of the District Councils Ordinance (Cap 547);
- (vi) a judgment or order of the Court of First Instance in—
 - (A) an application for judicial review under section 21K of the High Court Ordinance (Cap 4); or
 - (B) any other proceedings under that Ordinance, which put in issue whether a candidate declared under section 46 of the District Councils Ordinance (Cap 547) as duly elected at an election can lawfully assume the office of the elected member of the District Council constituency concerned;
- (vii) a determination of the Court of First Instance under section 45 of the Village Representative Election Ordinance (Cap 576); or
- (viii) a judgment or order of the Court of First Instance in—
 - (A) an application for judicial review under section 21K of the High Court Ordinance (Cap 4); or
 - (B) any other proceedings under that Ordinance, which put in issue whether a candidate declared under section 36 of the Village Representative Election Ordinance (Cap 576) as duly elected at an election can lawfully assume the office of the Village Representative for the village concerned.

- (2) ~~The Chief Executive in Council may by order published in the Gazette amend subsection (1) to vary the amounts specified.~~

Section 23 Leave to appeal

- (1) No appeal shall be admitted unless either-
 - (a) leave to appeal has been granted by the Court of Appeal; or
 - (b) in the absence of such leave, leave has been granted by the Court.
- (2) ~~Where an appeal lies of right, leave to appeal shall not be refused but shall, in the first instance, be granted as conditional leave in accordance with section 25.~~

Section 25 Grant of leave to appeal

- | (1) Where the Court of Appeal or the Court decides ~~or is required~~ to grant leave to appeal pursuant to an application made under section 24 it may grant leave subject to such conditions as it considers necessary.
- (2) Without restricting the generality of subsection (1) leave granted under subsection (1) may be granted-
 - (a) upon a condition that the appellant shall enter into good and sufficient security, for the due prosecution of the appeal, and the payment of all such costs as may become payable to the respondent in the event of the appeal being dismissed for non-prosecution, or of the Court ordering the appellant to pay the respondent's costs of the appeal; and
 - (b) upon such other conditions (if any) as to the time or times within which the appellant shall procure the preparation of the record as the Court of Appeal or the Court considers appropriate.
- (3) The security required under subsection (2)(a) shall-
 - (a) be entered into within a period to be fixed by the Court of Appeal or the Court, but not exceeding 3 months from the date on which the application for leave to appeal is granted; and
 - (b) be to the satisfaction of the Court of Appeal or the Court in a sum not exceeding \$400000 in respect of each respondent.
- (4) The Court of Appeal or the Court, as the case may be, may vary any conditions it has imposed under this section in such manner as it considers fit.
- (5) The Chief Executive in Council may by order published in the Gazette amend subsection (3)(b) to vary the amount specified.
- (6) Without prejudice to subsection (2) the Court of Appeal or the Court, as the case may be, may when granting leave under subsection (1) impose a timetable on any party for the prosecution of the appeal and may either on the application of a party or of its own motion vary that timetable.

Applicationⁱ

This part applies in relation to a final judgment of the Court of Appeal only if the date of the final judgment (whether pronounced orally or delivered in writing) falls on or after the commencement of this Part.

ⁱThis provision will appear in the Administration of Justice (Miscellaneous Provisions) Bill. It will not be incorporated into Cap. 484.

**Proposed Amendments to the Criminal Procedure Ordinance (Cap. 221)
in Marked-up Mode**

Section 79A Interpretation

"live television link" (電視直播聯繫) means a system in which a courtroom and another room located in the same premises as the courtroom are equipped with, and linked by, ~~a closed circuit television system~~ audio-visual facilities-

- (a) that is capable of allowing-
 - (i) persons in the courtroom to see and hear persons in the other room;
and
 - (ii) persons in the other room to hear, or see and hear, persons in the courtroom;
- (b) for the purpose of persons in the other room giving evidence in the proceedings taking place in the courtroom,
and includes a similar system linking a room in which a magistrate is taking a deposition in writing under section 79E with another room from which the person gives evidence for the purpose of the deposition;

Annex D

Proposed Detailed Arrangements for the Delivery of Verdict/Sentence and Reasons for Criminal Cases in the District Court

The proposed arrangements for the delivery of verdict/sentence and their respective reasons for criminal cases in the District Court after the proposed legislative amendments come into operation are as follows –

- (a) after completion of the substantive hearing/trial (say on Day *x*), the District Judge may reserve the verdict and its reasons for delivery at a later date (say on Day *y*);
- (b) on Day *y*, parties and generally their trial counsel will need to attend a hearing as the Judge delivers the verdict orally (as required under section 80(1) of the District Court Ordinance (Cap 336)). The Judge will then either (i) also deliver the reasons orally; or (ii) hand down the reasons for the verdict in written form on the same day;
- (c) if the Judge opts for option (i) in step (b) above, the Judge will proceed to hear any submissions on costs and mitigation. He/she may give the sentence right away or adjourn to give the sentence on another date. Alternatively, the parties may apply for time to prepare the submissions on costs or mitigation (which is the same as the present situation);
- (d) if the Judge opts for option (ii) in step (b) above, still on Day *y*, the Judge will allow time for the defendant to consider the written reasons. If necessary, the Judge may adjourn to another date to deal with the issues on costs and mitigation. If no adjournment is considered necessary, the Judge may proceed right away to hear any submissions on costs and mitigation. The Judge may then give the sentence right away or adjourn to give the sentence on another date; and
- (e) for all the scenarios mentioned above, on the day when the sentence is to be delivered, the Judge may orally deliver the sentence and reasons and then reduce the reasons for the

sentence into writing. Alternatively, the Judge may orally deliver the sentence and hand down the written reasons.

2. According to the new section 80(2) of our proposed amendments to the District Court Ordinance (Cap 336), the reasons for the verdict will always have to be delivered together with the verdict at the same time. Similarly, the reasons for the sentence will have to be delivered together with the sentence.

**Proposed Amendments to the District Court Ordinance (Cap. 336)
in Marked-up Mode**

Section 80 Verdict

(1) The verdict and any sentence ~~shall~~must be delivered orally and be recorded in writing at the time of that delivery.

~~(2) The reasons for the verdict and any sentence—~~

~~(a) shall be delivered orally; and~~

~~(b) shall be reduced to writing within 21 days after the hearing or the trial, and the reasons so reduced to writing shall be signed by the judge.~~

~~(2) The reasons for the verdict or any sentence must be delivered—~~

~~(a) together with the verdict or any sentence (as appropriate); and~~

~~(b) either orally or in writing.~~

~~(3) If the reasons are delivered orally, they must be reduced to writing within 21 days after the hearing or the trial.~~

~~(4) The reasons reduced to writing must be signed by the judge.~~

~~(5) If the reasons are delivered in writing, the Court must—~~

~~(a) deliver a copy of the reasons to each of the parties;~~

~~(b) lodge a copy of the reasons in the High Court library; and~~

~~(c) make a copy of the reasons available for public inspection in the Registry of the Court.~~

**Proposed Amendments to the Magistrates Ordinance (Cap. 227)
in Marked-up Mode**

Section 5AA Professional qualifications of permanent magistrates

- (1) A person ~~shall be~~is eligible to be appointed as a permanent magistrate if the person—
- (a) ~~he~~is qualified to practise as a barrister, solicitor or advocate in a court in Hong Kong or any other common law jurisdiction having unlimited jurisdiction either in civil or criminal matters; and
 - (b) ~~since becoming so qualified, he has~~the required experience as specified in subsection (2).
- (2) For subsection (1)(b), a person has the required experience if, for a period of or periods totalling not less than 5 years—
- (a) since becoming qualified as described in subsection (1)(a), the person—
 - (i) has practised as a barrister, solicitor or advocate in such a court;
 - (ii) has been a legal officer;
 - (iii) has been the Director of Legal Aid or a Deputy Director of Legal Aid, Assistant Director of Legal Aid or Legal Aid Officer, appointed in accordance with section 3 of the Legal Aid Ordinance (Cap. 91);
 - (iv) has been the Official Receiver or an Assistant Official Receiver (Legal), Assistant Principal Solicitor, Senior Solicitor or Solicitor, appointed in accordance with section 75 of the Bankruptcy Ordinance (Cap. 6); or
 - (v) has been the Director of Intellectual Property or a Deputy Director of Intellectual Property, Assistant Director of Intellectual Property, Assistant Principal Solicitor, Senior Solicitor or Solicitor, appointed in accordance with section 3 of the Director of Intellectual Property (Establishment) Ordinance (Cap. 412)-.; or
- ~~(2) Notwithstanding subsection (1), a person shall also be eligible to be appointed as a permanent magistrate if—~~
- ~~(a) he is qualified to practise as a barrister, solicitor or advocate in a court in Hong Kong or any other common law jurisdiction having unlimited jurisdiction either in civil or criminal matters; and~~
 - (b) whether before or since becoming ~~so~~qualified, he as described in subsection (1)(a), the person ~~has for a period of or periods totalling not~~

~~less than 5 years~~ been a special magistrate appointed in accordance with section 5.

- (3) ~~For the purposes of~~In calculating the period of 5 years referred to in subsection ~~(1)(b2)~~—
- (a) periods of less than 5 years falling within any of the paragraphs or subparagraphs of that subsection may be combined;
 - (b) for the purposes of paragraph (a) of that subsection, periods served in an office specified in Part I of the First Schedule to the repealed Registrar General (Establishment) Ordinance (Cap. 100) may be taken into account notwithstanding the repeal of that Ordinance.

**Proposed Amendments to the Labour Tribunal Ordinance (Cap. 25)
in Marked-up Mode**

Section 12 Contents of claims

A claim shall contain-

- (a) the name and address of each claimant, and, in the case of a representative claim, the name and address of each person represented;
- (b) the name and address of each defendant;
- (c) the ~~sum of money~~ sum of money (whether liquidated or unliquidated) claimed by each claimant or person represented;
- (d) such particulars of the claim as shall be reasonably sufficient to inform the defendant of the grounds for the claim and of the manner in which the amount claimed by each claimant or person represented has been calculated.

Section 15 Conciliation certificate to be filed

- (1) The tribunal shall not hear a claim until a certificate in the prescribed form signed by a tribunal officer or an authorized officer is filed or produced to the effect that-
 - (a) one or more of the parties has refused to take part in conciliation;
 - (b) conciliation has been attempted but no settlement has been reached;
 - (c) conciliation is unlikely to result in a settlement being reached; or
 - (d) conciliation may prejudice the interests of a party.
- (2) A certificate under subsection (1) shall be filed with or produced to the tribunal not later than 24 hours before the date fixed for the hearing of the claim.
- (3) During the hearing of a claim the tribunal may, subject to ~~sections 16 and 30~~ section 16, adjourn the claim and notify the Commissioner in the prescribed form of the adjournment and the reason therefor if-
 - (a) the tribunal is of the opinion that there is a reasonable likelihood of a settlement of the claim; and
 - (b) all parties to the claim have agreed to an adjournment for the purpose of conciliation.
- (4) The Commissioner may, when he has been notified of an adjournment pursuant to subsection (3), hold conciliation between such of the parties to the claim as are willing to take part.
- (5) The Commissioner may, if after such conciliation the parties reach a settlement of the claim or if he is of the opinion that there is no reasonable likelihood of such a settlement, so advise the tribunal in the prescribed form.
- (6) The Commissioner shall, unless he has earlier advised the tribunal under subsection (5), advise the tribunal as to what, if any, progress has been made in the conciliation not less than 24 hours before the date to which the claim has been adjourned.
- (7) If a settlement of a claim is reached, whether as a result of conciliation or not, the terms of the settlement shall be reduced to writing in the prescribed form and signed by the parties to the settlement.

- (8) A settlement, which has been reduced to writing and signed by the parties thereto, shall be filed in the tribunal.
- (9) A settlement filed under subsection (8) shall be treated for all purposes as if it were an award of the tribunal.

Section 30 Giving security upon adjournment

~~Without prejudice to the generality of section 29A, the tribunal may, if it is of the opinion that an adjournment of the hearing of a claim may result in prejudice to a party because of the disposal or loss of control of assets by a defendant, grant an adjournment only on payment into the tribunal of such sum of money, or the giving of such other security for the payment of the amount of any award, as the tribunal may think sufficient.~~

30. Security for award or order

- (1) The tribunal may order a party to give security for the payment of an award or order that has been or may be made if the tribunal considers it just and expedient to do so.
- (2) The tribunal may make the order either of its own motion or on the application of a party.
- (3) The order may require security to be given—
 - (a) by payment into the tribunal a sum of money that the tribunal considers sufficient; or
 - (b) in any other form and manner that the tribunal considers appropriate.
- (4) Without limiting subsection (1), the tribunal may make an order under that subsection against a party if—
 - (a) the tribunal is satisfied that there is a real risk that the payment of an award or order that has been or may be made is likely to be obstructed or delayed because—
 - (i) the party has disposed of, removed from Hong Kong or lost control of assets belonging to the party;
 - (ii) the party is about to dispose of, remove from Hong Kong or lose control of assets belonging to the party; or
 - (iii) there is a real risk of the party disposing of, removing from Hong Kong or losing control of assets belonging to the party;
 - (b) the tribunal is satisfied that—
 - (i) the party has conducted the proceedings in a manner that delays the determination of the case; or
 - (ii) the party's conduct otherwise constitutes an abuse of the process; or

- (c) the tribunal is satisfied that the party has, without reasonable excuse, failed to comply with any award, order or direction.
- (5) If a party fails to comply with an order under subsection (1), the tribunal may—
 - (a) dismiss the party's claim;
 - (b) stay the proceedings; or
 - (c) enter judgment on the claim against the party.
- (6) On a party's failure to comply with an order under subsection (1), the tribunal may exercise the powers referred to in subsection (5) without further hearing the party or considering the party's case if the order expressly indicates the tribunal's intention to do so on such non-compliance without further hearing or consideration.

Section 31 Review of awards and orders

- (1) Except where a party has filed an application for leave to appeal and does not agree to withdraw the application, a presiding officer may, within 14 days from the date of an award or order given or made by him, review the award or order and on such review may re-open and re-hear the claim wholly or in part and may call or hear fresh evidence and may confirm, vary or reverse his previous award or order.
- (2) The power conferred by subsection (1) may be exercised-
 - (a) by a presiding officer of his own motion, on notice in the prescribed form to all parties;
 - (b) on the application of a party within 7 days, on notice in the prescribed form to all other parties.
- (3) The exercise of the power conferred by subsection (1) shall not operate as a bar to appeal by a party against the award or order or thereafter against the determination of the review.

~~(4) On the application of a party for a review of an award or order, the presiding officer, having regard to the possibility of assets which may be available to satisfy an award being disposed of to the prejudice of any party, may make such order regarding payment into the tribunal, giving of security or otherwise as he may think fit.~~

(4) After a party has made an application for a review of an award or order, the presiding officer may order any party to give security for the payment of any award or order that has been or may be made.

(4A) The presiding officer may make the order either of the presiding officer's own motion or on the application of a party.

(4B) The order may require security to be given—

- (a) by payment into the tribunal a sum of money that the presiding officer considers sufficient; or
- (b) in any other form and manner that the presiding officer considers appropriate.

(4C) Without limiting subsection (4), the presiding officer may exercise the power under that subsection—

(a) on being satisfied that the application for a review of an award or order—

(i) is devoid of merit; or

(ii) is made to delay the process; and

(b) having regard to the possibility of assets that may be available to satisfy an award or order being disposed of to the prejudice of any party.

(4D) If a party fails to comply with an order under subsection (4), the presiding officer may dismiss the application for review.

(4E) On a party's failure to comply with an order under subsection (4), the presiding officer may dismiss the application for review under subsection (4D) without further hearing the party or considering the party's case if the order expressly indicates the presiding officer's intention to do so on such non-compliance without further hearing or consideration.

(5) A presiding officer may transfer the hearing and consideration of a review to another presiding officer who shall have all the powers and functions which he would have if he had originally heard the claim and had prepared the record of proceedings.

~~Section 38 Awards and orders may be registered in District Court~~

~~A final award or order of the tribunal may be registered in such manner as may be prescribed, in the District Court and shall, on such registration, become for all purposes a judgment of the District Court and, subject to section 40, may be enforced accordingly, notwithstanding that amount for which an award or order has been given is beyond the jurisdiction of the District Court.~~

38. Awards and orders may be registered in District Court

- (1) A final award or order of the tribunal may be registered, in such manner as may be prescribed, in the District Court and, on such registration, becomes for all purposes a judgment of the District Court made on the date on which the final award or order was made by the tribunal.
- (2) Subject to section 40, the award or order so registered may be enforced accordingly even if the amount for which the award or order has been given is beyond the jurisdiction of the District Court.

Section 44 Punishment for refusal to comply with request by tribunal officer to produce document and for obstruction of tribunal officer

Subject to section 14(5), any person who-

- (a) refuses, without reasonable excuse, to comply with a lawful request made by a tribunal officer for the production to him of any records, books of account or other documents; or
- (b) wilfully obstructs a tribunal officer in the carrying out of any duty under section 14,

shall be guilty of an offence and shall be liable on summary conviction to a fine at level 4.

44A. Documents not to be used for other purposes

- (1) The tribunal may give directions prohibiting or restricting the disclosure or use of a specified document if the tribunal considers it appropriate to do so having regard to all the circumstances of the case.
- (2) The circumstances include the need to protect—
 - (a) intimate personal and financial information;
 - (b) commercially sensitive information; and
 - (c) information communicated or obtained in confidence.
- (3) If a specified document has not been read to or by the tribunal, or referred to, at a hearing of the tribunal held in public, no person, other than the person who disclosed the document, may use or disclose the document otherwise than for the purpose of the proceedings in which the document is disclosed.
- (4) Despite subsections (1) and (3), if the tribunal considers that the justice of the case so requires, the tribunal may, in any proceedings in the tribunal, order —
 - (a) the use of a specified document in a manner specified in the order; or
 - (b) the disclosure of a specified document to a person and in a manner specified in the order.
- (5) Despite subsections (1) and (3), a person may disclose or use a specified document under an order of a court of record or magistrates' court.
- (6) A person who contravenes subsection (3) or a direction given under subsection (1) is liable to committal for contempt of court.

(7) In this section—

specified document (指明文件) means any document disclosed in a proceedings in the tribunal.

Section 47 Immunity

- (1) A presiding officer has, in the performance of his powers or duties under this Ordinance, the same privileges and immunities as a judge of the Court of First Instance in civil proceedings in that court.
- (2) A witness before the tribunal shall be entitled to the same privileges and immunities as if he were a witness in civil proceedings in the Court of First Instance.

48. Transitional provisions

The amendments made to this Ordinance by the Labour Tribunal (Amendment) Ordinance 2013 (of 2013) apply in relation to all proceedings to which this Ordinance relates irrespective of when those proceedings were commenced.

SCHEDULE

[section 7]

1. A claim for a sum of ~~money~~money, whether liquidated or unliquidated, which arises from-
 - (a) the breach of a term, whether express or implied or (if relevant) arising by force of section 10(1) of the Minimum Wage Ordinance (Cap 608), of a contract of employment, whether for performance in Hong Kong or under a contract to which the Contracts for Employment Outside Hong Kong Ordinance (Cap 78) applies; (Amended 8 of 1976 s. 49; 59 of 1999 s. 3) (aa) the breach of a term, whether express or implied or (if relevant) arising by force of section 10(1) of the Minimum Wage Ordinance (Cap 608), of a contract of apprenticeship; or
 - (b) the failure of a person to comply with the provisions of the Employment Ordinance (Cap 57), the Minimum Wage Ordinance (Cap 608) or the Apprenticeship Ordinance (Cap 47),other than a claim specified in the Schedule to the Minor Employment Claims Adjudication Board Ordinance (Cap 453).
2. A claim for contribution under section 26(2).
3. Notwithstanding paragraphs 1 and 2, the tribunal shall not have jurisdiction to hear and determine a claim for a sum of ~~money~~money (whether liquidated or unliquidated), or otherwise in respect of a cause of action, founded in tort whether arising from a breach of contract or a breach of a duty imposed by a rule of common law or by any enactment.
4. Any question as to-
 - (a) the right of an employee to a severance payment under Part VA of the Employment Ordinance (Cap 57); or
 - (b) the amount of such payment, (Added L.N. 178 of 1974) other than a claim specified in the Schedule to the Minor Employment Claims Adjudication Board Ordinance (Cap 453).
5. Any question as to-
 - (a) the right of an employee to payment of wages by a person other than his employer under Part IXA of the Employment Ordinance (Cap 57); and
 - (b) the amount of such payment,other than a claim specified in the Schedule to the Minor Employment Claims Adjudication Board Ordinance (Cap 453).

6. Notwithstanding paragraphs 1, 2, 4 and 5, the tribunal shall have jurisdiction to hear and determine a claim transferred to the tribunal under section 8(3) of the Minor Employment Claims Adjudication Board Ordinance (Cap 453) or section 7 or 10 of the Small Claims Tribunal Ordinance (Cap 338). (Added 61 of 1994 s. 48. Amended 28 of 1999 s. 18)
7. A claim for remedies under Part VIA of the Employment Ordinance (Cap 57). (Added 75 of 1997 s. 6)
8. (Repealed 135 of 1997 s. 4)
9. (Repealed 135 of 1997 s. 14)

**Proposed Amendments to the Labour Tribunal (General) Rules
(Cap. 25 sub.leg.A)
in Marked-up Mode**

Rule 12 Registration of award or order in District Court

- (1) Where an award or order is made by the tribunal, and if stay of execution has not been ordered under section 37 of the Ordinance, the registrar shall, on the application of the party in whose favour the award or order is made, supply to him a certificate of award or order in the prescribed form and a copy thereof. (see Form 17)
- (2) The registrar of the District Court ~~shall, on the production of a certificate of award or order, and a copy thereof to him within 12 months after the date of the award or order,~~must, on the production of a certificate of award or order and a copy of it to the registrar, register the certificate in the Register of Actions kept in the District Court.
- (3) The registrar of the District Court shall seal and date the copy certificate and return it to the person producing it.
- (4) A presiding officer may at any time authorize an officer attached to the tribunal, not being below the rank of senior clerical officer, to discharge the duties of the registrar under paragraph (1).

**Proposed Amendments to the Labour Tribunal (Forms) Rules
(Cap. 25 sub.leg.C)
in Marked-up Mode**

Schedule

[rule 2]

FORM 1
LABOUR TRIBUNAL ORDINANCE
(Chapter 25)
TITLE TO CLAIM: GENERAL FORM

Between (a)
Claimant(s)

and

(b)
Defendant(s)

~~Claim No. of 19~~ Claim No. of

Note: (a) Insert full name and address of each claimant and, in the case of a representative claim, the name and address of each person represented.
(b) Insert full name and address of each defendant.

FORM 2
LABOUR TRIBUNAL ORDINANCE
(Chapter 25)
FORM OF CLAIM
[title as in Form 1]

[section 11]

TO THE DEFENDANT.

The claimant claims the amount
of particulars of the grounds for
which and the manner in which it is calculated are set out as follows:

(a) 1. The grounds for the claim are:

.....
.....
.....

(b) 2. The amount of claim is calculated as follows:

.....
.....
.....

| Dated this ~~day of~~ 19 day of.....

.....
(c) (Signature of Claimant)

| Filed this..... ~~day of~~ 19 day of.....

Registrar
L.S.

Note: (a) Set out sufficient particulars to inform the defendant of the grounds for the claim.

- (b) Set out in full the manner in which the amount of claim is calculated and whether it includes any interest or expenses.
- (c) This claim must be signed by each claimant or person represented before the date of hearing.

FORM 3

[section 13]

LABOUR TRIBUNAL ORDINANCE
(Chapter 25)
NOTICE OF PLACE AND DAY FIXED FOR HEARING
[title as in Form 1]

TO THE DEFENDANT:

TAKE NOTICE that this claim has been made by the claimant against you and will be heard at a tribunal to be held

at

before, Presiding Officer, on the day

of 19 day of....., at *a.m./p.m.

AND TAKE NOTICE that if you do not attend at the time and place mentioned, the claim will be heard in your absence and such award or order may be made in your absence as the tribunal thinks fit.

Dated this day of 19 day of.....

Registrar
L.S.

(a) This notice and a copy of the claim was served by me

on at on the day

of 19 day of.....

.....
(Signature of recipient of claim and notice) (Signature of process server)

* Delete whichever is not applicable.

Note: (a) Service shall be effected in accordance with section 13(2) of the Labour Tribunal Ordinance.

FORM 4 [section 13]
LABOUR TRIBUNAL ORDINANCE
(Chapter 25)
NOTICE OF NEW PLACE AND NEW DAY FIXED FOR HEARING
[title as in Form 1]

TO THE DEFENDANT.

TAKE NOTICE that this claim will be heard

at on the ~~day of 19~~
~~day of.....~~, at *a.m./p.m. and any previous notice of the place and
date of hearing is hereby cancelled.

Dated this ~~day of 19~~ ~~day of.....~~

Registrar
L.S.

(a) This notice was served by me on at on the
~~day of 19~~ ~~day of.....~~

.....
(Signature of recipient of notice)

.....
(Signature of process server)

* Delete whichever is not applicable.

Note: (a) Service shall be effected in accordance with section 13(2) of the Labour
Tribunal Ordinance.

FORM 5
LABOUR TRIBUNAL ORDINANCE
(Chapter 25)

[(Gen.) rule 7]

NOTICE OF DAY OF HEARING BY COURT/TRIBUNAL TO WHICH CLAIM
HAS BEEN TRANSFERRED

In the *Court of First Instance/District Court/Small Claims Tribunal of Hong Kong
[title as in Form 1]

TO ALL PARTIES INTERESTED.

TAKE NOTICE that this claim has been transferred to *this Court/this Tribunal
and will be heard at on the ~~day of 19~~
~~day of.....~~, at *a.m./p.m.

Dated this ~~day of 19~~ ~~day of.....~~

.....
Registrar,
*High Court/District Court/
Small Claims Tribunal

L.S.

(a) This notice was served by me on at
| on the ~~day of~~ 19 day of.....

.....
.. ..
(Signature of recipient of notice) (Signature of process server)

* Delete whichever is not applicable.

Note: (a) Service shall be effected in accordance with the Labour Tribunal
(General) Rules.

FORM 6 [section 14(1) & (Gen.)
rule 8(a)]
LABOUR TRIBUNAL ORDINANCE
(Chapter 25)
SUMMARY OF FACTS
[title as in Form 1]

TO THE PRESIDING OFFICER.

I,, tribunal officer, on the
| ~~day of~~ 19 day of..... received a copy of this claim from
the registrar and have inquired into the facts thereof, a summary of which is set out
in the following :

- | 1. By a contract of employment made *orally/in writing, *(a copy of which is

attached) on the ~~day of~~ 19 day
of....., the claimant(s) agreed *to serve/employ the defendant(s)
as on the following terms:

- (a)
- (b)
- (c)
- (d)

2. *The claimant(s) were dismissed from the services of the defendant(s) on the ~~day of~~ 19 day of.....
3. *The dismissal was made *orally/in writing *(a copy of which is attached).
4. *The defendant(s) left the services of the claimant(s) on the ~~day of~~ 19day
of.....
5. *The defendant(s) gave *no notice/ days' notice to the claimant(s) of *his/their intention to leave the services of the claimant(s).
6. *The claimant(s) became ill on the ~~day~~
of..... 19 day of..... and informed the defendant(s) *orally/in writing *(a copy of which is attached) of *his/their illness and the opinion of *his/their medical advisor *(a copy of which is attached) that he/they would be unable to resume work fordays.
7. *The following facts are agreed by the claimant(s) and the defendant(s):
 - (a)
 - (b)
 - (c)
 - (d)
8. *The claimant(s) dispute(s) the following facts:
 - (a)
 - (b)
 - (c)
 - (d)
9. *The defendant(s) dispute(s) the following facts:
 - (a)
 - (b)
 - (c)
 - (d)
10. The following facts are, in my opinion, of assistance to the tribunal:
 - (a)
 - (b)
 - (c)

(d)

11. The following persons have refused to be interviewed by me:

(a)

(b)

(c)

(d)

12. The following persons have been interviewed by me but have refused to *make any statement/answer any question put to him:

(a)

(b)

(c)

(d)

| Dated this ~~day of~~ 19 day of.....

.....
Tribunal Officer

* Delete whichever is not applicable.

Note : To be completed in duplicate and delivered to the registrar not later than 24 hours after the completion of the necessary inquiries.

FORM 7
LABOUR TRIBUNAL ORDINANCE
(Chapter 25)
CERTIFICATE OF CONCILIATION
[title as in Form 1]

[section 15(1)]

I,, authorized officer, hereby *certify/report-

*That the following *claimant(s) defendant(s), having been interviewed by me, *has/have indicated *his/their refusal to take part in conciliation :

(a) 1.

2.

3.

4.

*That the parties to this claim, having taken part in conciliation, have not been able to reach any settlement.

*That having interviewed the parties to this claim, I am of the opinion that conciliation is unlikely to result in a settlement being reached.

*That having interviewed the parties to this claim, I am of the opinion that conciliation may prejudice the interest of the *claimant(s)/defendant(s).

(b) Dated this ~~day of~~ 19 day of.....

.....
Authorized Officer

*(c) I,, tribunal officer, having studied the above report, certify that it is true and correct.

(b) Dated this ~~day of~~ 19 day of.....

.....
Tribunal Officer

* Delete whichever is not applicable.

Note : (a) Insert full name of each claimant or person represented, or defendant who refuses to participate in conciliation.

(b) To be delivered to the registrar not later than 24 hours before the date fixed for the hearing of the claim.

(c) To be filled and signed by the tribunal officer if the authorized officer has reported to him on conciliation.

FORM 8
LABOUR TRIBUNAL ORDINANCE
(Chapter 25)

[section 15(3)]

NOTICE OF ADJOURNMENT

[title as in Form 1]

TO THE COMMISSIONER FOR LABOUR.

TAKE NOTICE that this appearing to me that there is a reasonable likelihood of a settlement of this claim being agreed to by all or some of the parties thereto, I have ordered that hearing of this claim be adjourned to the day of 19 day of at *a.m./p.m.

Dated this day of 19 day of

.....
Presiding Officer

* Delete whichever is not applicable.

FORM 9 [section 15(5) & (6)]
LABOUR TRIBUNAL ORDINANCE
(Chapter 25)
ADVICE OF RESULT OF CONCILIATION
[title as in Form 1]

TO THE PRESIDING OFFICER.

Conciliation has been held by me pursuant to section 15(4) of the Labour Tribunal Ordinance between the *(following) parties to this claim:

*A settlement has been agreed to by such parties.

*I am of the opinion that there is no reasonable likelihood of a settlement being agreed to by such parties.

*The following has resulted from conciliation:

Dated this day of 19 day of

.....
*Authorized Officer/
for Commissioner for Labour.

* Delete whichever is not applicable.

Note : This advice has to reach the presiding officer not less than 24 hours before the date to which hearing has been adjourned.

FORM 10
LABOUR TRIBUNAL ORDINANCE
(Chapter 25)

[section 15(7)]

CERTIFICATE OF SETTLEMENT
[title as in Form 1]

We, (a)
.....
.....
parties to this claim, hereby agree to a settlement of this claim on the following terms:

(b)
.....
.....

The above agreement has been interpreted to us in the
dialect and understood by us.

Dated this ~~day of~~ 19 day of.....

(c) (Signature of Claimant(s))

(c) (Signature of Defendant(s))

Before me,

.....
Authorized Officer.

Filed this~~day of~~ 19 day of.....

Registrar

L.S.

- Note : (a) Insert full names of those parties who agree to the settlement.
 (b) Set out in full the conditions on which the settlement is agreed
 (c) This certificate must be signed by all parties who agree to the settlement.

Form 11 [section 31(2)(a)]
 LABOUR TRIBUNAL ORDINANCE
 (Chapter 25)
 NOTICE OF REVIEW BY A PRESIDING OFFICER OF
 HIS OWN MOTION
 [title as in Form 1]

TO ALL PARTIES INTERESTED.

TAKE NOTICE that in exercise of the powers conferred by section 31(1) of the Labour Tribunal

Ordinance, Presiding Officer, will review the *award/order made on the~~day of~~ 19 day of..... against

(a)*claimant(s)/defendant(s) to this claim.

AND TAKE NOTICE that the review will be heard

at on the~~day of~~ 19 day of..... at *a.m./p.m.

Dated this~~day of~~ 19 day of.....

Registrar.

L.S.

(b) This notice was served by me on
at on the ~~day of~~ 19 day
of.....

.....
(Signature of recipient of notice)

.....
(Signature of process server)

* Delete whichever is not applicable.

Note : (a) Insert full name and address of party against whom award/order was made.

(b) Service shall be effected in the manner prescribed under the Labour Tribunal (General) Rules.

FORM 12 [section 31(2)(b)]
LABOUR TRIBUNAL ORDINANCE
(Chapter 25)
NOTICE OF REVIEW BY A PRESIDING OFFICER ON THE
APPLICATION OF A PARTY
[title as in Form 1]

TO ALL PARTIES INTERESTED.

An Application has been made by

(a), a party to this claim, for a review under section 31 of the Labour Tribunal Ordinance of an *award/order made on the ~~day of~~ 19 day of..... in respect of this claim.

TAKE NOTICE that, Presiding Officer, will review the *award/order at on the ~~day of~~ 19 day of..... at *a.m./p.m.

Dated this ~~day of~~ 19 day of.....

Registrar.
L.S.

(b) This notice was served by me
on at on
the ~~day of~~ 19 day of.....

.....
(Signature of recipient of notice)

.....
(Signature of process server)

* Delete whichever is not applicable.

Note : (a) Insert full name of the party by whom the application has been made.
(b) Service shall be effected in the manner prescribed under the
Labour Tribunal (General) Rules.

FORM 13 [section 31(4)]
LABOUR TRIBUNAL ORDINANCE
(Chapter 25)
APPLICATION FOR REVIEW OF AN *AWARD/ORDER
BY A PARTY
[title as in Form 1]

TO, PRESIDING OFFICER.

I, (a), a party to this claim which has heard and
determined before you on the ~~day of~~ 19 day
of....., being dissatisfied with the *award/order made by you in respect of
this claim, hereby, pursuant to section 31(2)(b) of the Labour Tribunal Ordinance,
make application to you to review the *award/order.

(b) Dated this ~~day of~~ 19 day of.....

.....
(Signature of Applicant)

* Delete whichever is not applicable.

Note : (a) Insert full name of the party making application
(b) An application for a review of an award or order must be made within 7 days of the award or order.

FORM 14 [section 32(2)]
LABOUR TRIBUNAL ORDINANCE
(Chapter 25)
APPLICATION FOR LEAVE TO APPEAL ON POINT OF LAW
[title as in Form 1]

TO THE COURT OF FIRST INSTANCE.

I, (a), a party to this claim, pursuant to section 32 of the Labour Tribunal Ordinance do hereby apply for leave to appeal against the *award/order/determination by, Presiding Officer, made in respect of this claim on the~~day of~~ 19 day of.....

The grounds on which I desire to appeal are that-

*the *award/order/determination is erroneous in point of law in that-(b)

- 1.....
- 2.....
- 3.....
- 4.....

*the *award/order/determination is outside the jurisdiction of the tribunal in that-(c)

- 1.....
- 2.....
- 3.....
- 4.....

Dated this~~day of~~ 19 day of.....

.....
(Signature of Applicant)

(d) Lodged this ~~day of~~ 19 day of.....

.....
Registrar, High Court

L.S.

* Delete whichever is not applicable.

- Note: (a) Insert full name of the party making the application for leave to appeal.
 (b) Set out the point of law in question.
 (c) Set out the reasons.
 (d) This application must be lodged with the Registrar, High Court, within 7 days after the date on which the written award/order/determination appealed against was served.

FORM 15
(Repealed L.N. 126 of 1976)

FORM 15A [(Gen.) rule 8A]
 LABOUR TRIBUNAL ORDINANCE
 (Chapter 25)

NOTICE OF DAY FIXED FOR HEARING OF AN APPLICATION
 FOR LEAVE TO APPEAL

[title as in Form 1]

TO (the applicant).

TAKE NOTICE that your application ~~dated~~ 19 dated
 for leave to appeal against the *award/order/determination
 of, Presiding Officer, made on the ~~day~~
~~of~~ 19 day of..... in respect of this claim will be heard
 at on the ~~day of~~ 19 day

| of..... at

| Dated this ~~day of~~ 19 day of.....

.....
Registrar, High Court
L.S.

.....
(a) This notice was served by me on
| at on the ~~day of~~ 19
day of.....

.....
(Signature of recipient of notice)

.....
(Signature of process server)

* Delete whichever is not applicable.

Note: (a) Service to be effected in accordance with the Labour Tribunal (General) Rules.

FORM 16 [(Gen.) rule 9(1)(c)]
LABOUR TRIBUNAL ORDINANCE
(Chapter 25)
NOTICE OF DAY FIXED FOR HEARING OF AN APPEAL
In the High Court of Hong Kong

[title as in Form 1]

TO ALL PARTIES INTERESTED.

TAKE NOTICE that leave to appeal against the *award/order/determination of, Presiding Officer, | made on the ~~day of~~ 19 day of.....-in respect of this claim has been granted. The grounds of appeal are set out in the application for leave to appeal, a copy of which is annexed hereto.

AND TAKE NOTICE that this appeal will be heard

at on the day
of 19 day of-at

Dated this day of 19 day of.....

Registrar, High Court
L.S.

(a) This notice was served by me

on at
on the day of 19 day of.....

.....
(Signature of recipient of notice)

.....
(Signature of process server)

* Delete whichever is not applicable

Note: (a) Service to be effected in accordance with the Labour Tribunal (General) Rules.

FORM 17
LABOUR TRIBUNAL ORDINANCE
(Chapter 25)
CERTIFICATE OF *AWARD/ORDER
[title as in Form 1]

[(Gen.) rule 12(1)]

I,, certify that (a)
on the day of 19 day
of-obtained against (b) in the tribunal *the
award of/the order for the payment
of

Dated this day of 19 day of.....

*Registrar/Officer authorized by Presiding
Officer under rule 12(4) of the Labour

Tribunal (General) Rules

L.S.

TO THE REGISTRAR, DISTRICT COURT.

The above certificate is presented by me for registration in accordance with rule 12(2) of the Labour Tribunal (General) Rules.

~~(e) Dated~~ Dated this ~~day of~~ day of ~~19~~
day of.....

.....
(Signature of party presenting
for registration)

The above certificate is registered in the District Court.

Dated this ~~day of~~ day of ~~19~~ day of.....

Registrar, District Court

L.S.

* Delete whichever is not applicable.

Note: (a) Insert full name of party in whose favour the award or order is made.
(b) Insert full name of party against whom the award or order is made.
~~(c) The award or order must be presented for registration not later than 12 months after the date of the award or order.~~

TO THE LABOUR TRIBUNAL.

I, (a)....., a claimant to this claim, which was struck out by the tribunal in my absence on the day ~~of~~ 19 day of..... hereby, pursuant to section 20A of the Labour Tribunal Ordinance, make application for the restoration of the claim.

The *reason/reasons for my non-appearance at the hearing *is/are
.....
.....

(b) Dated this ~~day of~~ 19 day of.....

.....
(Signature of Applicant)

* Delete whichever is not applicable.

Note: (a) Insert full name of the claimant making application.

(b) This application must be made to the tribunal within 7 days after the hearing or such further period as the tribunal may allow.

FORM 19 [section 21A]
LABOUR TRIBUNAL ORDINANCE
(Chapter 25)
APPLICATION TO SET ASIDE AN *AWARD/ORDER
[title as in Form 1]

TO THE LABOUR TRIBUNAL.

I, (a) ,a defendant to this claim, which was heard and determined by the tribunal in my absence and an *award/order made on the ~~day~~ of 19 day of....., hereby, pursuant to section 21A of the Labour Tribunal Ordinance, make application to set aside the *award/order.

The *reason/reasons for my non-appearance at the hearing *is/are
.....
..
.....
..

(b) Dated this ~~day of~~ 19 day of.....

.....
(Signature of Applicant)

* Delete whichever is not applicable.

Note: (a) Insert full name of the defendant making application.

(b) This application must be made to the tribunal within 7 days after the hearing or such further period as the tribunal may allow.

FORM 20 [sections 20A & 21A]
LABOUR TRIBUNAL ORDINANCE
(Chapter 25)

NOTICE OF PLACE AND DAY FIXED FOR HEARING OF
AN APPLICATION TO *RESTORE A CLAIM/SET ASIDE
AN *AWARD/ORDER

[title as in Form 1]

TO ALL PARTIES INTERESTED.

An application has been made by (a)
....., a *claimant/defendant
to this claim, to-

*restore under section 20A of the Labour Tribunal Ordinance a claim which
was struck out

*set aside under section 21A of the Labour Tribunal Ordinance the

*award/order made

in the absence of the applicant on the~~day of~~
~~19 day of.....~~-in respect of this claim. The reasons for the non-appearance
of the applicant are set out in the Application, a copy of which is annexed hereto.

TAKE NOTICE that the Application will be heard at a tribunal to be held
at before, Presiding Officer, on
the ~~day of~~ ~~19 day of.....~~, at
*a.m./p.m.

Dated this~~day of~~ ~~19 day of.....~~

.....
Registrar

L.S.

(b) This notice and a copy of the application was served by me on
at
on the~~day of~~ ~~19 day of.....~~

.....
(Signature of recipient of
notice and application).

.....
(Signature of process server)

* Delete whichever is not applicable.

Note: (a) Insert full name of the applicant.
(b) Service shall be effected in accordance with section 13(2) of the
Labour Tribunal Ordinance.

**Proposed Amendments to the Labour Tribunal (Suitors' Funds) Rules
(Cap. 25 sub.leg.D)
in Marked-up Mode**

Rule 4 Registrar to give receipt

- (1) The registrar shall give a receipt to any person by whom funds are paid into the tribunal.
- (2) A receipt given under this rule shall be as nearly as may be in Form 1 in the Schedule hereto and shall contain particulars sufficient to identify the payment to which it relates and a statement of such of the following circumstances as may be applicable-
 - (a) paid in on behalf of defendant (name of party) in satisfaction of claim of the above-named (name of party);
 - (b) paid in under order dated the ~~day of 19~~day of ;
 - (c) paid in to ~~security for costs account~~security money account on behalf of (name of party).

Schedule

[rule 4(2)]

FORM 1
 LABOUR TRIBUNAL (SUITORS' FUNDS) RULES
 Receipt
 IN THE LABOUR TRIBUNAL
 (Title of cause or matter. ~~No. of 19~~ No. of).
 Ledger account

(if the same as the cause, state as above).

Received from _____ the sum of _____
 (Signature) *Registrar*

Dated this ~~day of 19~~ day of _____ .

[rule 7]

FORM 2
 LABOUR TRIBUNAL (SUITORS' FUNDS) RULES
 Declaration
 IN THE LABOUR TRIBUNAL
 (Title of cause or matter. ~~No. of 19~~ No. of).
 Ledger account

(if the same as the cause, state as above).

I (name and address of applicant) solemnly and sincerely declare that I am the
 (degree of relationship) and next or one of the next of kin of (name of deceased)
 and that I am entitled to take out administration to his estate and to receive the sum
 of \$ directed to be paid to him by the order ~~dated the 19~~ dated the _____ .

And I further declare that the total value of the assets of the deceased including the
 above sum does not exceed \$5000, and I certify that the death-bed and funeral
 expenses of the deceased have been paid: and I make this solemn declaration
 conscientiously believing the same to be true and by virtue of the provisions of the
 Oaths and Declarations Ordinance, Chapter 11.

(Signature of applicant)

Declared at

| Before me this ~~day of 19~~day of _____.
(Signature)

Commissioner for Oaths,
notary public, or other
authorized officer

Proposed Additions to the Hong Kong Court of Final Appeal Ordinance (Cap. 484)

12. Section 40A added

After section 40—

Add

“40A. Suitors’ Funds Rules

- (1) The Chief Justice may make rules for regulating the following matters—
 - (a) the deposit, payment, delivery, and transfer in, into, and out of the Court of money of suitors;
 - (b) the evidence of such deposit, payment, delivery, or transfer, and the investment of and other dealings with money in the Court;
 - (c) the execution of the orders of the Court; and
 - (d) the powers and duties of the Registrar with reference to such money.
- (2) Without limiting subsection (1), rules made under that subsection may —
 - (a) regulate the placing on and withdrawal from deposit of money in the Court, and the payment or crediting of interest on money placed on deposit;
 - (b) determine the smallest amount of money on deposit on which interest is to be credited to an account to which money placed on deposit belongs;
 - (c) determine the time at which money placed on deposit is to begin and to cease to bear interest and the mode of computing such interest;
 - (d) determine the cases in which money placed on deposit is to begin and to cease to bear interest and the mode of computing such interest;
 - (e) determine the cases in which interest on money placed on deposit is to be placed on deposit; and
 - (f) dispose of money remaining unclaimed in the Court.”.

**Proposed Amendments to the High Court Ordinance (Cap. 4)
in Marked-up Mode**

**Section 57 ~~Rules concerning deposit, etc. of moneys, etc. in High Court~~
Suitors' Funds Rules**

- (1) The Chief Judge of the High Court may make rules for regulating-
 - (a) the deposit, payment, delivery, and transfer in, into, and out of the High Court of money, securities, and movable property of suitors;
 - (b) the evidence of such deposit, payment, delivery, or transfer, and the investment of and other dealings with money, securities, and movable property in court;
 - (c) the execution of the orders of the High Court; and
 - (d) the powers and duties of the Registrar with reference to such money, securities, and property.

- (2) Without prejudice to the generality of the foregoing, rules made under this section may provide for-
 - (a) regulating the placing on and withdrawal from deposit of money in court, and the payment or crediting of interest on money placed on deposit;
 - (b) determining the smallest amount of money on deposit on which interest is to be credited to an account to which money placed on deposit belongs;
 - (c) determining the time at which money placed on deposit is to begin and to cease to bear interest and the mode of computing such interest;
 - (d) determining the cases in which money placed on deposit is to begin and to cease to bear interest and the mode of computing such interest;
 - (e) determining the cases in which interest on money placed on deposit and the dividends on any securities standing in the name of the Registrar is or are to be placed on deposit; and
 - (f) disposing of money remaining unclaimed in court, ~~other than the balance of an intestate estate, remaining unclaimed in court or money remaining unclaimed in the Bankruptcy Estates Account established under section 128 of the Bankruptcy Ordinance (Cap 6).~~

(3) For the purposes of this section "suitors" (訴訟人) includes any party to arbitral proceedings who makes payment of money into the Court of First Instance in accordance with rules of court.

(4) For the purposes of this section, *securities* includes shares.

Proposed Additions to the Competition Ordinance (Cap. 619)

13. Section 158A added

Part 10, after section 158—

Add

“158A. Suitors’ Funds Rules

- (1) The Chief Judge may, after consulting the President, make rules for regulating the following matters—
 - (a) the deposit, payment, delivery, and transfer in, into, and out of the Tribunal of money, securities and movable property of suitors;
 - (b) the evidence of such deposit, payment, delivery, or transfer, and the investment of and other dealings with money, securities and movable property in the Tribunal;
 - (c) the execution of the orders of the Tribunal; and
 - (d) the powers and duties of the Registrar of the Tribunal with reference to such money, securities and movable property.
- (2) Without limiting subsection (1), rules made under that subsection may—
 - (a) regulate the placing on and withdrawal from deposit of money in the Tribunal, and the payment or crediting of interest on money placed on deposit;
 - (b) determine the smallest amount of money on deposit on which interest is to be credited to an account to which money placed on deposit belongs;
 - (c) determine the time at which money placed on deposit is to begin and to cease to bear interest and the mode of computing such interest;
 - (d) determine the cases in which money placed on deposit is to begin and to cease to bear interest and the mode of computing such interest;
 - (e) determine the cases in which interest on money placed on deposit is, and the dividends on any securities standing in the name of the Registrar of the Tribunal are, to be placed on deposit; and
 - (f) dispose of money remaining unclaimed in the Tribunal.
- (3) For the purposes of this section, *securities* includes shares.”

**Proposed Amendments to the District Court Ordinance (Cap. 336)
in Marked-up Mode**

Section 73 Suitors' Funds Rules

- (1) The Chief Judge may make rules for regulating-
 - (a) the deposit, payment, delivery, and transfer in, into, and out of the Court of money, securities, and movable property of suitors;
 - (b) the evidence of such deposit, payment, delivery, or transfer, and the investment of and other dealings with money, securities, and movable property in court;
 - (c) the execution of the orders of the Court; and
 - (d) the powers and duties of the Registrar with reference to such money, securities, and movable property.

- (2) Without prejudice to the general nature of subsection (1), rules made under this section may provide for-
 - (a) regulating the placing on and withdrawal from deposit of money in court, and the payment or crediting of interest on money placed on deposit;
 - (b) determining the smallest amount of money on deposit on which interest is to be credited to an account to which money placed on deposit belongs;
 - (c) determining the time at which money placed on deposit is to begin and to cease to bear interest and the mode of computing such interest;
 - (d) determining the cases in which money placed on deposit is to begin and to cease to bear interest and the mode of computing such interest;
 - (e) determining the cases in which interest on money placed on deposit and the dividends on any securities standing in the name of the Registrar is or are to be placed on deposit; and
 - (f) disposing of money, ~~other than the balance of an intestate estate, remaining unclaimed in court or money remaining unclaimed in the Bankruptcy Estate Account established under section 128 of the Bankruptcy Ordinance (Cap 6).~~ remaining unclaimed in court.

- (3) For the purposes of this section, *securities* includes shares.

Proposed Additions to the Lands Tribunal Ordinance (Cap. 17)

8. Section 10AA added

After section 10—

Add

“10AA. Suitors’ Funds Rules

- (1) The Chief Justice, after consulting the President, may make rules for regulating the following matters—
 - (a) the deposit, payment, delivery, and transfer in, into, and out of the Tribunal of money, securities and movable property of suitors;
 - (b) the evidence of such deposit, payment, delivery, or transfer, and the investment of and other dealings with money, securities and movable property in the Tribunal;
 - (c) the execution of the orders of the Tribunal; and
 - (d) the powers and duties of the registrar with reference to such money, securities and movable property.
- (2) Without limiting subsection (1), rules made under that subsection may —
 - (a) regulate the placing on and withdrawal from deposit of money in the Tribunal, and the payment or crediting of interest on money placed on deposit;
 - (b) determine the smallest amount of money on deposit on which interest is to be credited to an account to which money placed on deposit belongs;
 - (c) determine the time at which money placed on deposit is to begin and to cease to bear interest and the mode of computing such interest;
 - (d) determine the cases in which money placed on deposit is to begin and to cease to bear interest and the mode of computing such interest;
 - (e) determine the cases in which interest on money placed on deposit is, and the dividends on any securities standing in the name of the registrar are, to be placed on deposit; and
 - (f) dispose of money remaining unclaimed in the Tribunal.
- (3) For the purposes of this section, *securities* includes shares.”

Proposed Additions to the Labour Tribunal Ordinance (Cap. 25)

9. Section 45 amended (Chief Justice may make rules)

(1) Section 45—

Renumber the section as section 45(1).

(2) After section 45(1)—

Add

“(2) Without limiting subsection (1), the Chief Justice may make rules for regulating the following matters—

- (a) the deposit, payment, delivery, and transfer in, into, and out of the tribunal of money and movable property of suitors;
 - (b) the evidence of such deposit, payment, delivery, or transfer, and the investment of and other dealings with money and movable property in the tribunal; and
 - (c) the powers and duties of the registrar with reference to such money and movable property.
- (3) Without limiting subsection (1), rules made under that subsection may —
- (a) regulate the placing on and withdrawal from deposit of money in the tribunal, and the payment or crediting of interest on money placed on deposit;
 - (b) determine the smallest amount of money on deposit on which interest is to be credited to an account to which money placed on deposit belongs;
 - (c) determine the time at which money placed on deposit is to begin and to cease to bear interest and the mode of computing such interest;
 - (d) determine the cases in which money placed on deposit is to begin and to cease to bear interest and the mode of computing such interest;
 - (e) determine the cases in which interest on money placed on deposit is to be placed on deposit; and
 - (f) dispose of money remaining unclaimed in the tribunal.”.

Proposed Additions to the Small Claims Tribunal Ordinance (Cap. 338)

11. Section 36 amended (Chief Justice may make rules)

(1) Section 36—

Renumber the section as section 36(1).

(2) After section 36(1)—

Add

“(2) Without limiting subsection (1), the Chief Justice may make rules for regulating the following matters—

- (a) the deposit, payment, delivery, and transfer in, into, and out of the tribunal of money of suitors;
- (b) the evidence of such deposit, payment, delivery, or transfer, and the investment of and other dealings with money in the tribunal; and
- (c) the powers and duties of the registrar with reference to such money.

(3) Without limiting subsection (2), rules made under that subsection may —

- (a) regulate the placing on and withdrawal from deposit of money in the tribunal, and the payment or crediting of interest on money placed on deposit;
- (b) determine the smallest amount of money on deposit on which interest is to be credited to an account to which money placed on deposit belongs;
- (c) determine the time at which money placed on deposit is to begin and to cease to bear interest and the mode of computing such interest;
- (d) determine the cases in which money placed on deposit is to begin and to cease to bear interest and the mode of computing such interest;
- (e) determine the cases in which interest on money placed on deposit is to be placed on deposit; and
- (f) dispose of money, remaining unclaimed in the tribunal.”.