

**Bills Committee on Administration of Justice  
(Miscellaneous Provisions) Bill 2014**

**Provision of Information requested at  
the Meeting on 3 June 2014**

**PURPOSE**

This paper provides the information relating to appeals in civil causes or matters to the Court of Final Appeal (“CFA”) as requested by Members at the first meeting on 3 June 2014.

**STATISTICS**

2. At the meeting, Members requested the Judiciary Administration to provide the following updated statistics –

- (a) successful and unsuccessful rates of as of right appeals disposed of in the CFA filed since July 1997;
- (b) the number of substantive appeals (including as of right appeals) disposed of in the CFA since July 1997; and
- (c) leave applications disposed of in the CFA since July 1997.

3. The present as of right appeal system in civil matters is objectionable as a matter of principle. The Judiciary has proposed its removal because of the principles involved rather than the caseload as such.

4. The Judiciary would like to reiterate that as a matter of policy, the Judiciary does not normally maintain statistics on the results of appeal cases. The success of the appeals can be attributed to a large variety of reasons, depending very much on individual merits and circumstances of each appeal case. In some of these successful appeal cases, the CFA may take a different view from the lower courts’ judgment usually on law, but sometimes on the facts of the case. Sometimes, points not argued in the lower courts are argued in the CFA. Care must be taken in the use of such statistics, if they are useful in the first place.

5. That said, given Members' request, the Judiciary has taken special steps to compile, as far as possible, the relevant statistics from 2001 to 2012/2013 at **Annexes A to C** to provide a snapshot picture for Members. We have difficulty in collating accurate and reliable statistics from 1997 to 2000.

## **“OR OTHERWISE” GROUND**

6. Members also requested at the meeting that the Judiciary Administration provide information on the factors considered by the Judges under the “or otherwise” provision in section 22(1)(b) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484), and whether the CFA had explained what such factors were in any precedent cases.

### Overview

7. Members may note that the historical origin of appeals as of right in civil matters in Hong Kong lies in the system of appeals to the Judicial Committee of the Privy Council of the United Kingdom (“the Privy Council”), the highest appellate court of Hong Kong before 1 July 1997. This system applied not only to Hong Kong but also to all Commonwealth jurisdictions with rights of appeal to the Privy Council.

8. Before 1 July 1997, appeals in civil matters lay as of right to the Privy Council where the matter in dispute amounted to \$500,000 or more. When the Hong Kong Court of Final Appeal Bill was introduced into the Legislative Council in 1995, the as of right appeal mechanism was preserved so that the then prevailing appeal system would continue unchanged as far as possible<sup>1</sup>, but the threshold was raised to \$1 million to reflect the inflation factor.

9. We have for convenience divided up our analysis of the cases in which leave for appeal was granted before and after 1 July 1997 under the “or otherwise” ground, whether on that ground alone or with other grounds. Before that date, the highest court was the Privy Council; after that date, the CFA.

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<sup>1</sup> Legislative Council, *Official Record of Proceedings*, 26 July 1995, page 6036.

## Leave for Appeal to the Privy Council

10. The general principles laid down by the then Supreme Court of Hong Kong in *Hui Shiu-wing v Cheung Yuk-lin* [1968] HKLR 176 (“*Hui Shiu-wing*”) relating to leave for appeal to the Privy Council under the “or otherwise” ground provide useful guidance on the question of under what circumstances leave for appeal to the CFA should be granted under the “or otherwise” ground.

11. In *Hui Shiu-wing*, the then Supreme Court held that the expression “or otherwise” did “contemplate cases for which leave to appeal would be granted even if the question involved could not reasonably be described as one of great general or public importance”, but “[did] not think that any useful purpose would be served by attempting to define the field covered by the expression ‘or otherwise’”. Nevertheless, the Court noted, on a proper construction of rule 2(b)<sup>2</sup>, an implied limitation that the circumstances under which leave to appeal to the Privy Council is granted “must be exceptional” :

*“If the intention was that this Court could, if it thought fit, refer to Her Majesty in Council for decision any ordinary everyday question which comes before an appellate court, there was no need to insert in the rule the words “of great general or public importance”. In my view, the decision of this Court to grant leave to appeal is not unfettered; and it is our duty to endeavour to give effect to the express and implied limitations imposed upon its jurisdiction by rule 2(b), otherwise it would be tantamount to asking the Judicial Committee to function as an ordinary court of appeal”.*

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<sup>2</sup> Rule 2(b) of the Order in Council Regulating Appeals to the Privy Council from the Supreme Court of Hong Kong made on 10 August 1909 as amended by Order in Council made on 27 November 1957, which is the equivalent of section 22(1)(b) of Cap. 484, reads :

*“Subject to the provisions of these Rules, an appeal shall lie :-... at the discretion of the Court, from any other judgment of the Court, whether final or interlocutory, if in the opinion of the Court, 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 (Her) Majesty in Council for decision”.*

12. The then Supreme Court in *Hui Shiu-wing* concluded that the case did not present any exceptional features and declined leave accordingly. Its interpretation of the “or otherwise” ground has been followed in a number of subsequent cases<sup>3</sup>.

### Leave for Appeal to the CFA

13. The two points made by the then Supreme Court in *Hui Shiu-wing* above have subsequently been repeatedly affirmed by the CFA and the Court of Appeal (“CA”). They are (a) the Privy Council (the CFA since July 1997) does not function as an ordinary appellate court; and (b) leave to appeal to the Privy Council (the CFA since July 1997) should only be granted in exceptional cases.

14. In several recent cases, the CFA has emphasised that its function is primarily to consider points of law of great general or public importance, and not to provide appellants with a platform to debate yet again factual findings made in the lower courts<sup>4</sup>. The CFA has also clarified on numerous occasions that granting leave to appeal under the “or otherwise” ground is an exceptional course<sup>5</sup>; it is only in “rare and exceptional circumstances” that leave to appeal would be granted thereunder<sup>6</sup>. In *China Field Ltd v Appeal Tribunal (Buildings)*, FAMV

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<sup>3</sup> See, e.g., *Intercontinental Housing Development Ltd v Quek Teck Huat and Others*, CACV No.37 of 1986, (23 September 1986); *Wang Din Shin v Nina Kung alias Nina T.H. Wang*, CACV No. 460 of 2002 (17 November 2004); *Gary William Moore v The Royal Hong Kong Jockey Club*, CACV No. 123 of 1989 (26 April 1990).

<sup>4</sup> See, e.g., *Chinachem Charitable Foundation Ltd v Chan Chun Chuen and Another*, FAMV No. 20 of 2011, (2011) 14 HKCFAR 798, at [57]; *China Field Ltd v Appeal Tribunal (Buildings)*, FAMV No. 78 of 2008, (2009) 12 HKCFAR 68, at [16].

<sup>5</sup> See, e.g., *Hui Yiu Wing v The Regional Council*, FAMV No.16 of 2002, (2002) HKCU Lexis 1538, at [1]; *Bill Chao Keh Lung v Don Xia*, FAMV No. 6 of 2004, (2004) 7 HKCFAR 260, at [9]; *Chinachem Charitable Foundation Ltd v Chan Chun Chuen and Another*, FAMV No. 20 of 2011, (2011) 14 HKCFAR 798, at [57].

<sup>6</sup> *C G Lighting Ltd v Commissioner of Inland Revenue*, FAMV No. 23 of 2011, (2011) 14 HKCFAR 750, at [3].

No. 78 of 2008, (2009) 12 HKCFAR 68 (“*China Field*”), at [16], the CFA noted that :

*“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”.*

15. Whether to grant leave under the “or otherwise” ground is ultimately a matter of discretion<sup>7</sup>.

16. The same sentiment is shared by the CA, which has noted on various occasions that the granting of leave under the “or otherwise” ground is an exceptional course and would normally be a matter for decision by the CFA itself<sup>8</sup>.

17. The CFA has also provided some guidance on the approach to the “or otherwise” ground in a recent case of *Dr Leung Shu Piu v The Medical Council of Hong Kong*, FAMV No. 17 of 2014, at [14] : lawyers should approach leave applications under the “or otherwise” ground with some circumspection and should clearly state the grounds in support of such applications in their written submissions.

#### Actual Cases with Leave Granted

18. Leave has been granted by the CFA and CA either solely under the “or otherwise” ground or in conjunction with other grounds. The decision to grant leave is typically fact-specific. Accordingly, any categorisation of the factors or circumstances under which leave was granted by the court can only be a broad guide. Moreover, leave has sometimes been granted by way of an oral decision without a written

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<sup>7</sup> *Greatworth Industrial Ltd v Chevalier (Construction) Co. Ltd*, FAMV No. 43 of 2006, (2006) 9 HKCFAR 857, at [2]; *China Harbour Engineering Company Ltd v The Secretary for Justice*, FAMV No. 55 of 2007, at [7].

<sup>8</sup> See, e.g., *Re Centre Rise Trading Ltd*, CACV No. 250 of 2008 (30 April 2009), at [8]; *Cheong Shing Ltd v Yu Kwan*, CACV No. 68 of 2010 (13 October 2010), at [3]; *Keen Lloyd Energy Ltd v Bank of China (Hong Kong) Ltd*, CACV Nos. 34 to 37 of 2008 (6 January 2009), at [13]; *Richfine Development Ltd v Hugh Rupert Rivington*, CACV No. 257 of 2008 (22 June 2009), at [17]; *New Technology Cable Ltd v Popbridge Industrial Ltd*, CACV No. 50 of 2000 (19 September 2000), at [7].

determination. Therefore, the cases that we have identified for the purpose of this exercise below are not exhaustive, but rather illustrative.

19. Against the above background, the factors or circumstances under which leave has been granted under the “or otherwise” ground can broadly be grouped into the following three categories –

(a) *legal error(s) causing grave injustice*

The decisions of cases at **Annex D** suggest that the CFA or CA (as applicable) is likely to grant leave in cases where it is arguable that –

- (i) the lower court(s) made a legal error or errors causing grave injustice; and
- (ii) the result would have been different had the error(s) not been made.

(b) *relatively important subject matters*

The decisions of cases at **Annex E** suggest that the CFA and CA may be minded to grant leave to appeal to the CFA where the subject matter of the appeal is of considerable importance.

(c) *miscellaneous*

The decisions of cases at **Annex F** show that leave under the “or otherwise” ground has sometimes been granted as a logical consequence to other orders made by the court.

20. The above analysis of the case law shows that deserving cases which do not meet the requirement of “great general or public importance” under section 22(1)(b) of Cap. 484 may still be granted leave for appeal to the CFA.

**Judiciary**

**Administration Wing  
Chief Secretary for Administration’s Office**

**October 2014**

**Successful and Unsuccessful Rates of As of Right Appeals  
Disposed of in the Court of Final Appeal (filed in the years from 2001 to 2012)  
(as at July 2014)**

<b>Year of Filing</b>	<b>Total No. of Civil Cases filed</b>	<b>No. of civil appeals heard purely on “As of Right” grounds</b>	<b>Outcome of the pure “As of Right” Appeals</b>				
			<b>No. of appeals withdrawn</b>	<b>No. of appeals allowed</b>	<b><i>Rate of allowed appeals</i></b>	<b>No. of appeals dismissed</b>	<b><i>Rate of dismissed appeals</i></b>
2001	17	4	0	0	0%	4	100%
2002	16	5	1	2	40%	2	40%
2003	20	7	0	2	29%	5	71%
2004	18	3	0	0	0%	3	100%
2005	30	10	1	4	40%	5	50%
2006	23	5	0	1	20%	4	80%
2007	34	13	2	4	30%	7	54%
2008	30	6	1	4	66%	1	17%
2009	22	7	1	1	14%	5	71%
2010	17	7	1	0	0%	6	86%
2011	21	5	0	1	20%	4	80%
2012	27	6	0	2	33%	4	66%

Remarks :

- (1) Some of the appeal cases might have been submitted to the Court of Final Appeal under both limbs of section 22(1)(a) (as of right mechanism) and section 22(1)(b) (after obtaining leave) of the Hong Kong Court of Final Appeal Ordinance (Cap 484). The above table only captures the results of those appeals submitted solely under section 22(1)(a).
- (2) As some cases filed in 2013 have not been completely disposed of at the time the above table was compiled, we cannot provide figures for 2013.

**Annex B****Number of Civil Substantive Appeals (including as of right appeals)  
Disposed of in the Court of Final Appeal (2001-2013)**

<b>Year of Disposal</b>	<b>Number of Civil Substantive Appeals Disposed of (% against Total Appeals)</b>			
	<b>No. of Appeals Allowed (a)</b>	<b>No. of Appeals Dismissed (b)</b>	<b>No. of Appeals Withdrawn (c)</b>	<b>Total No. of Appeals (a+b+c)</b>
<b>2001</b>	6 (28%)	14 (67%)	1 (5%)	<b>21</b>
<b>2002</b>	8 (53%)	7 (47%)	0 (0%)	<b>15</b>
<b>2003</b>	11 (55%)	5 (25%)	4 (20%)	<b>20</b>
<b>2004</b>	5 (26%)	13 (69%)	1 (5%)	<b>19</b>
<b>2005</b>	7 (41%)	9 (53%)	1 (6%)	<b>17</b>
<b>2006</b>	20 (61%)	11 (33%)	2 (6%)	<b>33</b>
<b>2007</b>	10 (43%)	11 (48%)	2 (9%)	<b>23</b>
<b>2008</b>	12 (33%)	19 (53%)	5 (14%)	<b>36</b>
<b>2009</b>	11 (42%)	13 (50%)	2 (8%)	<b>26</b>
<b>2010</b>	6 (46%)	5 (39%)	2 (15%)	<b>13</b>
<b>2011</b>	8 (35%)	14 (61%)	1 (4%)	<b>23</b>
<b>2012</b>	4 (27%)	11 (73%)	0 (0%)	<b>15</b>
<b>2013</b>	16 (48.5%)	16 (48.5%)	1 (3%)	<b>33</b>

Annex C

**Number of Civil Leave Applications  
Disposed of in the Court of Final Appeal (2001-2013)**

<b>Year of Disposal</b>	<b>Number of Civil Leave Applications Disposed of (% against Total Applications)</b>			
	<b>No. of Applications Allowed (a)</b>	<b>No. of Applications Dismissed (b)</b>	<b>No. of Applications Withdrawn (c)</b>	<b>Total No. of Applications (a+b+c)</b>
<b>2001</b>	2 (7%)	24 (86%)	2 (7%)	<b>28</b>
<b>2002</b>	5 (15%)	27 (82%)	1 (3%)	<b>33</b>
<b>2003</b>	8 (16%)	43 (84%)	0 (0%)	<b>51</b>
<b>2004</b>	5 (20%)	20 (80%)	0 (0%)	<b>25</b>
<b>2005</b>	11 (28%)	27 (69%)	1 (3%)	<b>39</b>
<b>2006</b>	7 (14%)	41 (80%)	3 (6%)	<b>51</b>
<b>2007</b>	13 (21%)	49 (79%)	0 (0%)	<b>62</b>
<b>2008</b>	13 (20%)	52 (79%)	1 (2%)	<b>66</b>
<b>2009</b>	8 (9%)	77 (90%)	1 (1%)	<b>86</b>
<b>2010</b>	5 (12%)	36 (88%)	0 (0%)	<b>41</b>
<b>2011</b>	12 (24%)	36 (73%)	1 (2%)	<b>49</b>
<b>2012</b>	15 (32%)	29 (62%)	3 (6%)	<b>47</b>
<b>2013</b>	11 (22%)	38 (76%)	1 (2%)	<b>50</b>

## Annex D

### **Examples of Court of Final Appeal cases with leave granted under the “or otherwise” ground because of legal error(s) of the lower court(s) causing grave injustice**

1. *Archer v The Hong Kong Channel Ltd*, FAMV No. 7 of 1998, [1998] 1 HKLRD 829 (“*Archer*”) : In *Archer*, an obvious point of law in favour of the applicant was overlooked by everyone concerned in the lower courts by oversight, resulting in “a glaring injustice” (*Archer*, at p. 833)<sup>1</sup>. The Appeal Committee of the Court of Final Appeal (the “Appeal Committee”) granted leave solely under the “or otherwise” ground since the question involved was not of great general or public importance (*Archer*, at pp. 830 and 834). The Court of Final Appeal (“CFA”) subsequently allowed the appeal : *Archer v The Hong Kong Channel Ltd*, FACV No. 8 of 1998, (1997-1998) 1 HKCFAR 298, at p. 305.
2. *Chan Sik Pan v Wylam’s Services Ltd and Others*, CACV No. 108 of 2000 (3 January 2001) (“*Chan Sik Pan*”) : In *Chan Sik Pan*, the Court of Appeal (“CA”) granted leave solely under the “or otherwise” ground. The unusual circumstances include : (1) the defendant which was found liable by the CA, a Mr. Yu, was not allowed to continue with his evidence before the Judge at the District Court, possibly because the Judge came to a tentative view that Mr. Yu would not be found liable; and (2) the plaintiff’s claim against the three defendants was in the alternative and, therefore, an appeal on liability would involve all four parties. The CA was of the view that the plaintiff’s appeal was not so lacking in merit that leave should be refused and that Mr. Yu should not be deprived of an opportunity to raise new points which had not been dealt with by the Judge or the CA’s earlier judgment (*Chan Sik Pan*, at pp. 7 and 8). The CFA subsequently allowed the appeal and ordered a new trial : *Chan Sik Pan v Wylam’s Services Ltd and Another*, FACV Nos. 4 and 5 of 2001, (2001) 4 HKCFAR 308, at [32].
3. *Ting Kwok Keung v Tam Dick Yuen and Others*, CACV No. 751 of 2000 (27 September 2001) (“*Ting Kwok Keung*”) : In *Ting Kwok Keung*, the CA granted leave solely under the “or otherwise” ground on the

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<sup>1</sup> What was overlooked was the definition of “relevant date” in section 31R(1)(a) of the Employment Ordinance which “was perfectly clear” and did not “caus[e] any difficulty in the interpretation or application” (*Archer*, at p. 832).

basis that there may be sufficient reasons to conclude that the CA had wrongly interfered with the lower court's finding (*Ting Kwok Keung*, at [7], [9], [12] and [13]). The CFA subsequently allowed the appeal : *Ting Kwok Keung v Tam Dick Yuen and Others*, FACV No. 12 of 2001, (2002) 5 HKCFAR 336, at [63] and [71].

4. *Hui Yiu Wing v The Regional Council*, FAMV No. 16 of 2002 (24 September 2002) (“*Hui Yiu Wing*”) : In *Hui Yiu Wing*, the CA wrongly rejected the plaintiff's application to hear fresh evidence of a change in the plaintiff's circumstances<sup>2</sup> and accordingly made no award for loss of future earnings. The Appeal Committee held that the CA applied the wrong test, which “led to a fundamentally wrong approach being followed”, and it was “reasonably arguable that a different result would have been reached if the correct test had been applied and the correct approach had been followed” (*Hui Yiu Wing*, at [1]). In these exceptional circumstances, the Appeal Committee granted leave solely under the “or otherwise” ground. The appeal to the CFA was subsequently withdrawn<sup>3</sup>.
5. *Hong Kong Island Development Ltd v The World Food Fair Ltd and Another*, FAMV No. 38 of 2005, (2006) 9 HKCFAR 162 (“*Hong Kong Island Development*”) : In *Hong Kong Island Development*, the CFA granted leave solely under the “or otherwise” ground on the basis that it was “reasonably arguable that the CA was not entitled to displace the Judge's conclusion as to the absence of any concluded contract and to substitute its own view that a binding contract had come into existence” (*Hong Kong Island Development*, at [28]). The CFA subsequently allowed the appeal : *The World Food Fair Ltd and Another v Hong Kong Island Development Ltd*, FACV No. 6 of 2006, (2006) 9 HKCFAR 735, at [88].
6. *Kan Kam Cho and Another v Kan Chiu Nam Raymond and Another*, FAMV No. 53 of 2007 (5 November 2007) (“*Kan Kam Cho*”) : In *Kan Kam Cho*, the appellants raised two questions in their leave application : first, whether the CA wrongly confirmed the trial judge's finding of fact which formed the basis of the respondents' defence of limitation;

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<sup>2</sup> i.e., the plaintiff lost his employment after the first instance assessment of damages.

<sup>3</sup> This appeal was withdrawn because the parties settled out of court : the defendant agreed to pay the plaintiff a settlement sum of HK\$3,500,000 (inclusive of interest and costs).

the second question related to a point of law under the Limitation Ordinance. The Appeal Committee granted leave to examine the first question under the “or otherwise” ground and leave to examine the second question under the “great general or public importance” ground (*Kan Kam Cho*, at [2] and [3]). The CFA concluded that the lower courts made a finding of fact in the absence of evidence and answered the first question in favour of the appellants; accordingly, the appeal was allowed : *Kan Kam Cho and Another v Kan Chiu Nam Raymond and Another*, FACV No. 33 of 2007, (2008) 11 HKCFAR 538, at [12] to [14].

7. *Tradepower (Holdings) Ltd (in liquidation) v Tradepower (Hong Kong) Ltd and Others*, FAMV No. 11 of 2009 (30 March 2009) (“*Tradepower*”) : In *Tradepower*, the appellants contended that the CA was wrong to conclude that the directors were dishonest as this involved reversing clear findings to the contrary by the Recorder. On this basis, the Appeal Committee granted leave under the “or otherwise” ground (*Tradepower*, at [4]). The Appeal Committee also granted leave under the “great general or public importance” ground to examine questions as to what proof of dishonest intent under section 60 of the Conveyancing and Property Ordinance entails (*Tradepower*, at [5]). The CFA subsequently held that the CA’s approach to the proof of dishonest intent was correct, which rendered the directors’ subjective beliefs irrelevant. As such, the question submitted to the CFA under the “or otherwise” ground did not arise for decision and the appeal was dismissed : *Tradepower (Holdings) Ltd (in liquidation) v Tradepower (Hong Kong) Ltd and Others*, FACV No. 5 of 2009, (2009) 12 HKCFAR 417, at [114] to [116].
8. *WLK v TMC*, FAMV No. 50 of 2009, (2009) 12 HKCFAR 473 (“*WLK*”) : In *WLK*, the Appeal Committee granted leave under both the “great general or public importance” ground and the “or otherwise” ground. Leave was granted under the “or otherwise” basis in relation to allegedly self-evident arithmetical and other errors, i.e., whether the CA wrongly disregarded several loans in calculating the husband’s net assets (*WLK*, at [17]). The CFA subsequently corrected these calculation errors<sup>4</sup> and allowed the appeal : *WLK v TMC*, FACV No. 21 of 2009, (2010) 13 HKCFAR 618, at [140].

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<sup>4</sup> The CFA held that the CA wrongly added back the amount of (1) the Brother’s loan with interest and (2) the principal amount of the Dahoon International repayment to the husband’s net assets, *WLK* at [52] and [58].

9. *Tam Shuk Yin Anny v Choi Kwok Chan and Others*, FAMV No. 51 of 2009 (26 February 2010) (“*Tam Shuk Yin*”) : In *Tam Shuk Yin*, the Appeal Committee was satisfied that “it is quite arguable that there [was] no sound or legitimate basis for the award of interest...and it would be wrong to allow the award to stand” (*Tam Shuk Yin*, at [3]). Accordingly, the Appeal Committee granted leave solely under the “or otherwise” ground. The CFA subsequently allowed the appeal : *Tam Shuk Yin Anny v Choi Kwok Chan and Others*, FACV No. 3 of 2010, (2011) 14 HKCFAR 1, at [31].
10. *Chau Cheuk Yiu v Poon Kit Sang and Others*, FAMV No. 7 of 2011 (7 June 2011) (“*Chau Cheuk Yiu*”) : In *Chau Cheuk Yiu*, the Appeal Committee granted leave solely under the “or otherwise” ground (*Chau Cheuk Yiu*, at [1]). The appeal concerned with the circumstances in which it was appropriate to grant an extension of time for the purpose of bringing an appeal in order to secure a right due under a belated realisation by the judiciary of the true state of the law in a fundamental respect<sup>5</sup>. The CFA subsequently allowed the appeal on the basis that the CA misapplied the principle set out in *Hung Chan Wa* and wrongly affirmed the grant of extension of time : *Chau Cheuk Yiu v Poon Kit Sang and Others*, FACV No. 7 of 2011, (2012) 15 HKCFAR 460, at [65] and [79].
11. *Ho Chun Yan Albert and Leung Kwok Hung*, FAMV Nos. 21 and 22 of 2012, (2012) 15 HKCFAR 686 (“*Ho and Leung*”) : In *Ho and Leung*, the Appeal Committee considered that the costs orders made against Mr. Ho and Mr. Leung merited examination by the CFA and exceptionally granted them leave to appeal against those costs orders under the “or otherwise” ground (*Ho and Leung*, at [49]). The CFA subsequently allowed the appeal against those costs orders and held that the correct order for costs should be that no order for costs be made : *Ho Chun Yan Albert*, FACV No. 1 of 2013, at [51] and [52].
12. *MGA Entertainment Inc v Toys & Trends (Hong Kong) Ltd and Others*, FAMV No. 42 of 2012 (“*MGA*”) : In *MGA*, the CFA granted leave solely under the “or otherwise” ground<sup>6</sup>. The only issue in this appeal is what loss the defendants sustained as a result of a discharge of injunction by the trial judge (which was affirmed by the CA under a

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<sup>5</sup> *Chau Cheuk Yiu* at [1].

<sup>6</sup> Leave was granted orally without a written determination.

majority judgment). The CFA allowed the appeal and substantially reduced the amount of damages : *MGA Entertainment Inc v Toys & Trends (Hong Kong) Ltd and Others*, FACV No. 6 of 2013 at [86].

**Examples of Court of Final Appeal cases with leave granted under the “or otherwise” ground because the subject matter of the appeal is of considerable importance**

1. Syed Haider Yahya Hussain and Another v The Registrar of Births and Deaths, CACV No. 77 of 2000 (20 February 2001) (“*Syed*”) : In *Syed*, the Court of Appeal (“CA”) considered it appropriate to grant leave under the “or otherwise” ground because the appeal related to immigration, which was “a developing branch of law”, and there were “clearly issues to be decided there” (*Syed*, at p. 2). The Court of Final Appeal (“CFA”) subsequently allowed the appeal : The Registrar of Births and Deaths v Syed Haider Yahya Hussain and Another, FACV No. 6 of 2001, (2001) 4 HKCFAR 429, at [75].
2. Swire Properties Ltd and Others v Secretary for Justice, CACV No. 1058 of 2001, [2002] 4 HKC 117 (“*Swire Properties*”) : In *Swire Properties*, the CA granted leave under the “or otherwise” ground in view of the exceptional circumstances of the appellants having to pay billions of Hong Kong dollars for having developed land which they considered they had a right to develop (*Swire Properties*, at p. 134 C-D). The CFA subsequently dismissed the appeal : Swire Properties Ltd and Others v Secretary for Justice, FACV No. 13 of 2002, (2003) 6 HKCFAR 236, at [75].
3. Wang Din Shin v Nina Kung alias Nina T.H. Wang, CACV No. 460 of 2002 (30 November 2004) (“*Nina Wang*”) : *Nina Wang* concerned the title to, and the right to administer, Nina Wang’s estate. The CA granted leave both under the “as of right” ground and the “or otherwise” ground. All three judges agreed the circumstances of the appeal were exceptional, not least because a huge estate worth billions of dollars was at stake (*Nina Wang*, at [16], [23], [47] to [49]). In the Reasons for Decision, Yuen JA also referred to the court’s practice of attaching great importance to the grant of probate (*Nina Wang*, at [23]). The CFA subsequently allowed the appeal : Nina Kung alias Nina T.H. Wang v Wang Din Shin, FACV No. 12 of 2004, (2005) 8 HKCFAR 387, at [649].

4. *Sino Wood Investment Ltd v Wong Kam Yin*, FAMV No. 22 of 2004 (12 January 2005) (“*Sino Wood*”) : In *Sino Wood*, the appellant’s primary contention was that the respondent’s acts constituted “leaving Hong Kong” on a proper construction of section 21B of the High Court Ordinance and the relevant prohibition orders made thereunder; leave to appeal this issue was granted under the “great general or public importance” ground. The appellant’s secondary contention was that, if the respondent’s conduct did not constitute “leaving Hong Kong”, it nevertheless amounted to an attempt to commit contempt which was punishable as contempt of court; leave to appeal this issue was granted under the “or otherwise” ground (*Sino Wood*, at p. 2). The CFA allowed the appeal in relation to the primary issue and therefore did not need to consider the issue of attempted contempt : *Sino Wood Investment Ltd v Wong Kam Yin*, FACV No. 3 of 2005, (2005) 8 HKCFAR 715, at [26].

**Examples of Court of Final Appeal cases with leave granted under the  
“or otherwise” ground as a logical consequent to other orders  
made by the Court**

1. *De Monsa Investments Ltd v Whole Win Management Fund Ltd*, CACV No. 251 of 2010 (27 February 2012) (“*De Monsa*”) : In *De Monsa*, the Court of Appeal (“CA”) granted the defendant leave to appeal as of right against the CA’s order that it pay liquidated damages to the plaintiff. Accordingly, the CA was of the view that it would be anomalous not to grant the defendant leave to appeal in respect of the related issue of whether the Court of Final Appeal (“CFA”) should reinstate the Judge’s direction for an assessment of damages were the CFA to reverse the CA’s judgment. Accordingly, the CA granted leave under the “or otherwise” ground in respect of the latter issue (*De Monsa*, at [6] and [7]). The CFA subsequently allowed the appeal : *De Monsa Investments Ltd v Whole Win Management Fund Ltd*, FACV No. 6 of 2012, (2013) 16 HKCFAR 419, at [136].
2. *Z and X and C*, FAMV No. 14 of 2013 (27 September 2013) : In *Z and X and C*, the Appeal Committee granted the petitioner leave solely under the “or otherwise” ground to appeal on the issue of the ownership of certain shares. Leave was granted to avoid the possibility of inconsistency since the intervening party in that case had been given leave to appeal on the same issue (*Z and X and C*, at [2]). The CFA subsequently dismissed the appeal : *Z and X and C*, FACV No. 19 of 2013, at [5].