

**Note for the Bills Committee on the  
District Court (Amendment) Bill**

**Appeals from District Court :  
Application for Leave to Appeal**

**Purpose**

The purpose of this note is to respond further to Members' views on the proposed revised appeal mechanism from the District Court under the Amendment Bill.

**Background**

2. In considering the Administration's responses vide LC Paper No. CB(2)1314/99-00(03) at the Bills Committee meeting on 13 March, Members requested the Administration to provide a paper to explain:

- (a) The mechanism of appeals from District Court vis-à-vis appeals from other levels of courts;
- (b) The need/ merits for the procedure requiring an application for leave to appeal against decisions of District Judges to be made to the trial judge first, instead of to the Court of Appeal directly; and
- (c) The justification for the proposal to reduce the period within which a person can appeal against a DC judge's refusal to grant leave to appeal to Court of Appeal from 14 days to 7 days on the basis of RHC O.59 r.14(3) which applies to ex parte applications only.

3. Members also requested the Administration to provide statistics on the number of applications for leave to appeal to the District Court and the Court of Appeal.

**Existing mechanism of appeals**

4. Different mechanisms of appeals are currently in place at different levels of courts to cater for the different needs and circumstances of the courts/ tribunal concerned.

5. Appeals from decisions of the Small Claims Tribunal lie to the Court of First Instance of the High Court and require leave from the Court of First Instance. A refusal by the Court of First Instance to grant leave to appeal shall be final. Appeals from decisions of the Court of First Instance lie to the Court of Appeal and require leave from the Court of Appeal. A refusal by the Court of Appeal to grant leave shall be final: section 28 and 29A of the Small Claims Tribunal Ordinance.

6. Appeals from decisions of District Judges lie to the Court of Appeal and require leave from either the District Judge or the Court of Appeal. The application for leave shall be made to the District Court Judge. Where the District Court refuses leave to appeal, the appellant can appeal against the refusal to the Court of Appeal: section 63 of the District Court Ordinance.

7. Appeals from decisions of High Court masters lie to a judge of the Court of First Instance by way of re-hearing: Order 58 of the Rules of the High Court. Appeals lie as of right to the Court of Appeal from every judgment or order of the Court of First Instance: section 14 of the High Court Ordinance.

### **Merits of the mechanism of the application for leave to appeal in the District Court**

8. In re-considering whether any further changes to the mechanism of appeal from the District Court should be introduced, we have come to the view that as far as appeals from District Court Judges' decisions are concerned, we should retain the existing system except certain amendments to the leave period should be introduced. In coming to this view, the following considerations are relevant:-

- (a) The existing requirement of application for leave to appeal against decisions of the District Judge to be made to the trial judge has the merits of discouraging the lodging of unmeritorious applications for appeals;
- (b) A refusal by the District Judge to grant leave cannot be final, as the application has yet to be considered by a higher court; and
- (c) Without the screening and vetting by the District Judges, it is possible that the Court of Appeal will be overburdened with a lot of applications for leave against decisions, including decisions on interlocutory applications, from District Judges.

9. Our view at para. 8 is supported by statistical data. In 1999:-

Applications for leave to appeal against decisions of District Judges	41
Leave to appeal granted by District Judges	9
Leave to appeal refused by District Judges	21
Application withdrawn	11
Application for leave to appeal to Court of Appeal after refusal by District Judges	6

10 The statistics show that if the requirement of applying for leave to appeal from the District Judge were dispensed with, the workload of the Court of Appeal in this regard in 1999 could have increased by about 7 times. Should the requirement be removed from the Amendment Bill, the caseload situation of the Court of Appeal will be further aggravated upon the implementation of the new limits of the District Court as it is anticipated that the number of applications for leave to appeals may increase correspondingly when a considerable number of cases will be diverted to the District Court.

### **Time for application for leave to appeal**

11. We have also proposed in the Administration's responses vide LC Paper No. CB(2)1314/99-00(03) that where the District Court judges refuses leave to appeal, the appellant can appeal against the refusal to Court of Appeal within 7 days (as opposed to the present provision of 14 days). The objectives of the proposal are to avoid delays as far as possible, and to bring the leave period in line with that under the O. 59, r.14(3) of the Rules of the High Court(RHC). The relevant Rule provides that "where an ex parte application has been refused by the court below, an application for a similar purpose may be made to the Court of Appeal ex parte within 7 days after the date of refusal." It is the provision governing the time for a party to renew his leave application to the Court of Appeal where his first leave application is refused by the judge of the Court of First Instance. Most of the applications for leave to appeal are ex parte applications.

12. At the meeting on 6 March, members noted the time for appeal to the Court of Appeal against the refusal of a judge of the Court of First Instance of an application for leave for judicial review is 10 days [Order 53, r3 of RHC].

This kind of application, being application of a special nature and not relevant to the jurisdiction of the District Court, is however not relevant for the matter under consideration. Hence, we remain of the view that we should reduce the period within which a person can appeal against District Judge's refusal to grant leave to appeal to Court of Appeal along the line with that under O.59, r.14(3) of RHC.