

立法會
Legislative Council

LC Paper No. CB(3) 481/14-15

Ref. : CB(3)/M/OR

Tel : 3919 3300

Date : 26 February 2015

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 18 March 2015

Proposed resolution under the Criminal Procedure Ordinance

The Chief Secretary for Administration will move, at the Council meeting of 18 March 2015, a proposed resolution under section 9 of the Criminal Procedure Ordinance (Cap. 221). The proposed resolution is attached for Members' consideration. The President has directed that it be printed in the terms in which it was handed in on the Agenda of the Council.

2. The speech, in both Chinese and English, which the Chief Secretary for Administration will deliver when moving the proposed resolution is also attached.

(Odelia LEUNG)
for Clerk to the Legislative Council

Encl.

Criminal Procedure Ordinance

Resolution

(Under section 9 of the Criminal Procedure Ordinance (Cap. 221))

Resolved that the Criminal Appeal (Amendment) Rules 2015, made by the Criminal Procedure Rules Committee on 13 February 2015, be approved.

Criminal Appeal (Amendment) Rules 2015

(Made by the Criminal Procedure Rules Committee under section 9 of the Criminal Procedure Ordinance (Cap. 221) subject to the approval of the Legislative Council)

1. Criminal Appeal Rules amended

The Criminal Appeal Rules (Cap. 221 sub. leg. A) are amended as set out in rule 2.

2. Schedule amended

(1) The Schedule, Form VII—

Repeal

“on the 19 , and”

Substitute

“on the day of , and”.

(2) The Schedule, Form VII, English text—

Repeal

“in regard thereto.”

Substitute

“in regard to the appeal.”.

(3) The Schedule, Form VII—

Repeal

“Dated the day of 19 .”

Substitute

“Dated the day of .”.

(4) The Schedule, at the end of Form VII—

Add

- “Notes:
1. Please note rule 39 of the Criminal Appeal Rules (Cap. 221 sub. leg. A).
 2. Under that rule 39, on receipt by the Registrar of your notice of abandonment, your appeal is deemed to have been dismissed. The Court of Appeal has no inherent jurisdiction to permit your appeal to be reopened unless—
 - (a) your abandonment of the appeal is treated as a nullity; or
 - (b) there is a reference to the Court of Appeal by the Chief Executive under section 83P of the Criminal Procedure Ordinance (Cap. 221).
 3. Only in exceptional circumstances, where the Court is satisfied that the abandonment was not the result of a deliberate and informed decision, will the Court treat the abandonment as a nullity.”.

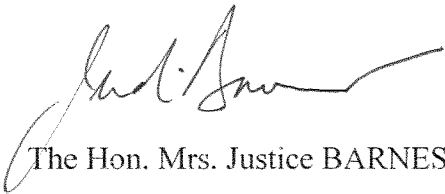
Made this 13th day of February 2015.



The Hon. Mr. Justice CHEUNG
Chief Judge of the High Court



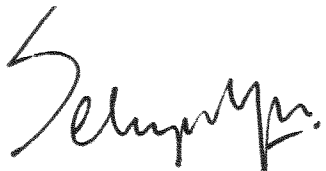
The Hon. Mr. Justice LUNN, V.P.



The Hon. Mrs. Justice BARNES



Andy HO
Senior Deputy Registrar, High Court



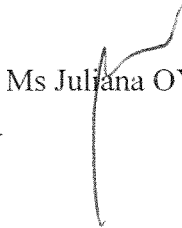
Selwyn YU, S.C.



Kenneth NG



William TAM



Ms Juliana OY CHAN

Explanatory Note

These Rules amend the Schedule to the Criminal Appeal Rules (Cap. 221 sub. leg. A) in Form VII by adding a note to indicate, for information purposes, the effect in law of abandoning an appeal by giving notice of abandonment.

(Translation)

**Speech by the Chief Secretary for Administration
at the meeting of the Legislative Council on 18 March 2015**

Criminal Procedure Ordinance (Cap. 221)
Criminal Appeal (Amendment) Rules 2015

Mr President,

I move that the Third Resolution standing in my name on the Agenda be passed. This motion aims to seek the approval of the Legislative Council for the Criminal Appeal (Amendment) Rules 2015 made by the Criminal Procedure Rules Committee under section 9 of the Criminal Procedure Ordinance (Cap. 221).

2. Under rule 39 of the Criminal Appeal Rules (Cap. 221 sub. leg. A), an appellant may, at any time before the hearing thereof, abandon his appeal by giving notice of abandonment thereof to the Registrar in Form VII, and upon such notice being received by the Registrar the appeal shall be deemed to have been dismissed by the Court of Appeal.

3. In order to reduce the number of unmeritorious applications to revive appeals by applicants who have filed a Notice of Abandonment, the Judiciary proposes to amend the Notice of Abandonment to indicate the effect in law of an abandonment, i.e. once an appeal is abandoned and thus dismissed, the Court of Appeal has no inherent jurisdiction to permit an appeal to be reopened unless the abandonment is treated as a nullity, or the matter is referred to it by the Chief Executive under section 83P of Cap. 221. The kernel of the nullity test is that the court must be satisfied that the abandonment is not the result of a deliberate and informed decision, i.e. the defendant's mind does not go with the act of the abandonment.

4. The Criminal Appeal (Amendment) Rules 2015 seek to amend the Schedule to Cap. 221 sub. leg. A in Form VII for the above purpose. I invite Members to pass the Resolution. Thank you.