

Application for Leave to Appeal to the Court of Final Appeal

Purpose

The purpose of this paper is to (a) explain the relevant procedure for an application for leave to appeal to the Court of Final Appeal (“the CFA”) and (b) provide statistics in respect of such kind of application.

General

2. The CFA is the highest appellate court in the Hong Kong Special Administrative Region and it hears appeals on civil and criminal matters from the High Court (the Court of Appeal and the Court of First Instance). Before an appeal can be heard and determined by the CFA, leave to appeal must be obtained first.

3. Depending on whether the cause or matter is a civil or criminal one, different procedures as prescribed under the Hong Kong Court of Final Appeal Ordinance (“the Ordinance”) (Cap. 484) may apply in respect of an application for leave to appeal.

Civil Appeals

4. No appeal shall be admitted unless leave to appeal has been granted by the Court of Appeal in the first place¹. If the Court of Appeal refuses to grant leave, an application for leave to appeal can be made to the CFA².

5. An appeal lies as of right from any final judgment of the Court of Appeal where the matter in dispute amounts to or is worth \$1 million or more³. Other appeals from the judgments of the Court of Appeal, whether final or interlocutory, shall be at the discretion of the Court of Appeal or the CFA if the question involved in the appeal is one which, in the opinion of the court, because of its great general or public importance, or otherwise, ought to be submitted to the CFA for decision⁴.

¹ Section 23(1)(a) of the Ordinance

² Section 23(1)(b) of the Ordinance

³ Section 22(1)(a) of the Ordinance

⁴ Section 22(1)(b) of the Ordinance

Criminal Appeals

6. In all criminal matters, leave to appeal must be obtained from the CFA. Leave will only be granted in two situations: (a) the appeal involves a point of law of great and general importance or (b) it is shown that substantial and grave injustice has been done⁵.

7. If the appeal involves a point of law of great and general importance, the applicant must first apply to the Court of Appeal or the Court of First Instance (as the case may be) for a certificate of such a law point⁶. Where the Court of Appeal or the Court of First Instance declines to certify, the applicant can apply to the CFA to certify such point of law and for leave to appeal⁷. If the applicant relies on the substantial and grave injustice ground, the application for leave to appeal must be made directly to the CFA.

Hearing of the Application for Leave to Appeal

8. Subject to the Rule 7 procedure explained below, an application for leave to appeal will be listed to be heard before the Appeal Committee. The decision of the Appeal Committee shall be final and not itself subject to appeal⁸. If the Appeal Committee dismisses the application after a hearing, the practice is that, the Appeal Committee gives reasons for its determination. If the Appeal Committee allows the application, it will usually only state in general terms the basis or bases on which leave to appeal is granted.

Rule 7 Procedure

9. Where the Registrar of the CFA considers that an application for leave to appeal discloses no reasonable grounds, or is frivolous or fails to comply with the rules, he may issue a summons to the applicant, calling upon the applicant to file written submissions and show cause before the Appeal Committee why the application should not be dismissed⁹. After considering the application, including any written submissions lodged by the applicant, the Appeal Committee may order that the application be dismissed without an oral hearing or direct that an oral hearing be fixed. It may also give such other directions as the justice of the case may require¹⁰. If, after considering the matter, the Appeal Committee decides that the application for leave to appeal should be dismissed on a Rule 7 ground, the practice is that it will make an

⁵ Section 32(2) of the Ordinance

⁶ Section 32(2) of the Ordinance

⁷ Section 32(3) of the Ordinance

⁸ Section 18(3) of the Ordinance

⁹ Rule 7(1) of the Hong Kong CFA Rules (“the Rules”)

¹⁰ Rule 7(2) of the Rules

order dismissing the application without an oral hearing and the order will identify the relevant Rule 7 ground or grounds. For example, the order may state that the application ‘discloses no reasonable grounds for leave to appeal’. A determination under Rule 7 dismissing the application is posted to the applicant or his solicitors and posted on the notice board in the public precincts of the Court.

10. The practice under the Rule 7 procedure is set out in detail in the Decision of the Appeal Committee in *Chow Shun Yung v. Wei Pih & another*¹¹. It was held that -

- (a) Rule 7:
 - (i) does permit the Registrar to restrict the manner of showing of cause to the filing of written submissions;
 - (ii) does permit the Appeal Committee to consider and determine leave applications within the rule on the papers and without an oral hearing;
 - (iii) is not inconsistent with any section of the Ordinance or any other provision of the Rules¹²; and
- (b) the determination of applications for leave to appeal on the papers and without an oral hearing or reasons beyond referring to the relevant Rule 7 grounds does not contravene Article 10 of the Bill of Rights¹³.

Statistics

11. From the Table attached at Annex, in 2008, out of a total of 140 leave applications disposed of, 111 of them were dismissed. Of the 111 applications which were dismissed,

- (a) 85 were dismissed under the Rule 7 procedure usually on the ground of failure to disclose reasonable grounds for leave to appeal;
- (b) 26 were dismissed after oral hearing. Of these 26 cases,
 - (i) in 17 cases, no Rule 7 summons had been issued; and
 - (ii) in 9 cases, a Rule 7 summons had been issued. After considering the matters, the Appeal Committee decided to

¹¹ (2003) 6 HKCFAR 300

¹² Per Ribeiro PJ at 313 § 32

¹³ Per Ribeiro PJ, at 317 § 40

hold an oral hearing and dismissed the application after oral hearing. (It should be noted in 9 other cases, a Rule 7 summons had been issued. After considering the matters, the Appeal Committee decided to hold an oral hearing and allowed the application, that is, granted leave after oral hearing.)

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Judiciary Administration

Annex

Leave Application Disposed of in 2008

Leave Applications	Disposed of by Rule 7	Disposed of after hearing		Disposed of after hearing (where Rule 7 summons issued but Appeal Committee directed to list for hearing)		Withdrawn without hearing	Total
		Dismissed	Allowed	Dismissed	Allowed		
Criminal	45	8	11	4	3	3	74
Civil	40	8	6	5	6	1	66
Total	85	16	17	9	9	4	140
	61%	11%	12%	6%	7%	3%	100%