

For Information

Legislative Council Panel on Administration of Justice and Legal Services

Proposed Legislative Amendments relating to the Notice of Abandonment in the Schedule to the Criminal Appeal Rules (Cap. 221 sub. leg. A)

PURPOSE

This paper briefs Members on the Judiciary's proposed legislative amendments relating to the Notice of Abandonment in the Schedule to the Criminal Appeal Rules (Cap. 221 sub. leg. A).

BACKGROUND

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.

PROPOSED LEGISLATIVE AMENDMENTS

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 the Criminal Procedure Ordinance (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. A marked-up version of the proposed amendments to Form VII is at the **Annex**.

FINANCIAL AND MANPOWER IMPLICATIONS

5. The proposal has no financial or staffing implications for the Judiciary.

CONSULTATION

6. The Judiciary has consulted the Criminal Procedure Rules Committee, the Hong Kong Bar Association, the Law Society of Hong Kong and the Hong Kong Law Costs Draftsmen Association. They are content with the proposed legislative amendments.

WAY FORWARD

7. Members are invited to note the contents of this paper. The Judiciary intends to invite the Criminal Procedure Rules Committee to make the amendment rules which will be subject to the approval of the Legislative Council.

Judiciary Administration
January 2015

**Marked-up Version of Proposed Amendments to
Notice of Abandonment in the Schedule to Cap 221 sub. leg. A**

FORM VII

[rule
39]

CRIMINAL PROCEDURE ORDINANCE

(Chapter 221)

HKSAR v.

Notice of abandonment

I,
having been convicted of
Court of First Instance
at the _____ on the 19 , and
District Court
having sent notice of appeal to the Court of Appeal against my said
conviction (or the sentence of
passed upon me on my said conviction) give you notice that I abandon all
further proceedings in regard to the appeal~~thereto~~.

Dated the day of 19 .

(Signed)

(Witness)

To the Registrar,
High Court,
Hong Kong.

- Notes: 1. Please note rule 39 of the Criminal Appeal Rules (Cap. 221 sub. leg. A).
2. Under 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.